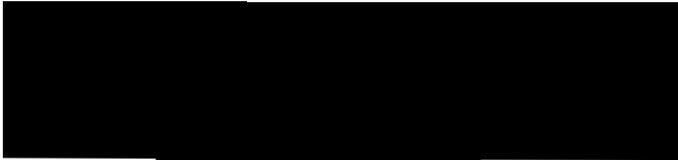




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FILE: [REDACTED] TEXAS SERVICE CENTER Date: ~~JAN~~ 24 2008
WAC 06 121 53268

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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. 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. The director also determined the petitioner had not established that she would continue work in her area of expertise in the United States.

On appeal, the petitioner argues that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that she intends to continue work as a dance teacher in the United States.

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 into 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, 60898-99 (Nov. 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on March 17, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a dance instructor and coach. 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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the 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). The petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner submitted the following:

1. Certificate from the Bulgarian Dance Sport Federation and the Municipality of the Town of Haskovo stating that the petitioner won first place in the Amateur Latin category at the [REDACTED] (1997).
2. Diploma stating that the petitioner won first place in the Youth Latin category at the [REDACTED] (1998).
3. Gold medal from the [REDACTED] (1998).
4. Diploma from the Romanian Dance Sport Federation stating that the petitioner won second place at the [REDACTED] (July 30, 2000).
5. Diploma from the French Dance Sport Federation stating that the petitioner won second place in the Latin category at the [REDACTED] (2000).
6. Certificate stating that the petitioner won second place in the Amateur Latin category at the [REDACTED] 2001" (2001).
7. Certificate from the Bulgarian Dance Sport Federation stating that the petitioner won second place in the Amateur Ten Dances category at the [REDACTED] (March 28, 2001).
8. Silver medal from the [REDACTED] (2001).
9. Certificate from the Bulgarian Dance Sport Federation and the Municipality of the Town of Gabrovo stating that the petitioner won first place in the Amateur Latin category at the Sport [REDACTED] Cup (May 19, 2001).
10. Certificate from the Bulgarian Dance Sport Federation stating that the petitioner won first place in the Amateur Latin category at the [REDACTED] (June 2001).
11. Certificate from the Bulgarian Dance Sport Federation and the Municipality of the Town of Bourgas stating that the petitioner won first place in the Amateur Latin category at the [REDACTED] (August 7, 2001).
12. Certificate from the Bulgarian Dance Sport Federation and the Municipality of the Town of Rousse stating that the petitioner won first place in the [REDACTED] at the [REDACTED] (2002).
13. Diploma stating that the petitioner won first place in the Amateur Latin category at the [REDACTED] (February 2002).

14. Certificate from the Bulgarian Dance Sport Federation and the Municipality of the Town of Varna stating that the petitioner won first place in the Latin category at the [REDACTED] (February 10, 2002).
15. Gold medal from the [REDACTED] (2002).
16. Certificate from the Bulgarian Dance Sport Federation stating that the petitioner won second place in the Amateur Latin category at the [REDACTED] for the [REDACTED] (May 24, 2002).
17. Certificate from the Bulgarian Dance Sport Federation and the Sport Dance Club "Paradise Dance" in Plovdiv stating that the petitioner won first place in the Championship for [REDACTED] (May 25, 2002).
18. Certificate from the Bulgarian Dance Sport Federation stating that the petitioner won first place in the Sport Dances category at the [REDACTED] (June 2002).
19. Certificate from the Bulgarian Dance Sport Federation and the Municipality of the Town of Rousse stating that the petitioner won first place in the Amateur Latin category at the [REDACTED] (June 2002).
20. Certificate from the Bulgarian Dance Sport Federation and the Municipality of the Town of Varna stating that the petitioner won first place in the Amateur Ten Dances category at the [REDACTED] (June 15, 2002).
21. Diploma from the Austrian Dance Sport Federation stating that the petitioner won second place in the [REDACTED] (2003).
22. Gold medal from the [REDACTED] (2004).
23. Certificate from the Bulgarian Dance Sport Federation and the Sport Dance Club "Siana Dance" stating that the petitioner won first place in the Amateur Latin category at the [REDACTED]

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The English language translations accompanying the petitioner's awards were not certified as required by the regulation.

In response to the director's request for evidence, the petitioner submitted a May 25, 2006 diploma stating that she won first place at the European Ten Dance Festival in Germany. The petitioner received this award subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Commr. 1971). Accordingly, the AAO will not consider this award in this proceeding.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* and it is her burden to establish every element of this criterion. In this case, there is no evidence showing the significance and magnitude of the events where the petitioner received awards. The petitioner has not shown that the preceding awards command significant recognition beyond the presenting organizations consistent with sustained national or international acclaim. For example, there is no evidence such as national press coverage surrounding the petitioner's awards or other evidence showing that they have a substantial level of recognition.

With regard to the petitioner's awards from amateur and youth dance competitions, such success is not an indication that the petitioner "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced competition from throughout her entire field (including professionals), rather than limited to her approximate age group or skill level within that field. CIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.¹ Likewise, it does not follow that a dancer or dance instructor who has had past success competing or coaching at the youth or amateur level should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

Even if the petitioner were to establish that her dance victories were consistent with national or international acclaim at the very top of her field, the statute and regulation require the beneficiary to seek entry into the United States to continue work in the area of extraordinary ability and expertise. Section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). According to Part 6 of the I-140 petition and a July 28, 2006 job offer letter from the "Way Dancer Center," the petitioner seeks employment in this country as a dance instructor and coach rather than as a dancer. While a competitive dancer and a dancing coach certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. See *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) ("[C]ontinuing work in one's 'area of extraordinary ability'" means "working in the same profession in which one has extraordinary ability.") Thus, while the petitioner's accomplishments as a competitive dancer are not completely irrelevant and will be given some consideration, ultimately she must satisfy the regulatory criteria through her achievements as a dance instructor and coach. As such, the petitioner's awards demonstrating her past record of purported success as a dancer cannot serve to meet this criterion.

Nationally or internationally recognized prizes or awards won by dancers coached directly by the petitioner, however, can be considered for this criterion. In this regard, the petitioner submitted a certification from [REDACTED] Senior Coach, Dance Club "Daga," stating:

¹ While we acknowledge that a district court's decision is not binding precedent outside of the district in which the case arose, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of [REDACTED]'s ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that CIS's interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

It is to certify that [the petitioner] has worked as a probationer-coach of [REDACTED]. She trained three groups of children according to their age:

- From six to nine years old children
- From eleven to thirteen years juniors
- From thirteen to fifteen years teenagers

[The petitioner] has successfully passed all theoretical and practical examinations connected with this.

The petitioner also submitted a document she prepared entitled "List with achievements of [the petitioner's] students under 13 years" stating: "[REDACTED] [and] [REDACTED] – 1st place International dance sport Championship 10 dances for children – Albena 2003, 1st place Vienna Open." In support of this statement, the petitioner submitted a letter from [REDACTED] stating: "At the moment her couple is the National Team of Bulgaria and is the first in the Rank list for year 2003 youth category." The petitioner also submitted a certification from [REDACTED] President of Judges Collegial of the Bulgarian Dance Sport Federation, stating: "[The petitioner] is a main teacher of the best Bulgarian couple [REDACTED] and [REDACTED] which get 1st place in Vienna Open 2004."³ The record, however, includes no primary evidence of the award from the Vienna Open. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). Rather than submitting first-hand evidence of the Vienna Open first place award, the petitioner instead submitted a letter from [REDACTED] claiming that the petitioner's students won at the preceding competition. [REDACTED] statement that the Vienna Open took place in 2004 contradicts the document prepared by the petitioner stating that the Vienna Open took place in 2003. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Nevertheless, there is no supporting evidence to demonstrate that a first place award from the Vienna Open is a nationally or internationally recognized prize or award. Further, as discussed previously, we cannot conclude that coaching success at the youth (under 13) or amateur level is an indication that the petitioner "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). In this case, there is no evidence showing, for example, that professional dancers under the petitioner's direct tutelage have won nationally or internationally recognized prizes or awards.

In light of the above, the petitioner has not established that she meets this criterion.

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 submitted evidence that she is a member of the [REDACTED] the Bulgarian Dance Sport Federation, and the Broadway Dance Center. The record, however, includes no evidence (such as membership bylaws or official admission requirements) showing that the preceding organizations require

This letter identifies [REDACTED] as "Chief Coach" of [REDACTED]. The record contains no evidence identifying the specific dates of this dance couple's tutelage by the petitioner.

outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's or an allied field. As such, the petitioner has not established that she meets this criterion.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁴

The petitioner submitted articles published in *Star Zagora's News*, *For the Woman*, *Novinar*, and *Dance*. The English language translations accompanying these articles were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the article in the June 2003 issue of *Novinar*, the article in the August 2003 issue of *Dance*, and the article entitled "Are You Ready?" were not primarily about the petitioner.⁵ Nor is there evidence (such as circulation statistics) showing that the preceding publications qualify as professional or major trade publications or other form of major media.

In response to the director's request for evidence, the petitioner submitted an article in *Globul* dated June 11, 2006 and an article in the June 2006 issue of *Imagine*. These articles were published subsequent to the petition's filing date and cannot be considered in this proceeding. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Nevertheless, there is no evidence that the preceding publications qualify as professional or major trade publications or other form of major media.

In light of the above, the petitioner has not established that she 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of

⁴ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

⁵ With regard to the article entitled "Are You Ready?," the petitioner did not provide the name of the author, the name of the publication, and its date of publication.

endeavor. 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). For example, judging a national competition for professional dancers is of far greater probative value than judging a local competition for youth or novices.

The petitioner submitted a certification from [REDACTED], President of the Bulgarian Dance Sport Federation, stating:

It is to certify that during the period from 2003 to 2004 [the petitioner] has worked as a judge in the competitions and championships for children and juniors:

[REDACTED] on 06.05.2003 – to twelve years old children
[REDACTED] on 27.04.2003 – to fourteen years old children
[REDACTED] on 12.01.2003 – to twelve years old children
[REDACTED] on 25.10.2004 – to twelve years old children

There is no evidence showing the specific competitive dance categories she evaluated, the names of the participating dancers, and their level of expertise. Nor is there evidence establishing the level of prestige associated with judging the preceding local competitions. Without evidence showing, for example, that the petitioner’s activities involved evaluating experienced professional dancers at the national or international level or were otherwise consistent with national or international acclaim, we cannot conclude that she meets this criterion.

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

The petitioner submitted several letters of recommendation discussing her dance experience, training, choreography skills, coaching talent, and competitive victories. The petitioner’s dance victories have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, CIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. The letters of recommendation do not specify exactly what the petitioner’s original contributions in dance have been, nor is there an explanation indicating how any such contributions were of major significance to her sport. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. While the petitioner may have helped various youth dancers with their skills and training, there is nothing in the letters of support to suggest that the petitioner has developed original training techniques, as opposed to methodologies passed down from her own tutelage in the sport. Further, even if the techniques taught by the petitioner were found to be original, there is nothing to demonstrate that these techniques have had major significance in the field. For example, there is no evidence to indicate that the petitioner’s techniques have been widely adopted throughout the sport or have influenced her field. While the

petitioner may have improved the skills of amateur and youth dancers under her tutelage, this does not demonstrate original contributions of major significance in the field consistent with sustained national or international acclaim.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a dance instructor or coach who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets 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 submitted a letter and a certification from [REDACTED] reflecting that she worked as a "probationer-coach" for the children's dance school of [REDACTED]. The record, however, includes no evidence that this organization has a distinguished reputation. Further, the preceding documents lack sufficient information about the petitioner's specific duties and responsibilities to demonstrate that she performed in leading or critical role for the dance club. Nor is there evidence demonstrating how the petitioner's role differentiated her from the other dance coaches who worked for [REDACTED].

In light of the above, the petitioner has not established that she meets this criterion.

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

In response to the director's request for evidence, the petitioner submitted an undated letter from [REDACTED] stating that she earned an annual salary of "50,000 BG levs" working for [REDACTED]. The plain language of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in her field. As such, the petitioner has not established that she meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, we concur with the director's determination that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

As stated previously, the director also determined the petitioner had not submitted clear evidence that she would continue work in her area of expertise in the United States. The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The petitioner submitted a July 28, 2006 letter from the "Way Dance Center" offering her a position as a dance teacher and instructor. We find that the preceding letter is adequate to demonstrate the petitioner intends to continue work in her area of expertise in the United States. Therefore, we withdraw the director's finding on this issue.

Nevertheless, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) 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.