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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: WAC-00-075-50352 Office: California Service Center Date: 18 SEP 2001

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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: [Redacted]

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

*Robert P. Wiemann*  
Robert P. Wiemann, Acting Director  
Administrative Appeals Office

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

The petitioner is a dance studio. The beneficiary is a competitive ballroom dancer. The petitioner seeks classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in the arts, in order to employ her in the United States for a period of three years as a dance instructor.

The director denied the petition finding that the petitioner failed to establish that the beneficiary satisfies the regulatory standards as an alien of extraordinary ability in the arts.

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.

At issue in this matter is whether the petitioner has established that the beneficiary is an alien of 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 in the arts, 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.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary is described as a native and citizen of the Ukraine who was last admitted to the United States on June 29, 1999 in J-1 classification. The nature and purpose of that visit was not disclosed. It was stated that the beneficiary has eleven years experience in competitive ballroom dance, won the Ukrainian State Championship in 1996, and has been a performer and soloist since 1997 with *Impulse*, a performing dance company.

On review of the record, the director carefully reviewed the evidence submitted in support of the petition. The director found that there was insufficient evidence that the beneficiary had achieved the level of recognition contemplated at 8 C.F.R. 214.2(o)(3)(iv) necessary to establish extraordinary ability in the arts.

On appeal, counsel for the petitioner disputed some of the director's references in the decision that the beneficiary had competed as an amateur and as part of a team and that such activities were insufficient to establish a claim of extraordinary ability.

On review of the record, it must be concluded that the petitioner has not established the claim of extraordinary ability as defined in these proceedings. The director found that there was no evidence that the beneficiary has achieved the requisite "sustained acclaim" evidenced by nationally or internationally recognized awards.

It must first be noted that professional dance may be evaluated either as athletics, in terms of competitive ballroom dance, or as a performing art, in terms of professional theatrical dance. However, the evidence does not establish that the beneficiary has satisfied either standard. 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 applicable criteria at 8 C.F.R. 214.2(o)(3)(iv)(B). It must be noted that these provisions are only minimal documentary requirements and merely submitting documentation addressing the requirements does not establish eligibility for the benefit sought. The evidence must be weighed in its totality.

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.

As noted by the director, the beneficiary has established a career as a professional dancer and has gained a degree of recognition, including winning a national championship in her native country. However, there is no evidence that the beneficiary has achieved sustained acclaim evidenced by reviews in professional or trade journals. Nor has she won any major international competitions. A certain level of media recognition is the norm in professional athletics and arts and is not sufficient to establish extraordinary ability in the field of endeavor. The regulations require a demonstration that the alien has reached a high level of achievement in the field. The record does not establish that the beneficiary's achievements in the field of dance have received sustained national or international acclaim evidenced by published material in major publications or that she has commanded a high salary for her services. While the beneficiary's accomplishments have obviously received a level of recognition in order to be offered a position with a major studio in the field of dance, the evidence is insufficient to establish that she has achieved a level of recognition that is "substantially above that ordinarily encountered" among competitive dancers.

It must further be noted that the statute requires the alien to seek admission in order to continue in the area of extraordinary ability. It must be concluded that an artist/entertainer seeking admission in order to teach basic or introductory dance at a commercial level is not continuing at the level of extraordinary ability, even if it is demonstrated that the alien has extraordinary ability.

The regulations also require the submission of a labor consultation.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

To address this requirement, counsel for the petitioner submitted a letter from the American Guild of Musical Artists. It is concluded that this is not the appropriate peer group for the field of dance. Therefore, this requirement has not been satisfied as well.

The denial of this petition is without prejudice to the petitioner pursuing any other visa classification 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.