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FILE: [REDACTED]
EAC 04 219 53655

Office: VERMONT SERVICE CENTER

Date: MAR 29 2007

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:

[REDACTED]
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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability.¹ The director determined the petitioner had not established eligibility for classification as an alien of extraordinary ability.

On appeal, counsel questions whether the evidence submitted by the petitioner was properly considered. Counsel cites errors in the notice of denial, problems with the director's request for additional evidence, and evidence that was ignored by the director. For the reasons discussed below, we find that the director's request for additional evidence erroneously implied that the petitioner had to meet specific criteria and the final decision contains errors of law and ignores much of the evidence submitted.

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.

¹ The petitioner was initially represented by attorney Sergei Danilov. In this decision, the term "previous counsel" shall refer to Sergei Danilov.

§ 204.5(h)(3). 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, filed on July 21, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a "Professional Dance Sport Competitor" and "Dance Instructor." 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 criteria follow.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) Published material 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

At the time of filing, the petitioner submitted award certificates, published articles that discuss his dancing achievements, recommendation letters, and photographs. In his July 1, 2004 letter accompanying the petition,

previous counsel argued that the petitioner satisfied the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (iv), and (v).

On January 19, 2005, the director issued a request for additional evidence. Specifically, the director requested evidence of the petitioner's awards, memberships, published material about the petitioner, and his salary. The director provides no explanation for singling out these four criteria. Nothing in the regulation implies that an alien must meet any specific criterion as long as the alien meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). The director also noted that the record lacked letters "from well-known persons" in the petitioner's field although most of the criteria require objective evidence of accomplishments as opposed to letters of support from recognized experts, however credible their opinions may be.

In response, the petitioner submitted additional letters of recommendation, evidence of an "Associate" diploma from the North American Dance Teachers Association, further photographs, and digital video disc recordings of his dance performances.

In the August 18, 2005 decision denying the petition, the director states: "Your cover letter claims that your extraordinary ability is shown in the awards received, and the writing career you have followed in the literature industry of cosmetology." This statement, however, is irrelevant to the petitioner's case. The director's decision listed all ten of the regulatory criteria, but only discussed awards, memberships, and remuneration. The director's decision included no discussion of the published material submitted by the petitioner or the specific awards he received, nor did it address previous counsel's arguments that the petitioner meets the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (v). The director acknowledged the petitioner's submission of awards but concluded that he had not demonstrated whether the awards were individual or "as a member." Nothing in the regulation at 8 C.F.R. § 204.5(h)(3)(i) precludes team awards. As such, the director's focus on that issue was in error. The director also stated that the petitioner had not submitted "objective evidence, such as affidavits from well-known U.S. organizations or individuals, to support your claims of prestige and ability." While affidavits may serve as valid evidence, they are far more subjective than objective. Evidence that addresses the regulatory criteria, such as awards and independent journalistic coverage of the alien, is far more persuasive than the subjective opinions of experts in the field. Thus, the implication that expert letters from U.S. sources are required to establish eligibility under this classification is in error.

The director then discusses the membership criterion at length, concluding that the petitioner had not established that he met the criterion set forth at 8 C.F.R. 204.5(h)(3)(ii). After that conclusion, the director noted that the petitioner's personal statements and those of his attorney are not objective. While we concur with these statements, their order does not make it clear to the petitioner that one's personal statements as to the membership requirements of an association cannot serve to establish that it requires outstanding achievements of its members. Rather, the petitioner must submit official documentation from the association, such as the association's membership bylaws. Moreover, the limited inquiry in the director's request for additional evidence may have led the petitioner to believe he had to meet the membership criterion and could not rely on evidence to meet other criteria instead.

In this matter, we find that the director's decision fails to explain the deficiencies in the evidence submitted consistent with the regulations such that the petitioner could file a meaningful appeal addressing those deficiencies. Thus, while we agree with the director that the petitioner has not demonstrated eligibility pursuant

to section 203(b)(1)(A) of the Act, we must remand the matter to the director for issuance of a new request for evidence notice that properly addresses the deficiencies in the record. On appeal, counsel now asserts that the petitioner meets the criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iii), (v), (vii), (viii), and (ix). A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “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).

8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not established that his awards are reflective of national or international recognition rather than local or regional recognition. The director should instruct the petitioner to submit any media coverage of the events at which the petitioner has won awards or other comparable evidence of their national or international significance.

8 C.F.R. § 204.5(h)(3)(ii) calls for 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. The petitioner has not submitted evidence of the membership bylaws or the official admission requirements for the organization’s to which he belongs showing that they require outstanding achievement for admission to membership or that prospective members are evaluated by national or international experts in consideration of their admission to membership. The director should instruct the petitioner to submit official documentation from associations of which the petitioner claims to be a member showing their membership criteria (such as membership bylaws).

8 C.F.R. § 204.5(h)(3)(iii) calls for 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. The petitioner has not shown that the published material he submitted was primarily about him and published in major media. The director should instruct the petitioner to submit evidence from the publications that have covered the petitioner regarding their circulation statistics.

8 C.F.R. § 204.5(h)(3)(v) calls for evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. In this case, the evidence submitted by the petitioner does not establish that any of his past accomplishments represent original contributions of major significance in the fields of professional Dance Sport competition or dance instruction. In order to satisfy this criterion, the petitioner must submit evidence showing that his artistic or athletic contribution has demonstrably influenced professionals throughout his field or that the field has somehow changed as result of his work. The director should instruct the petitioner to submit evidence showing that the petitioner’s past accomplishments rise to the level of an original contribution of major significance in the field of dance.

8 C.F.R. § 204.5(h)(3)(vii) calls for evidence of the display of the alien’s work in the field at artistic exhibitions or showcases. The plain language of this criterion, however, indicates that it is more appropriate for visual artists (such as sculptors and painters) rather than for dancers such as the petitioner.

8 C.F.R. § 204.5(h)(3)(viii) calls for evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. In order to establish that he performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. The director should instruct the petitioner to submit evidence establishing that he has performed in a leading or critical role for a distinguished organization in a manner reflective of sustained national or international acclaim.

8 C.F.R. § 204.5(h)(3)(ix) calls for 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 submitted evidence of biweekly compensation paid to him by The Wedding Dance Specialists LLC. The petitioner also submitted a prevailing wage determination issued by the Virginia Employment Commission. Prevailing wage statistics limited to Virginia are not an appropriate basis for comparison. The petitioner must submit evidence demonstrating that his level of compensation places him at the very top of his field at the national level rather than above average at the local level. The petitioner offers no national salary statistics as a basis for comparison showing that his compensation was significantly high in relation to others in his field. The director should instruct the petitioner to submit national wage statistics for competitive dancers or dance instructors (from an organization such as the U.S. Department of Labor) to establish that the petitioner earns a level of compensation that places him among the highest paid individuals in his field at the national level.

In conclusion, we concur with the director's finding that the petitioner has failed to demonstrate he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Nevertheless, the director's request for evidence was deficient in that it singled out criteria that the petitioner did not initially claim to meet. Further, the director's decision denying the petition was deficient in that it contained errors of law and ignored much of the evidence submitted. Therefore, we must remand the matter to the director for issuance of a new request for evidence notice that properly addresses the deficiencies in the record as outlined above. The director may request any additional evidence deemed warranted and should allow the petitioner 12 weeks to respond. Pursuant to 8 C.F.R. § 103.2(b)(12) and *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971), any evidence submitted by the petitioner in response to the director's request must demonstrate his eligibility at the time of filing (July 21, 2004). If the director concludes that the petitioner's response does not overcome the deficiencies in the record, the director must issue a decision that addresses all of the petitioner's evidence and that applies the pertinent statutory and regulatory requirements in the analysis of his evidence.

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. The evidence of record does not establish that the petitioner meets these requirements.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.