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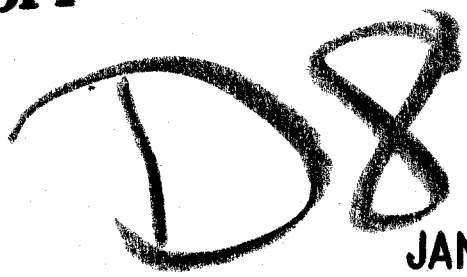

JAN 26 2005

File: LIN 02 296 53935 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, 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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a dance studio and is 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), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him for three years as a dance instructor and performer at an annual salary of $30,000.

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.

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 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 35-year old citizen of Slovakia.

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)[1] is under consideration to become an official Olympic event.[2]

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 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) 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

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[1] DanceSport is the term used for competitive ballroom dance.
[2] See news release in the record of proceeding at www.idsf.net/press02/idsf0213 as accessed on September 12, 2002.

(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 the alien is engaged. Such testimonials must be in a form 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.

The petitioner asserts that the beneficiary has been nominated for a significant national award in his field of endeavor, namely, his 2002 nomination to the Slovakia National SportDance Team. The petitioner failed to establish that nomination to the Slovakia National SportDance Team is a significant national award. The petitioner provided no objective corroborating evidence that would indicate that such a nomination is a significant national or international award. The beneficiary does not satisfy the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iv)(A), so the petitioner must establish that the beneficiary satisfies at least three of the criteria set out at 8 C.F.R. § 214.2(o)(3)(iii)(B).

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.

The petitioner failed to provide evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts or endorsements to demonstrate that the beneficiary will perform as a lead or starring participant in productions that have 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.

In relation to criterion number two, the petitioner provided evidence that the beneficiary has participated, placed or won certain dance competitions, but not in the form of critical reviews or other published materials. The petitioner submitted two untranslated articles. The petitioner failed to provide translations of the articles in accordance with 8 C.F.R. § 103.2(b)(3), so they cannot be considered. The petitioner failed to submit any other published materials by or about the beneficiary that was published in major newspapers, trade journals, magazines or other publications. 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 asserts that the beneficiary played a leading and critical role for the Slovak Dance Sports Federation (SDSF) and the Slovakia National Team. Counsel for the petitioner stated that "occupying 1st place . . . [the beneficiary] played the leading role in his country's competitive dance establishment." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 cannot be ascertained from the evidence on the record whether he played a lead, starring or critical role.

The petitioner submitted testimonials as evidence to satisfy this criterion. [redacted] Dance Masters, stated that the beneficiary has "represented our Dance Club in many national as well as international dance competitions." [redacted] owner, Couture Body Movement, wrote that the beneficiary and his partner "through the years . . . [have] proved themselves time and again to be worthy Champions of this Country on all major competitions abroad." [redacted] professional dance coach, wrote that the beneficiary and his partner "are very successful in the national competitions and also competitions abroad." In review, the testimonials do not establish that the beneficiary played a leading or critical role as a performer for organizations with a distinguished reputation. The testimonials' authors provided scant information about the stature of the competitions, or how the beneficiary could be characterized as playing a lead or starring role in the competitions. The beneficiary does not satisfy this criterion.

For criterion number three, the petitioner asserted that the beneficiary satisfies this criterion as a coach because he coached pupils who have performed as a lead or starring participants in productions or events with a distinguished reputation.

[redacted] Vice President of the Slovak DanceSport Federaton, wrote a letter stating that four of the beneficiary's students became champions in the juvenile category in 2001 and vice-champions in the SDS Championships, juvenile category, in 2002.

Capt. [redacted] Military Cultural Club Manager of the DanceSport club "Aknela" in Slovakia, certifies that the beneficiary "has acted for us as an external dance trainer since 1998. With [the beneficiary's help] we have succeeded to train several dance couples in the highest international performance category S."

Lt. Col. [redacted] head of the Cultural and Methodical Centre in Trencen, Slovakia, wrote that the beneficiary has acted as an assistant trainer since 1998 and that he "helped us to train up the dance sport champions . . . in the junior, youth and amateur categories."

The testimonials quoted above are vague. All but one testimonial fails to state the names of the beneficiary's pupils. They also fail to state the frequency with which the beneficiary worked with these pupils. 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.

The petitioner provided no evidence in relationship to this criterion.

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 testimonials.

[redacted] Owner, DeLiz DanceSport Studio wrote, "my opinion of [the beneficiary] is based upon the documents listed in Attachment B." Attachment B was not included in the record of proceedings.

[redacted] dance masters, Paska Dancing School wrote that the beneficiary is a multiple champion of the Slovak Republic and that he achieved his position in the highest "S" category in the Latin American and Standard divisions.

[redacted] owner of Couture Body Movement, wrote that the beneficiary and his partner are "top quality Latin American [dance] champions in their country."

[redacted] championship adjudicator, wrote in an undated letter that the beneficiary and his partner "will be a tremendous asset."

[redacted] dance coach, wrote that the beneficiary and his partner "are very successful in the national competitions and also competitions abroad."

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 his achievements from organizations, critics, government agencies, or other recognized experts in his field. The testimonials are vague as to both the beneficiary's acclaim and achievements.

The petitioner also asserts that the beneficiary has received recognition for his achievements in the field of dance instruction. Mr. [redacted] Vice President of SDSF wrote that the beneficiary and his partner "represent a

significant contribution for the entire Slovak Dance Sport." [redacted] owner of a dance studio, wrote that "only the very best Dance Sport instructors produce students who achieve the 'S' or 'International' level, as [the beneficiary] has."

Mr. [redacted] failed to explain how the beneficiary and his dance partner have made a significant contribution to Slovak DanceSport or why winning competitions is tantamount to making a significant contribution. The testimonials fail to establish that the beneficiary has received significant recognition for his achievements as a coach. 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.

For criterion number six, the petitioner submitted a letter from a dance studio owner that states that "a starting salary of $30,000 per year plus benefits is very unusual and virtually unheard of in the Detroit metropolitan area." In his decision, the director noted that the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, indicates that in the year 2000, median annual earnings of dancers were $22,470 and the highest 10 percent earned more than $55,220. On appeal, counsel for the petitioner asserts that the offered salary of $30,000 is 33.5% above the median annual earnings and the director should consider the value of medical benefits in addition to the salary.

To evaluate whether the salary is high, AAO needs to compare it to the median and highest wages offered nationwide to dancers. $30,000 is not high in relation to the wage earned by the top 10 percent. The beneficiary does not satisfy this criterion.

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 DanceSport.

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.