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U.S. Citizenship
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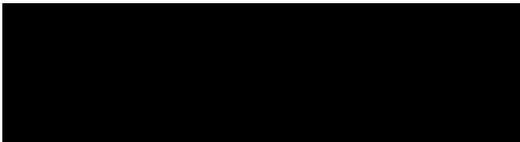
D8

FILE:  Office: CALIFORNIA SERVICE CENTER Date: JUN 20 2005

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 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

S Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a nonprofit dance company. The petitioner seeks 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), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ her as a ballet dancer for three years at a weekly salary of \$600.

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 submits a brief and additional 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 25-year old native and citizen of Germany. She attended a preparatory school for ballet in Germany, and participated in an exchange program at the [REDACTED] in Japan. She also participated in an exchange program with the Alvin Ailey Company in New York. In the years 1999 through December 2002, she performed with the [REDACTED] Theatre in Frankfurt, Germany.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts as defined by the statute and the regulations.

The regulation at 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.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a significant national or international award). Barring the alien's receipt of such an award, the regulation outlines six criteria, at least three of which must be satisfied for an alien to establish the distinction necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, it claims, demonstrates that the beneficiary meets the following criteria.

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.

For criterion number one, the petitioner submitted printed programs for productions in which the beneficiary performed with the [REDACTED] Theatre company in Frankfurt, Germany. The petitioner initially

submitted six critical reviews of the Malaika Kusumi Ballet Theatre company. None of the reviews mentions the beneficiary. The petitioner indicated that some of the reviews include photographs of the company's members including the beneficiary.

On appeal, the petitioner submitted two additional critical reviews.¹ The petitioner submitted partial translations of the articles; one mentions the beneficiary performed as a soloist in one production and the other mentions the beneficiary by name. Although the evidence submitted on appeal suggests that the beneficiary played a starring role as a soloist in one production, the petitioner failed to establish that this production has a distinguished reputation. The beneficiary does not satisfy this criterion.

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.

For criterion number two, the petitioner submitted eight critical reviews. Only two of the reviews mention the beneficiary and the mentions are very brief.² The petitioner failed to submit to Citizenship and Immigration Services (CIS) evidence of the circulation of the publications in which the reviews were published so CIS is unable to determine whether the reviews were printed in major media as required by the regulation. The petitioner failed to establish that the beneficiary satisfies 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 article in newspapers, trade journals, publications, or testimonials.

The evidence in the record includes eight reviews or articles. Two of the articles mention the beneficiary by name. Although the beneficiary performed in one production as a soloist, the evidence is insufficient to establish that she played a lead, starring, or critical role for the [REDACTED] company.

The co-artistic director for the petitioning organization wrote a letter stating that the beneficiary was a principal dancer and soloist at the [REDACTED] Theatre from July 1999 to December 2002. In the absence of corroborating evidence, this letter cannot be given much weight. 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).

The petitioner submitted a testimonial written by [REDACTED] a former principal ballerina with the San Francisco Ballet, which states that beneficiary has been a principal dancer and soloist for numerous dance productions. The letter fails to state the basis for [REDACTED] knowledge of the beneficiary and provide sufficient details to support her conclusion.

The petitioner submitted a letter written by the beneficiary's former employer [REDACTED] that states, in part:

¹ Counsel for the petitioner indicated in a cover letter that he was submitting three articles on appeal, but only two additional articles are in the record of proceeding.

² One states: "Four dancers circle the soloist [beneficiary]." The other states: "While [REDACTED] . . . knits, [the beneficiary] beautifully and athletically represents [REDACTED] choreography."

[The beneficiary] was engaged as a soloist by the [redacted] Theater from 1999-2002. [She] came to me as a 18 year old fresh from school; however, even then she had determined maturity that allowed me to include her in one of the ballets that I sold to the [redacted]

[The beneficiary] is a stunning performer. She can perform anything you ask, anytime you ask with amazing emotional content and artistic integrity.

Although [redacted] letter speaks highly of the beneficiary, it does not indicate that the beneficiary has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation. 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.

No evidence was submitted in relation to criterion number four.

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 that author's authority, expertise, and knowledge of the alien's achievements.

As evidence that the beneficiary has received significant recognition for her achievements, the petitioner submitted a letter written by [redacted] that asserts that the beneficiary "is a dancer of extraordinary ability." [redacted] failed to indicate how she became knowledgeable of the beneficiary's achievements. She failed to describe the beneficiary's achievements, other than to state that the beneficiary danced in numerous productions with "well known companies in Europe," including television advertisements. The petitioner failed to establish that the beneficiary has earned a position of prominence in her field by virtue of her achievements. The beneficiary does not satisfy this criterion.

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.

The petitioner has offered to pay the beneficiary a weekly salary of \$600. In the absence of wage surveys, the AAO is unable to evaluate whether the proffered wage may be considered high in relation to others in the beneficiary's field of endeavor.

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 ballet.

Counsel for the petitioner notes on appeal that the director failed to request further evidence before issuing a denial and requests that the appellate decision be expedited with the evidence submitted on appeal. All documents have been considered.

The petitioner submitted a favorable consultation from the American Guild of Musical Artists (AGMA). Consultations are advisory in nature and are not binding on CIS. 8 C.F.R. § 214.2(o)(5)(i)(D). In this case, the record does not establish that the alien is eligible for O-1 classification.

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.