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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

Administrative Appeals Office  
425 Eye Street N.W.  
BCIS, AAO, 20 MASS, 3/F  
Washington, D.C. 20536

Identifying data deleted to  
prevent clearly unwarranted



File: LIN 02 195 52351

Office: NEBRASKA SERVICE CENTER

Date: MAY 23 2003

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)

ON BEHALF OF PETITIONER:



**PUBLIC COPY**

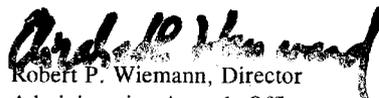
**INSTRUCTIONS:**

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a ballroom dance studio that seeks to employ the beneficiary as a dance competitor and coach for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies as an alien of extraordinary ability in the arts. The director further determined that the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability as an instructor or coach.

On appeal, counsel for the petitioner states that the beneficiary is qualified for the classification sought. Additional evidence has been provided.

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 . . . 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.

8 C.F.R. § 214.2(o) (3) (iv).

The 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.<sup>1</sup>

The beneficiary is a 25-year old native and citizen of Australia. The record shows that the beneficiary is an amateur competitor and instructor in "DanceSport" (competitive ballroom dance). According to the record, she has participated in national and international dance sport competitions including the 9<sup>th</sup> Lion City International

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<sup>1</sup> It is noted that the beneficiary's field of endeavor, ballroom dancing aka DanceSport, was granted provisional recognition as an Olympic sport in 1997, and as such the beneficiary could be held to the higher standard of an alien of extraordinary ability in athletics.

Dance Sport Championships (Singapore 1996), the 1997 Amateur DanceSport Grandprix Competition (Tokyo), and the International Dance Sport Federation Latin Competition World Games in 1997. She danced for the Bavarian Dance Sport Association and the German Dance Sport Federation during the years 2000-2001.

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 DanceSport.

For criterion number one, the petitioner asserts that the beneficiary has performed and will perform services as a lead or starring participant in productions or events that have a distinguished reputation. The director concedes that the beneficiary performed as a lead or starring participant in one event that has a distinguished reputation, namely, the World Championships for Australia. The director noted that the evidence on the record includes articles about additional competitions in which the beneficiary participated, but that the documentation fails to demonstrate that these competitions have a distinguished reputation. The petitioner provided the Bureau with a publicity release documenting that the beneficiary was selected to compete in the 1997 International World Games. In review, the petitioner has established that the 1997 International World Games has a distinguished reputation, but the record does not establish that the beneficiary played a critical or leading role in these events. The evidence is insufficient to establish that the beneficiary has performed as a *lead or starring participant* in productions or events that have a distinguished reputation in the past. The petitioner failed to establish that the beneficiary *will* perform as a lead or starring participant in productions or events that have a distinguished reputation in the future.

As evidence that the beneficiary satisfies criteria numbers two and three, the petitioner provided the Bureau with several news articles. The first article describes all of the participants in the 1997 International Under-21 Latin Championship and notes that the beneficiary and her dance partner placed third. The second article quotes the beneficiary's dance partner as saying that he and the beneficiary were very happy to be able to come to Japan and indicates that they won the Mikasanomiya-Cup in the Latin Dance Class. A third article notes that the beneficiary and her dance partner won the right to represent Australia at the world championships in Germany. A fourth article notes that the beneficiary and her partner placed third in the Bavarian Latin American Championship. A fifth item portrays the beneficiary and her dance partner dancing at the New Years Evening Ball. A sixth article notes that the beneficiary and her German dance partner won their first competition in Nottingham, England. An article dated May 25, 2000 states that Stefan Vogel found a new dance partner in the beneficiary. In review, the evidence on the record is

insufficient to establish that the beneficiary has achieved national or international recognition for her achievements evidenced by published materials about the beneficiary. The evidence is insufficient to establish that the beneficiary has performed in a lead, starring or critical role for organizations that have a distinguished reputation.

Regarding criterion number four, no evidence was submitted.

For criterion number five, the petitioner provided the Bureau with numerous testimonials. The authors of the testimonials describe the beneficiary's achievements and qualities. Several authors mention that the beneficiary coached or instructed students. One such author notes that the beneficiary's students placed in the finals of their division. Without more documentation, the Bureau cannot fully evaluate the beneficiary's performance as a coach and instructor. The record as presently constituted is insufficient to establish that the beneficiary is a coach or instructor of O-1 caliber.

For criterion number six, the record is silent as to whether the beneficiary has received a high salary in the past. The petitioner has not established that the proposed annual wage of \$500 a week constitutes a high salary in relation to other SportDance competitors and coaches.

A representative of the American Guild of Musical Artists stated in a letter dated May 23, 2002 that his organization finds the beneficiary "appears to meet the standard of distinction" as a dancer and coach. Such consultations are advisory in nature and are not binding on the Bureau. 8 C.F.R. §214.2(o)(5)(i)(D).

After a careful review of the entire record, including the opinion of the American Guild of Musical Artists, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in the arts.

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 director's decision will not be disturbed.

**ORDER:** The appeal is dismissed.