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FILE: [REDACTED] NEBRASKA SERVICE CENTER Date: **OCT 16 2008**
EAC 06 019 52592

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

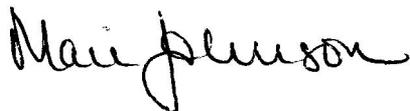
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. 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 argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). More specifically, counsel asserts that the evidence of record satisfies the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(iii), (v), and (viii).

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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 she has sustained national or international acclaim at the very top level.

This petition, filed on October 14, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a folk dancer or more specifically a “folk character artist.” The record reflects that the petitioner worked for the Russian National Ballet “Kostroma” from 1995 to 2004. In response to the director’s request for

evidence, the petitioner submitted evidence showing that she is currently employed by the ZAP Dance Company in Philadelphia, Pennsylvania as its artistic director and one of its principal dancers.

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, internationally recognized award). 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 petitioner has submitted evidence pertaining to the following criteria.¹

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 a letter from [REDACTED] Artistic Director, First State Ballet Theatre, Wilmington, Delaware, stating:

In 1994, [the petitioner] was awarded as a distinguished participant of International Festival of Folk arts and crafts in Bruceer city France; in 1995, [the petitioner] was awarded the title of the Laureate of the International Folklore Festival, Ayanapa city, Cyprus; in 1997, she was awarded the title of Best Folk Dancer and the Laureate of the International Folklore Festival, Ayanapa city, Cyprus.

Rather than submitting primary evidence of the preceding awards, the petitioner instead submitted a letter from Mr. [REDACTED] attesting to their existence. We note that Mr. [REDACTED] is not from the institutions that issued these awards. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The record includes no primary evidence of these awards or evidence that they are nationally or internationally recognized. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, the petitioner has not overcome the absence of primary and secondary evidence demonstrating that she received these awards.

The petitioner submitted a May 18, 2001 commendation letter from the Head of Self-Administration of Kostroma City thanking the petitioner for her contribution to the city as a folk dancer for the Russian National Ballet "Kostroma." The petitioner also submitted a May 15, 2001 commendation letter from the Head of the Department of Culture, Cinema, and Historical Heritage, Kostroma Area, thanking the petitioner for her

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

“contribution to the development . . . of the folk dance in the Kostroma area.” The preceding commendation letters reflect local or regional recognition rather than national or international recognition. There is no evidence showing that the petitioner has received nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

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

Published material 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 general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication, or from a publication printed in a language that the vast majority of the country's population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The petitioner submitted an April 2003 article in *Kostroma's Courier*, but there is no evidence (such as circulation statistics) showing that this newspaper qualifies as a form of major media. Further, pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The English language translation accompanying the April 2003 article was not a full translation as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner submitted a January 1998 article in *Nice-Matin* entitled “A Glittering Homage to the Romanovs,” but the article does not mention the petitioner. The article was about a Christmas celebration held at the Empire Ballroom in Monaco rather than being primarily about petitioner. The plain language of this regulatory criterion, however, requires that the published material be “about the alien.” Further, there is no evidence showing that this newspaper qualifies as a form of major media.

The petitioner submitted an article in *Moscow News* entitled “Formula of Improvisation,” but the article is about a youth fashion show rather than the petitioner and only mentions her name in passing. Further, the date of the article was not provided as required by the plain language of this regulatory criterion. Finally, there is no evidence showing that *Moscow News* qualifies as a form of major media. The petitioner has not established that a brief mention of her name in a publication tailored to an English speaking minority segment of the Russian population is evidence of national acclaim in her native country.

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

The petitioner submitted a December 15, 2000 article in *OCT Weekly* entitled “Crossing the Year 2000 – Discovering a New Journey,” but the article does not mention the petitioner. The article was about programs and activities related to Shenzhen, China’s Christmas and New Year celebrations rather than being primarily about petitioner. Further, the name of the author of the article was not provided as required by the plain language of this regulatory criterion. Finally, there is no evidence showing that *OCT Weekly* qualifies as a form of major media.

The petitioner also submitted photographs of her appearing in the Kostroma Ballet Company’s catalogues for its trips to China and Japan, but photographs alone cannot serve to meet this criterion. Further, there is no evidence showing that these promotional catalogues qualify professional or major trade publications or some other form of major media. The petitioner has not established that such promotional material, which is not the result of independent media reportage, is evidence of her national or international acclaim.

In response to the director’s request for evidence, the petitioner submitted a November 2, 2006 article in *Northeast Times* (a community newspaper of Northeast Philadelphia) and an October 7, 2006 article in *Weekend*. The preceding articles were published subsequent to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider these articles in this proceeding. Nevertheless, there is no evidence showing that these local publications qualify as a form of major media.

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

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

The petitioner submitted several letters of support.

[REDACTED], President, ZAP Dance Company, Philadelphia, Pennsylvania, states that his dance company was founded by himself and the petitioner. He further states:

In my professional opinion, [the petitioner] is truly one of the few who has risen to the very top of her field of endeavor. She has performed in the Kremlin, i.e. the Russian Presidential Palace, on numerous occasions. She was invited to represent her country at various major international cultural events, including appearances at her country’s embassies in various countries. She has toured the globe, consistently playing the central role in the performances of the National Kostroma Ballet, an internationally recognized dance company widely accepted as one of the best in Russian dance. It is undisputed that the Russian dance, as a field of art in general, does not enjoy the same level of audience recognition in the United States as it does in Russia. Nevertheless, [the petitioner] has accomplished an impressive entry into this field in the United States, performing at colleges, where her performance was appreciated by academics studying the Russian culture, at major culture festivals and Russia-related events. She is successfully capturing the best venues of the Russian folk dance and character dance has to offer today in the United States

Artistic Director, International Ballet Classique, Upper Darby, Pennsylvania, states:

[The petitioner's] consistently successful leading performances as a soloist establish her own unique and substantial extraordinary contribution. While supported by other accomplished members of all the dance ensembles, the soloist clearly defines the level of the performance and makes definite individual contribution, especially in the field of Russian folk dance, where dances include lengthy and attention catching complex soloist parts.

[The petitioner's] unique and important contribution in this regard lies in her unique ability to combine the mastery of classic ballet techniques with her knowledge and understanding of the authentic folk dance, which is often an encrypted message in itself. [The petitioner] is well known as a master of authentic Russian dance traditions, the skill obtained as a result of her careful research, investigation, and study of these traditions. I would like to confirm that [the petitioner's] unique style and performance truly establish her as one of those few who have risen to the very top of his [sic] field of endeavor.

[REDACTED], Character Artist, Boston Ballet, states:

Like myself, [the petitioner] is what is best described as "Character Artist," or "Folk Character Artist." Folk character artists, or dancers, are often confused with Russian folk dancers, and this how she classified herself . . . in her immigrant visa application. There is, however, a fine distinction between the two fields that may not be immediately apparent to a lay person. Her description of herself as a folk dancer is correct, but her filed [sic] of expertise may be more precisely defined as "folk character dance," or rather Russian character dance. The important distinction of the character dance from the original folk dance is that character dance is based on elaborate music and dance arrangements in the folk style, adapting the principles of the classic ballet and classical music to incorporate authentic folk elements. The original folk dance is less elaborate and tends to reflect historic dance and music patterns specific to a particular nation.

* * *

In my professional opinion, [the petitioner] has undoubtedly risen to a level above nearly all others in the field of character dance. She is well known and internationally recognized as a rare master of character dance, one of the few who have mastered even the most difficult and taxing elements of character dance at the level that is truly superb and probably at the edge of human ability. [The petitioner's] physical abilities as well as her technical and artistic mastery of character dance is beyond comparison. In addition to technical brilliance as a soloist dancer, she has an established reputation as a true connoisseur of the Russian folk character dance. [The petitioner] masterfully combines the classic ballet techniques with thorough knowledge and understanding of the authentic folk dance, which [the petitioner] has carefully researched, investigated, and studied. [The petitioner's] unique mastery of the dance as well as her deep knowledge and understanding of the choreographic arrangements involved make her truly unique and superb to nearly all others in her field.

The preceding letters of recommendation discuss the petitioner's talent as a performer, her unique style of dance, and her activities in the field, but they fail to demonstrate that she has made original contributions of major significance in her field. These letters include no substantive discussion as to which of the petitioner's specific artistic achievements rise to the level of original contributions of major significance in the field.

[REDACTED], Ballet Master Lecturer, University of the Arts, Philadelphia, Pennsylvania, states:

Obertas is a professional dance term, referring to a rotational movement involved in a majority of Slavic folk and character dances, unquestionably the most attractive and at the same time difficult figures in Russian folk dance. Performing this dance figure may be compared to performing lutz jumps in figure skating, as it is similarly taxing and demands the highest mastery of the technique.

In my professional opinion, [the petitioner's] unique style and performance truly establish her as one of those few who have risen to the very top of his [sic] field of endeavor. . . . Based on having watched [the petitioner's] performance, I may confidently [sic] confirm that her technique in performing obertas is superior to all other known dancers in the field [sic] of Russian folk dance. Of the 15 existing types of obertas in the contemporary choreography now, [the petitioner] is the only dancer I know who managed to master and perform . . . 10 varieties and to create 5 new ones. The uniqueness of [the petitioner's] style lies in several major elements of this distinctive dance, which she has created and developed for the first time in the world. She is the inventor and the creator of the obertas technique where the movement starts with "epaulement croise" (oblique turn to the audience). This technique enables the dancer to perform spinning movements much faster and more elegantly. Another technique of the Russian obertas suggested by [the petitioner] involves rotation to "passe retire," which is also an innovative dance movement, greatly improving and easing the obertas performance [sic].

Another important movement in the character dances is a double "Saut de basque," a dance term meaning a jump in which the dancer turns in the air with one foot drawn up to the knee of the other leg. This bright element is a traditional finishing movement for the trick part of the dance. It is one of the most complicated elements in the performance technique of character and folk dances. Normally, it is performed only by male dancers, and when they do perform it, they perform it only once. As far as I know, [the petitioner] is the only dancer who can and does perform this element 24 times while moving on the stage, which is significantly more difficult than the usual performance while being at the fixed point. Of course, in addition to using her invented elements and dance techniques, throughout the course of her career, [the petitioner] also successfully performed other dance elements from the "obertas" series including "Slavic," "Spanish," "Chinese," "Cossack," and other dances.

[REDACTED] states that the petitioner created new obertas techniques and is capable of performing the double "Saut de basque" movement multiple times, but there is no supporting evidence showing that the petitioner's dance movements constitute original contributions of major significance in the field. 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. While the petitioner's artistic talent is admired by those offering letters of support, there is no

evidence demonstrating that her techniques have had major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other performers nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 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 of support from the petitioner's personal contacts 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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a performer or artistic director who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

The petitioner submitted a letter from [REDACTED], President of National Ballet "Kostroma," stating:

This is to confirm that [the petitioner] performed in a leading role for the Russian National Ballet "Kostroma." As a head of the folk dance team, she was the Russian National Ballet's leading dancer. As such, she undoubtedly played a central, leading role for our overall ballet troupe, which is entirely devoted to the Russian folk character dance.

The petitioner also submitted evidence showing that the National Ballet "Kostroma" has a distinguished reputation. As such, we concur with the director's finding that the petitioner meets this single regulatory criterion.

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

The petitioner submitted documentation of various stage performances in which she participated. This regulatory criterion calls for commercial successes in the form of "sales" or "receipts"; simply submitting event programs, promotional material, or photographs from the petitioner's stage performances cannot meet the plain language of this criterion. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of her field. For example, there is no indication that the petitioner's performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

In this case, the petitioner has established that she meets only one of the regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

The record reflects that CIS previously approved a P-1 nonimmigrant visa petition filed on behalf of the petitioner to perform as a member of an internationally recognized entertainment group. That prior approval does not preclude CIS from denying an immigrant visa petition based on a different standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

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 has approved a nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *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).

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. 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.