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U.S. Department of Homeland Security

Citizenship and Immigration Services

D8

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536



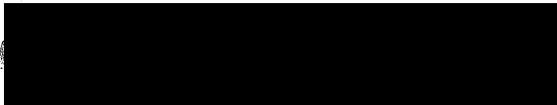
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File: LIN 02 227 50960

Office: NEBRASKA SERVICE CENTER

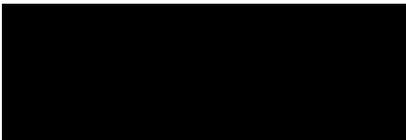
Date:

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:



**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 Citizenship and Immigration Services (CIS) 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.

*Naui Johnson*

*for*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Nebraska Service Center. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a dance studio and artist manager, which seeks to employ the beneficiary as a ballroom dancer for a period of one year.

The petitioner filed a petition for a nonimmigrant worker on July 3, 2002. The petition was denied in a decision dated January 4, 2003. The petition was denied on the grounds that the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability in the arts.

Counsel for the petitioner filed an appeal from the decision with an appellate brief and additional evidence. The AAO dismissed the appeal on May 23, 2003, finding that the petitioner had failed to overcome the grounds for denial.

On motion, counsel for the petitioner submits a statement and additional evidence.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. In order to prevail on a motion to reopen, the petitioner must establish that the new facts and/or evidence presented were unavailable at the time the prior decision was issued. *Id.*

According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy. To prevail on a motion for reconsideration, the petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." *Id.*

According to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

In this case, the petitioner has not demonstrated that the documentation submitted was previously unavailable and has not established that the prior decision was an incorrect application of law. The petitioner asserts that the new fact is that the beneficiary has won fourth place in the 2003 United States National 10-Dance Professional Championship. It is noted that the beneficiary won this prize in March 2003, eight months after the instant petition was filed. The petitioner must establish filing eligibility at the time the petition was filed, and not at some

later date. 8 C.F.R. § 103.2(b)(12). According to the information contained on the nonimmigrant visa petition, at the time of filing the petition with CIS, the beneficiary had not established eligibility for this visa classification. In *Matter of Katigbak*, 14 I&N Dec. 45 (R.C. 1971), although an immigrant visa petition case, it was held that the beneficiary must be qualified at the time of filing the visa petition. In view of the language in section 101(a)(15)(O) of the Act, it must be concluded that an alien of extraordinary ability must likewise meet the eligibility criteria at the time of filing the nonimmigrant petition in his behalf. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (R.C. 1978).

The petitioner has failed to establish that this action meets the applicable requirements of a motion and it must be dismissed.

**ORDER:** The motion is dismissed.