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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JUL 20 2007**
EAC 06 008 51830

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Maura DeAdinck
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner asserts that his dance partner was approved. The petitioner provided no evidence of this approval or information, such as a receipt number, that would allow us to verify this claim. Regardless, each case must be decided on a case-by-case basis on the evidence of record. The petitioner also submits new evidence, most of which postdates the filing of the petition and cannot be considered evidence of the petitioner’s eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). While the petitioner does not specifically address the director’s concerns and we concur with the director’s ultimate conclusion, the director’s decision fails to analyze the evidence pursuant to the pertinent regulations. Thus, we will more fully analyze the evidence below.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien’s entry to the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of

endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a competitive Latin dancer. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The director's notice of intent to deny listed the criteria for a different classification, aliens of exceptional ability pursuant to Schedule A, Group II, that requires "widespread international recognition" rather than "national or international acclaim." The director implies that the petitioner may be intending to seek this other classification although the record does not suggest that the petitioner was seeking any classification other than extraordinary ability pursuant to section 203(b)(1)(A) of the Act. Both the notice of intent to deny and the final decision imply that the petitioner must demonstrate that he has won awards individually, as opposed to as a member of a team, and that he must meet specific criteria rather than any three of the ten. As the director's notices did not properly address the pertinent criteria, we will consider all ten criteria as follows:

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Most of the evidence submitted relates to this criterion. Contrary to the director's implication, we will not dismiss an award simply because the petitioner won the award as a member of a team. We note that Grammy Awards are issued to musical groups and Olympic medals are awarded to entire teams. That said, the petitioner must demonstrate that he is a named recipient of the award and not simply associated with an award-winning project. Finally, as stated in the regulation at 8 C.F.R. § 204.5(h)(3)(i), the award must be nationally or internationally *recognized*. Thus, the petitioner must establish the award's significance at, at a minimum, the national level.

Several references, including the petitioner's main coach for six years, assert that the petitioner and his partners were Bulgarian National Champions in the Latin and Ballroom categories and "vice champions" in other competitions. The primary evidence of an award is the award itself whereas secondary evidence might be media coverage of the award. To rely on affidavits, the petitioner must first demonstrate that both primary and secondary evidence does not exist or is unavailable. 8 C.F.R. § 103.2(b)(2).

The petitioner submitted the following awards issued by the Bulgarian Sport Dance Federation:

1. First Place "M-La," Republican Championship of Sport Dances, Sofia, year unknown;
2. Second Place "AM-La," Republican Championship of Sport Dances and Club of Sport Dances "Siana Dance," Plovdiv, year unknown;
3. First Place "M-La," Republican Championship of Sport Dances and Club of Sport Dance "Amarand-M," year unknown;
4. First Place, Open Sport Dances Tournament, Dupnica, 1999;
5. First Place, V Open Sport Dances Tournament, Stara Zagora, 1999;
6. First Place, Open Sport Dances Tournament, Kavarna, 1999;
7. First Place "M-La," Republican Championship of Sport Dances, Burgas, 2001;
8. First Place in the Championship for Amateurs 10 dances, Republican Championship of Sport Dances, 10 Dances, 2001;
9. First Place "M-La," Open Tournament of Sport Dances and Club of Sport Dances "Tuida-2001;"
10. First Place "M-La" and Conventional Dance, Republican Championship of Sport Dances," Plovdiv, 2001;
11. First Place "A-La," National Sport Dances Championship, Venlingrad, 2001;
12. Second Place "B-la," Open Tournament of Sport Dances, Plovdiv, 2001;
13. Second Place, Open Tournament of Sport Dances of KST "Fantastiko," Dupnica, 2001;
14. Second Place "A-la," Sport Dances Tournament "Masters Gala," Sofia, 2001;
15. First Place "M-La," International Tournament of Sport Dances, Varna, 2002;
16. First Place "M-La" and Am-B-St, Republican Championship of Sport Dances, Ruse, 2002.
17. Second Place, Republican Championship of Sport Dances and Club of Sport Dances, Plovdiv, 2002;
18. First Place "18M+M-La," Open Tournament of Sport Dances and Club of Sport Dances "Sliven" and Town Sliven, 2004;

19. First Place "M-La," 9 National Tournament of Sport Dances for the Cup of Sofia, 2004 and
20. First Place, National Tournament of Sport Dances, Sofia, 2004;

The director concluded that the petitioner did not demonstrate whether he won these awards as an individual or as a member of a team. The awards, however, are either issued to the petitioner individually or to him and his partner. Moreover, as stated above, we will not discount the above awards simply because they were issued to the petitioner jointly with his partner.

On appeal, the petitioner submits a Certificate of Accomplishment from the Broadway Dance Center in recognition of his completion of a three-month program. This is not an award or prize for excellence. The remaining evidence submitted on appeal relates to accomplishments after the date of filing which cannot be considered evidence of eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Thus, we will focus on the petitioner's Bulgarian awards. The petitioner must demonstrate the national significance of these awards. The petitioner has not provided materials regarding the hierarchy of dance competitions in Bulgaria or the meaning of abbreviations such as "M-La." Nevertheless, we acknowledge the assertions of the petitioner's coach and others that at least some of these awards represent national championships. Thus, we are satisfied that the petitioner meets this one criterion. The petitioner, however, must meet at least three to establish eligibility.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In response to the director's intent to deny, the petitioner asserted that he was submitting "evidence of membership in international associations." The petitioner, however, only submitted letters providing general praise, awards, a "start book," and untranslated foreign-language articles. The director appears to accept that evidence of membership was submitted, concluding that the petitioner had not established whether his membership was individual or "as a member" and stating that mere association with a prestigious association is insufficient.

On appeal, the petitioner submitted evidence that he is a member of the National Dance Council of America as a "Pro/Am Teacher" and a "Competing Professional." The petitioner, however, did not submit the membership criteria for the council.

As stated by the director, at issue for this criterion is the requirements for membership. Specifically, the petitioner must demonstrate that he is a member of an association that requires outstanding achievements of its members. Membership required for all competitors in the field cannot serve to set the petitioner apart from other members of the field.

For the reasons discussed above, the petitioner has not established that he meets this criterion.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Initially, the petitioner submitted a 2003 article in the *Stara Zagora News* and a summary translation. The article appears to discuss the success of the petitioner and his partner at a recent youth competition. In response to the director's notice of intent to deny, the petitioner submitted two foreign-language articles with no translation. The director did not discuss this evidence.

The record contains no evidence that the *Stara Zagora News* has a national circulation such that we can consider it major media. Moreover, the petitioner did not comply with the regulation at 8 C.F.R. § 204.5(h)(3)(iii) by submitting complete certified translations of all of the published materials. Thus, the petitioner has not established that he meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The record contains some evidence that the petitioner has taught children. The director did not acknowledge these assertions. The evidence submitted to meet a given criterion, however, must be indicative of or at least consistent with national or international acclaim. In other words, duties that are inherent to an occupation cannot serve to meet this criterion. It is inherent to the occupation of teacher to evaluate one's students. Thus, the petitioner's teaching responsibilities cannot serve to meet this criterion. The record contains no evidence that the petitioner has served as a judge at a dance competition or had a similar judging responsibility. Thus, he has not established that he meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the alien have made contributions that are both original and of major significance. While the petitioner has been a successful dancer in Bulgaria and submits letters providing general praise of his abilities, the petitioner has not explained how he has made contributions to the sport of dance that are either original or have impacted the sport as a whole such that they can be considered to be of major significance. Thus, the petitioner has not established that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner does not claim to meet this criterion and the record contains no evidence relating to it.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner is a competitive dancer in ballroom dance, which we note is an Olympic *sport*. Even dance that constitutes art is a performing art. Thus, the petitioner has not established that this criterion, applicable to the visual arts, is applicable to his field. We note that it is inherent to ballroom dancing to dance in competitions. Not every dance competition is an exhibition of showcase of the petitioner's "art." Thus, we are not persuaded that his performance at dance competitions serves to meet this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner does not claim to meet this criterion and the record contains no evidence relating to it.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner does not claim to meet this criterion and the record contains no evidence relating to it. We note that the director implies that the failure to meet this criterion precludes eligibility. The regulations, however, do not specify that an alien must meet this criterion provided he meets at least three other regulatory criteria. Thus, we withdraw the director's implication that the failure to meet this criterion precluded eligibility.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner engages in dance as a competitive sport, not as a performing artist. Regardless, the petitioner does not claim to meet this criterion and the record contains no evidence relating to it.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a ballroom dancer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a ballroom dancer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.