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U.S. Department of Justice

Immigration and Naturalization Service

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*Office of Administrative Appeals*  
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Washington, D.C. 20536



File: LIN 01 220 56851

Office: NEBRASKA SERVICE CENTER

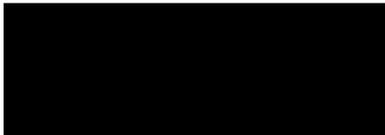
Date: **SEP 30 2002**

IN RE: Petitioner:  
Beneficiary:



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

IN BEHALF OF PETITIONER:



**PUBLIC COPY**

**INSTRUCTIONS:**

This is the decision 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.

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 that 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 that 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, Director  
Administrative Appeals Unit

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. An appeal was summarily dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reopen. The motion will be granted; the previous decision to dismiss the appeal will be affirmed.

The petitioner is a dance studio providing ballroom dance instruction. The beneficiary is a competitive dancer and dance instructor. The petitioner seeks O-1 classification for the beneficiary, as an alien with extraordinary ability in the arts pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(O)(i). The petitioner seeks to employ the beneficiary in the United States for a minimum of one year as a ballroom dance instructor.

The director determined that the petitioner had not established that the beneficiary qualifies as an alien of extraordinary ability in the arts. The director said that while the evidence established that the beneficiary had won many amateur competitions in her home country, it does not establish that these awards or prizes are at the level of an Academy Award or an Emmy, which are associated with top accomplishments by professionals in the arts. The director concluded that the petitioner had established that the beneficiary had met only one criterion (the fifth) in the list of six. The director denied the petition.

The Associate Commissioner summarily dismissed the appeal based on the failure of the petitioner to submit a brief or additional evidence within the time allotted.

On motion, counsel for the petitioner asserts that a brief was timely submitted to the Service, but apparently not routed to the record prior to the issuance of the decision. Counsel submitted a copy of the brief with the motion to reopen.

On motion, counsel states that the beneficiary is qualified for the classification sought because she satisfies criteria two, five, and six. Counsel submits additional evidence and states that the petitioner is now offering to pay the beneficiary between \$40,000 and \$50,000 a year.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(O)(i), 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 or, with regard to motion picture and television productions, has a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability.

In order to qualify as an alien of extraordinary ability in the field of 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)(3)(iv). No claims have been made that these standards do not readily apply in this matter.

It is noted that the Service's decision in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. The evidence submitted must establish that the beneficiary qualifies as an alien of extraordinary ability.

In addition, regulations define extraordinary ability in the field of arts to mean distinction. Distinction, in turn, is defined as "a high level of achievement in the field of 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)(ii). Pursuant to 8 C.F.R. 214.2(O)(3)(ii), arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

The beneficiary has neither been nominated for, nor has she been the recipient of, any significant national or international awards or prizes in the field of ballroom dance.

The beneficiary has won and placed in numerous amateur-dancing competitions in Poland. The petitioner failed to establish that the beneficiary has earned a position of prominence in her field by virtue of her achievements.

The record contains three articles in Polish publications and six articles in U.S. publications about the beneficiary. Notwithstanding their praise, and generally respectful tone, these articles appear to be primarily human-interest stories rather than serious reviews of the beneficiary. The petitioner has not provided any information regarding the circulation or reputation of these publications. Most important, the articles are not evidence that the beneficiary has achieved national or

international acclaim for her achievements in the field of ballroom dance.

Counsel asserts that the proposed annual wage of \$50,000 to \$60,000 is high in relation to other ballroom dance teachers. On the initial Form I-129 petition, the petitioner indicated that she intended to pay the beneficiary \$250 a week. The petitioner failed to explain why she was now going to more than triple the beneficiary's salary. A petitioner may not make material changes to his petition in an effort to make a deficient petition conform to Service requirements. See Matter of Izumii, 22 I&N Dec. 169 (Comm. 1998).

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in ballroom dance.

Beyond the decision of the director, section 101(a)(15)(O) of the Act, states that an alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer. 8 C.F.R. 214.2(o)(1)(i). The term "event" is defined at 8 C.F.R. 214.2(o)(3)(ii) as an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. The record is devoid of any mention of an event or to a specific date at which the beneficiary's services will no longer be required. The examples provided by the regulation suggest occurrences or phenomena of definite and finite duration. Therefore, the existence of an event has not been established. As the previous decision to deny the petition will be affirmed based on the grounds discussed above, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision to dismiss the appeal will not be disturbed.

**ORDER:** The petition is denied.