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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 13 2006

EAC 03 210 52403

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserts that the director's reference to other petitions from Eastern European nationals was irrelevant to the petitioner's eligibility. Counsel notes that the petitioner's dance partner had a petition approved in the same classification. Counsel further asserts that the director erred in discounting the petitioner's youth awards. Even if we were to accept counsel's assertions regarding the petitioner's awards, which relate to only one of the regulatory criteria, the appeal does not attempt to rebut the director's conclusions regarding the remaining regulatory criteria, of which an alien must meet at least three.

The director asserted that the Service Center "routinely receives dozens of filings from Eastern European nonimmigrant beneficiaries seeking E11 status as having extraordinary ability as ballroom dancers." We concur with counsel that this information is not relevant to the petitioner's eligibility.

Regarding the petitioner's partner, her petition was initially denied and appealed to this office. On August 29, 2002, this office remanded the matter back to the director, noting, according to the copy of our decision submitted in this matter, several "shortcomings." The matter was remanded for the purpose of requesting additional evidence to support the claims made in connection with that petition. Less than a month later, on September 20, 2002, the director approved the petition. That matter is not before us, and it is unknown whether additional documentation was requested and submitted according to the remand order or whether the petition was approved in error. Regardless, each case is determined on its own merits.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved a petition on behalf of the petitioner's partner based on similar evidence, the AAO would not be bound to follow the contradictory decision of a service center. *See generally Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Finally, counsel relies heavily on a lengthy reference letter. While we will consider the letter below, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
>
> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a dancer. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international

recognized award). Prior to appeal, counsel did not assert that the petitioner's awards rose to this level. On appeal, however, counsel does not address any of the remaining regulatory criteria, suggesting that it may be counsel's position that the petitioner's awards constitute major international recognized awards. We will consider the evidence.

Initially, the petitioner submitted letters from coaches affirming that the petitioner has won significant awards and the petitioner's own self-serving list of awards he has won. The petitioner also submitted photographs of medals, plaques and trophies, only one of which, a plaque from the [redacted] bears the petitioner's name.

The director requested additional evidence, noting that at least some of the awards appeared to be from junior level or youth competitions. In response, [redacted] President of the National Dance Council of America (NDCA), notes that the youth division technically ends at age 21 and, thus, the petitioner, at age 20, could only compete in the youth divisions. Mr. [redacted] further asserts that the petitioner is a United States National Youth Champion and can "go no further" in the United States.

The petitioner submitted additional photographs of awards that do not bear his name, a 2004 Certificate of Achievement that postdates the filing of the petition and Bulgarian youth and junior awards.

None of the above evidence suggests that the petitioner won a major international recognized prize. Rather, the awards appear to be junior level U.S. or Bulgarian awards. While the petitioner appears to have competed in a joint U.S/Canadian competition, the record is absent evidence that this is a *major* international recognized award with the prestige of an Olympic medal or Nobel Prize.

The above evidence will be considered below as it relates to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i).

Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.

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

The petitioner submitted the evidence relating to awards and prizes discussed above. The director concluded that the petitioner's awards were from youth, junior level and amateur rising star level competitions and could not serve to meet this criterion. On appeal, counsel challenges the conclusion that junior level awards cannot serve to meet this criterion.

First, as discussed above, the petitioner has not submitted the primary evidence required to establish that he has won the U.S. awards claimed. Photographs of medals, trophies and plaques that do not bear

the petitioner's name with self-serving captions are insufficient. The record lacks the award certificates bearing the petitioner's name or official competition results as published by the competitions' organizers or in trade journals.

Second, the petitioner has not established that dancesport is a sport where competitors peak as teenagers. We will not narrow the petitioner's field to dancers his age. Without evidence that he has received awards at competitions open to the most experienced and renowned dancers prior to the date of filing, we cannot conclude that he meets this criterion.

Finally, even if we were to conclude that the petitioner meets this criterion, and we do not, it is only one criterion. An alien must meet at least three to be eligible for the classification sought. On appeal, counsel makes no attempt to address the director's adverse conclusions regarding the remaining criteria.

> *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.*

In response to the director's request for additional evidence, counsel asserted, without explanation, that the petitioner meets this criterion. Mr[redacted] asserts that the petitioner competed in exclusive competitions and was judged by "national and international experts."

The director concluded that the petitioner had not demonstrated his membership in any dance organization that requires outstanding achievements of its members. Counsel does not challenge this conclusion on appeal.

We concur with the director. A competition is not an association with a "membership." Thus, the petitioner has not established that he meets this criterion.

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In response to the director's request for additional evidence, the petitioner submitted foreign language newspaper articles with partial translations. The director noted that the petitioner had not provided complete translations as required pursuant to 8 C.F.R. § 103.2(b)(3) and 8 C.F.R. § 204.5(h)(3)(iii) and that the articles did not appear to be recent. Counsel does not challenge this conclusion on appeal.

We concur with the director. Moreover, the petitioner did not provide any circulation data for the publications in which the articles appear. As such, the petitioner has not established that the articles appeared in major media. Finally, the partial translations suggest that while the petitioner is mentioned by name, the articles are not "about" the petitioner, but the competitions themselves.

In light of the above, the petitioner has not established that he meets this criterion.

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

Neither counsel nor the petitioner claims that the petitioner meets this criterion and the record contains no evidence relating to it.

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

In response to the director's request for additional evidence, counsel asserted, with no explanation, that the petitioner meets this criterion. The director concluded that the record lacked evidence that the petitioner had been influential in the field. Counsel does not challenge this conclusion on appeal.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). Neither counsel nor the petitioner has explained how competing successfully in dancesport is either original or influential in the field such that the field has been demonstrably impacted.

In light of the above, the petitioner had not established that he meets this criterion.

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

Neither counsel nor the petitioner has claimed that the petitioner meets this criterion and the record contains no evidence relating to it.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

In response to the director's request for additional evidence, counsel asserted that as a competitor in major competitions, the petitioner has "showcased" his talents. Mr. [redacted] repeatedly refers to the petitioner's competitions as showcases.

The director concluded that competing was inherent to the occupation of ballroom dancer and that competing did not set the petitioner apart from other ballroom dancers. Counsel does not address this conclusion on appeal.

While dancing can be an art, the petitioner is a dancesport competitor. The record contains repeated references to this sport as an eventual Olympic event. As such, it appears that the petitioner is seeking eligibility in athletics, not in the arts. Athletic competitions are not artistic exhibitions or showcases. Even in the performing arts, it is inherent to the field to perform on stage. Not every performance is an artistic showcase or exhibition. The petitioner has not established that he has performed in exhibitions designed to showcase select dancers as opposed to athletic competitions. Thus, the petitioner has not established that he meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In response to the director's request for additional evidence, counsel stated: "As a champion in major competitions in both the United States and Bulgaria, he has won and starred in events that serve as evidence that he has performed in lead and starring roles." Counsel referenced the letter from Mr. [redacted] as evidence of the significance of the competitions. The director rejected this claim. Counsel does not challenge this conclusion on appeal.

Competing, even successfully, is not performing in a leading or critical role for the entity sponsoring the competition. At issue for this criterion are the role the petitioner was hired or selected to fill and the national reputation of the entity that hired or selected him. We concur with the director that the record does not contain evidence relating to this criterion. Thus, the petitioner has not established that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Neither counsel nor the petitioner has claimed that the petitioner meets this criterion and the record contains no evidence relating to it.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Neither counsel nor the petitioner has claimed that the petitioner meets this criterion and the record contains no evidence relating to it.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a dancer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the

petitioner shows talent as a dancer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.