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U.S. Department of Justice

Immigration and Naturalization Service

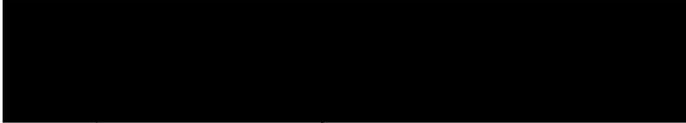
OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

File: SRC-00-238-51033 Office: Texas Service Center Date: 18 SEP 2001

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Myra L. Roseberry*  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a ballet school and a performing ballet company. The beneficiary is a professional dancer and choreographer. The petitioner seeks extension of the beneficiary's stay in the United States in O-1 classification, as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), in order to continue to employ him as artistic director for an additional three years.

The director denied the petition finding, in pertinent part, that the petitioner failed to establish that the beneficiary satisfies the regulatory standards for classification as an alien with extraordinary ability in the arts.

On appeal, counsel for the petitioner argued that the beneficiary qualifies as an alien with extraordinary ability in the arts and submitted additional documentation.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The beneficiary is a native of France and a citizen of Canada last admitted to the United States on or about May 13, 1997 in O-1 classification with authorization to remain through May 1, 2000.

At issue is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts within the meaning of this provision.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

*Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

*Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well known in the field of arts.

8 C.F.R. 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the

field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

On review of the record, it is apparent that the director carefully reviewed the evidence submitted in support of the petition. The record reflects that the beneficiary has been a professional dancer since 1966, has co-founded a dance company in Montreal, Canada, and has received favorable reviews for both his dance and his choreography. In May 1997, he was granted O-1 classification authorized for temporary employment with the Tulsa Dance Academy for three years. The petitioner now seeks a three-year extension of that authorization. It must be noted, however, that extensions of stay may only be granted in increments of one year. 8 C.F.R. 214.2(o)(12)(ii). It is also noteworthy that the petitioner indicated that it was filing for new employment of the beneficiary rather than for an extension. This discrepancy was not explained.

The question at issue is whether the beneficiary has reached the level of recognition necessary for classification as an alien with extraordinary ability in the arts and whether the proposed position is one in which he would continue to perform at the level of extraordinary ability.

Here, there is no evidence that the beneficiary has received an award equivalent to those listed at 8 C.F.R. 214.2(o)(3)(iv)(A) above. Nor does the record show that the beneficiary meets at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iv)(B). It must be noted that these provisions are only documentary requirements and merely addressing them does not establish eligibility for the benefit sought.

The beneficiary has had a career in professional dance spanning over 30 years. The petitioner submitted numerous favorable newspaper reviews of his performances. However, reviews of artistic performances are standard items in newspapers. It is noted that most of the performances were in regional theaters in both the United States and Canada, not in leading or prominent venues. No documentation was submitted from trade or professional reviewers to demonstrate that the beneficiary has received distinction in his field of endeavor.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for O-1 classification as having "extraordinary ability" the statute requires proof of "sustained" national or international acclaim and a demonstration that the alien's

achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

While the beneficiary has had a long and successful career, there is no evidence to establish that he has received recognition of his achievements that is "substantially above that ordinarily encountered" in the field of dance. Accordingly, it must be concluded that the record does not establish that the beneficiary's achievements have been recognized as being at the level of "extraordinary ability" necessary for O-1 classification as contemplated by the statute and regulations.

The denial of this petition is without prejudice to the petitioner pursuing any other immigration benefit for which the beneficiary may be eligible.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.