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FILE: LIN 02 048 51268 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:

PETITION: Petition for a 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 of the Administrative Appeals Office 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.

*Mari Johnson*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the Nebraska Service Center approved the nonimmigrant visa petition on January 10, 2002. The director issued a notice of intent to revoke approval of the petition on October 8, 2002. In response, the petitioner submitted a rebuttal. After reviewing the rebuttal, the director determined that the petitioner overcame the grounds for revocation. On March 12, 2003, the director revoked approval of the petition and the petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO remanded the case to the director to permit the director to issue a new Notice of Intent to Revoke and to allow the petitioner to respond to it. The director issued a new Notice of Intent to Revoke and the petitioner submitted a rebuttal. On October 28, 2003, the director properly issued a Notice of Revocation and certified its decision to the AAO. The matter is now before the AAO on certification. The director's decision, dated October 28, 2003, will be affirmed.

The petitioner is a dance studio. The beneficiary is a dance instructor and competitor. The petitioner seeks an extension of the beneficiary's stay in the United States in O-1 classification, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to continue to employ him in the United States as a "dance instructor/national dance competitor" for a period of one year at an annual salary of \$30,000.

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.

Counsel asserts that the director erred in applying the standard for aliens of extraordinary ability in athletics rather than the lesser standard for artists of distinction. The director noted that the International Olympic Committee has formally recognized DanceSport as a sport for inclusion in the Olympic games. DanceSport is another name for competitive ballroom dancing. DanceSport may be included in the 2008 Olympic games. A letter from the petitioner's counsel states that the beneficiaries will be training students for such Olympic competitions. The inclusion of DanceSport in the Olympics is a clear indication that DanceSport or ballroom dance has evolved into a form of athletic competition. The AAO concurs that the beneficiary should be held to the more stringent requirements for aliens of extraordinary ability in athletics rather than to those for artists.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

*Extraordinary ability in the field of science, education, business, or athletics* means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part, that:

*Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics.* An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

- (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
- (4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
- (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
- (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
- (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
- (8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

The beneficiary in this matter is a native of the former Soviet Union and a citizen of Estonia. According to counsel for the petitioner, the beneficiary has been dancing professionally since 1994. He last entered the United States as a B-2 nonimmigrant visitor for pleasure on July 7, 1998.

After reviewing the evidence submitted in support of the petition, the director found the evidence insufficient to establish that the beneficiary has extraordinary ability in athletics.

There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

*Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner asserts that the beneficiary has competed twice at World Championships representing his native Estonia in 1994 and 1995. The petitioner has not indicated whether the beneficiary placed in these competitions. More importantly, the petitioner failed to establish the significance of these competitions.

As evidence that the beneficiary satisfies criterion number one, the petitioner submits evidence that the beneficiary has won several national and international championships in ballroom dance by placing 4<sup>th</sup> in the Ohio Star Ball and placing 6<sup>th</sup> in the United States National Professional Standard Championships Standard Division and 1<sup>st</sup> in the Rising Star Division.<sup>1</sup>

The beneficiary has won the following additional awards:

1999 Twin Cities Open<sup>2</sup> DanceSport Competition (1<sup>st</sup> Place International Standard); Dancers Cup Circuit (1<sup>st</sup> Place Rising Star, 3<sup>rd</sup> Place Open); California Open Dance Sport Championships (2<sup>nd</sup> Place Rising Star, 5<sup>th</sup> Place Open); Indiana Challenge (1<sup>st</sup> Place Open); Heritage Classic (3<sup>rd</sup> Place Rising Star); St. Louis Star Ball (1<sup>st</sup> Place Rising Star, 1<sup>st</sup> Place Open); 1999 Wisconsin State Dance Sport Championships (2<sup>nd</sup> Place Open International Standard); Atlanta Open DanceSport Championship (1<sup>st</sup> Place Rising Star, 2<sup>nd</sup> Place); Nevada Star Ball (1<sup>st</sup> Place Rising Star, 3<sup>rd</sup> Place Open); 2001 Capital DanceSport Championship (1<sup>st</sup> Place Rising Star, 3<sup>rd</sup> Place Open); Yankee Classic Dance Sport (1<sup>st</sup> Place Open); First Coast Classic Championships (1<sup>st</sup> Place Open); 35<sup>th</sup> Chicago Harvest Moon Ball Championships (2<sup>nd</sup> Place in Professional Rising Star Open Standard); 38<sup>th</sup> Chicago Harvest Moon Ball Championships (1<sup>st</sup> Place Open); Detroit Dancesport Open (1<sup>st</sup> Place in Open International Standard); 1998 Michigan Dancesport Festival Competition (2<sup>nd</sup> place in Rising Star and 3<sup>rd</sup> place in Open); Detroit Dance Sport Open (1<sup>st</sup> Place in International Standard); 2001 Wisconsin State Dancesport Championship (2<sup>nd</sup> Place in Open). According to the evidence on the record, the beneficiary placed in numerous other state competitions.

In review, the evidence on the record demonstrates that only one of the beneficiary's competitions, the United States National Professional Standard Championship, is national in scope. (*See letter of Lee Wakefield dated June 4, 2002, National Dance Council of America.*) As noted above, the beneficiary placed 6<sup>th</sup> in the standard division and 1<sup>st</sup> in the rising star division. A 6<sup>th</sup> place win, while notable, is not an award for excellence in the field of endeavor. The rising star award indicates that the beneficiary has potential in the field, but was not awarded based on competition with established dancers. The petitioner has failed to establish the significance of the beneficiary's awards. The beneficiary does not satisfy this criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

For criterion number two, while the beneficiary is a member of the Imperial Society of Teachers of Dancing (ISTD), the Professional Dancer's Federation, and the National Dance Council of America, the petitioner failed to establish that these organizations require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. The ISTD website indicates that membership is not limited to persons who have outstanding achievements. The beneficiary does not satisfy this criterion.

*Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought.*

For criterion number three, the petitioner asserts that two trade journals intend to publish articles about the beneficiary in the future. A petitioner must establish eligibility at the time of filing, not at some future date. *See 8*

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<sup>1</sup> Provo, Utah, March 7-9, 2002. The Rising Star Division is less prestigious than the Professional Division.

<sup>2</sup> "Open" events mean both amateurs and professionals may compete as opposed to an "amateur" event that bars professionals from competing. A win in an open class is much more highly regarded than a win in an amateur class.

C.F.R. § 103.2(b)(12).

The petitioner states that the beneficiary has appeared numerous times in *Dance Beat* magazine. The petitioner submitted a copy of an article titled "U.S. Championships at Provo," that was published in *Dance Beat*. A photograph of the petitioner and his wife accompanies the article. While the article mentions the beneficiary and his wife, the article is about the competition, rather than about the beneficiary, as required by the regulations.

The petitioner submitted copies of newspaper articles, but the majority of these do not indicate in which publication these articles appeared and thus cannot qualify as major media or major trade publications. Several articles appear to be published in local or regional newspapers. Some are not dated. One article was published in the newsletter of the beneficiary's former employer. The majority of the articles are not about the beneficiary but are reviews of competitions that discuss the performance of all the competitors including the beneficiary. None of these articles establish that the beneficiary has sustained national or international acclaim and has reached the top of his field.

The beneficiary does not satisfy this criterion.

*Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.*

For criterion number four, the petitioner states that the beneficiary has served as a judge for amateur dance competitions in the United States. The director determined that the petitioner failed to establish that the beneficiary was selected to judge on the basis of his sustained national or international acclaim. The AAO concurs. The petitioner failed to submit any independent evidence as to the basis for the beneficiary's selection as a judge. The beneficiary does not satisfy this criterion.

*Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.*

The petitioner submitted letters from other dancers, dance instructors, dance studio owners, and judges that praise the abilities of the beneficiary and his wife. It is not enough to state that the beneficiary is or will be a "tremendous asset" to the dance community. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

*Evidence of the alien's authorship of scholarly articles in the field, in professional journals or other major media.*

No evidence was submitted to meet this criterion.

*Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.*

Counsel asserts that the beneficiary plays a critical role for the petitioner and quotes her client as saying the beneficiary's reputation "is of extreme value to me as the owner of Indianapolis Ballroom. The [beneficiary and his spouse] are absolutely necessary for my business." The petitioner failed to demonstrate that the petitioner has a distinguished reputation and that the beneficiary has been employed in an essential or critical capacity there.

*Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.*

No evidence was submitted in support of this criterion.

It is noted that six petitions have been filed on behalf of the petitioner and his wife.<sup>3</sup> Unless CIS directs otherwise, the filing of a motion to reopen or reconsider or of a subsequent application or petition does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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 director's decision dated October 28, 2003 is affirmed and approval for the petition is revoked.

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<sup>3</sup> The file numbers for the petitions filed on behalf of this beneficiary are LIN 99 033 51643, LIN 00 238 52595, and LIN 02 048 51268.