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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



File: LIN 03 039 51858 Office: NEBRASKA SERVICE CENTER Date: **OCT 16 2003**

IN RE: Petitioner:   
Beneficiary:

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a dance studio and an artist management group, seeking O-1 classification of the beneficiary 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 employ her for one year as a ballroom dance performer and instructor at an annual salary of \$35,000 plus an undetermined percentage for each staged performance.

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

On appeal, counsel for the petitioner resubmitted previously provided documentation.

Section 101(a)(15)(O)(i) of 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 28-year old citizen of Russia. According to the evidence on the record, she last entered the United States as a B-1 nonimmigrant visitor for business on August 23, 2002.

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. It is noted that it may be more appropriate to apply the more stringent requirements for athletes given that ballroom dance (or dancesport) has been recognized as an official Olympic event.<sup>1</sup>

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<sup>1</sup> See evidence on the record, the letter of Laura D'Valera dated November 5, 2002.

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 that 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, and will perform, 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.

No claim has been made that the criteria at 8 C.F.R. § 214.2(o)(3)(iv) do not apply to the beneficiary's occupation.

The beneficiary has neither been nominated for, nor has she been the recipient of any significant national or international awards or prizes in her field of endeavor. The petitioner submitted evidence that the beneficiary received awards or diplomas in certain dance competitions. The petitioner failed to submit sufficient evidence to demonstrate that the beneficiary had received significant

national or international awards on par with an Emmy or Grammy award. The beneficiary does not satisfy the criterion set forth at 8 C.F.R. 214.2(o)(3)(iv)(A).

*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.*

In relation to criterion number one, the petitioner did submit several website advertisements about the beneficiary's performance at events and productions sponsored by the petitioning organization, including the petitioner's anniversary party and Harvest Moon party. The petitioner submitted several translated articles that mention that the beneficiary placed in dance competitions. The evidence is insufficient to establish that the beneficiary has and will perform as a lead or starring participant in productions that have a distinguished reputation.

*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.*

In relation to criterion number two, the petitioner provided evidence that the beneficiary has participated in, placed in or won certain dance competitions. The petitioner submitted numerous translated articles from Russian publications including *World of Dance, Event, and Stars*. Three of the articles are undated so they cannot be considered. The majority of the articles briefly report that the beneficiary was a finalist in a specific competition. The petitioner included an article published in *The Times* captioned, "Schererville Dancers Place Fourth in Country." The petitioner failed to indicate where *The Times* was published, and the size of its circulation, so the AAO cannot evaluate whether it may serve as evidence of the beneficiary's national or international recognition for achievements. The beneficiary does not satisfy this criterion.

*Evidence that the alien has performed, and will perform, 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.*

For criterion number three, the petitioner submitted articles published in Russian and American publications that indicate that the beneficiary participated in, placed in or won a specific dance competition. The petitioner failed to establish that these competitions have a distinguished reputation. The petitioner failed to establish that the beneficiary has and will perform services as a lead or starring participant in any of these events. Being a finalist is not equivalent to being a lead or starring participant. Even in instances when the beneficiary placed first in a certain category, it does not follow that she played a lead, starring or critical role. The beneficiary does not satisfy this criterion.

*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.*

For criterion number four, the petitioner submitted copies of articles about the beneficiary and her past performances. The petitioner stated that the beneficiary has been a finalist in over 30 competitions within the last three years. The petitioner failed to establish that the beneficiary's achievements are major commercial or critically acclaimed successes. The petitioner failed to establish that the beneficiary satisfies criterion number four.

*Evidence that the alien has received significant recognition for achievements from organizations, critics, government 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.*

For criterion number five, the petitioner submitted numerous letters from experts in the beneficiary's field of endeavor. Gregory Day, a former World and United States champion in the field of ballroom and Latin dance, wrote

that the beneficiary's "talents as a dance and dance teacher represent extraordinary ability." [REDACTED] a former dance champion and current judge, opined that the beneficiary "is a person of exceptional talent and great capacity." He noted her achievements, i.e. Champion of Russia in Ballroom Dance for 2001, "best female partner" for 2001 and Grand Finalist in IDSF "Open to the World" in Moscow in 1998. [REDACTED] a former Russian, Latin and 10-Dance Champion, wrote that the beneficiary "has been given high accolades as a professional dance instructor. Back in Europe she also had a highly acclaimed career as a professional dancer and coach." While the testimonials' authors all speak highly of the beneficiary's talent and career, the evidence falls short of establishing that the beneficiary has received significant recognition for her achievements from organizations, critics, government agencies, or other recognized experts in her field.

*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.*

No evidence was submitted in relation to criterion number six.

The beneficiary fails to satisfy at least three of the criteria set forth at 8 C.F.R. §214.2(o)(3)(iv)(B).

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

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 petitioner submitted a favorable consultation from an appropriate U.S. peer group, the United States Amateur Ballroom Dancers Association. Consultations are advisory in nature and are not binding on CIS. 8 C.F.R. § 214.2(o)(5)(i)(D).

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.

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.