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U.S. Citizenship and Immigration Services

D8

[redacted]

FILE: WAC 07 236 52392 Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2009

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under 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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center initially approved the nonimmigrant visa petition. The director subsequently issued a notice of intent to revoke, and upon review of the petitioner's response, revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, which claims to be a dance instruction, competition and promotion company, filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in the arts. The petitioner seeks to employ the beneficiary as a dance instructor/competitor for a period of 21 months. The beneficiary was previously granted O-1 status for employment with a different U.S. petitioner.

The director approved the petition on August 10, 2007, and granted the beneficiary an extension of her O-1 status through May 1, 2009. On December 19, 2007, the director issued a notice of intent to revoke the petition approval pursuant to 8 C.F.R. § 214.2(o)(9)(iii)(A)(5), advising the petitioner that U.S. Citizenship and Immigration Services (USCIS) determined that the approval of the petition involved gross error. Specifically, the director observed that the evidence of record was insufficient to establish: (1) that the petitioner qualifies as a United States employer or agent eligible to file petitions for aliens to work in the United States; (2) that the beneficiary will be performing services relating to an event or events as defined in the regulations; or (3) that the beneficiary qualifies for classification as an alien with extraordinary ability in the arts.

The director revoked the approval of the petition on January 29, 2008 based on the petitioner's failure to respond to the notice of intent to revoke, but later re-opened the matter when the petitioner established that the petitioner's response was in fact timely filed. In a decision dated February 22, 2008, the director found that the petitioner had failed to overcome the proposed grounds for revocation and concluded that: (1) the petitioner is not a qualifying employer or agent; and (2) the beneficiary's proposed activities in the United States do not meet the regulatory definition of "event" at 8 C.F.R. § 214.2(o)(3) and do not represent continuing work in the area of extraordinary ability. Specifically, the director determined that the beneficiary appears to be occasionally providing dance instruction to the petitioner's clients, while independently entering dance competitions in a situation akin to freelancing in the open market.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient documentation to evidence its employer-employee relationship with the beneficiary and its business success and viability. Counsel asserts that the petitioner is employing the beneficiary as a dance instructor at the rate stated on the Form I-129, and that the beneficiary represents the petitioner when she competes in dance competitions. Counsel submits a brief and additional evidence in support of the appeal.

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 extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991).

Section 101(a)(46) of the Act states that the term "extraordinary ability" means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.

The regulation at 8 C.F.R. § 214.2(o)(8)(i)(B) provides that the director may revoke a petition approval at any time, even after the validity of the petition has expired. The regulation at 8 C.F.R. § 214.2(o)(8)(iii) sets forth the grounds for revocation on notice:

> (A) *Grounds for revocation.* The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that:
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> *(1)* The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
>
> *(2)* The statement of facts contained in the petition was not true and correct;
>
> *(3)* The petitioner violated the terms or conditions of the approved petition;
>
> *(4)* The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or
>
> *(5)* The approval of the petition violated paragraph (o) of this section or involved gross error.
>
> (B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

In the present matter, the director provided a statement of the grounds for the revocation and cited to 8 C.F.R. § 214.2(o)(8)(iii)(A)(*5*) as the basis for revocation, noting that the approval of the petition involved gross error.

The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. *See Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's New College Dictionary* 502 (3rd ed. 2008).

As the term "gross error" was created by regulation, it is most instructive to examine the comments that accompanied the publication of the rule in the Federal Register. The term "gross error" was first used in the regulations relating to the revocation of a nonimmigrant L-1 petition. In the 1986 proposed rule, an L-1 revocation would be permitted if the approval had been "improvidently granted." 51 Fed. Reg. 18591, 18598

(May 21, 1986)(Proposed Rule). After receiving comments that expressed concern that the phrase "improvidently granted" might be given a broader interpretation than intended, the agency changed the final rule to use the phrase "gross error." 52 Fed. Reg. 5738, 5749 (Feb. 26, 1987)(Final Rule).

Upon review of the regulatory history and the common usage of the term, the AAO interprets the term "gross error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that USCIS determines to have been approved contrary to law must be considered an unmitigated error, and therefore a "gross error." This view of "gross error" is consistent with the example provided in the Federal Register. *See* 52 Fed. Reg. at 5749.

Upon review and for the reasons discussed herein, the present petition was properly revoked as the director clearly approved the petition in gross error, contrary to the eligibility requirements provided for in the regulations.

Title 8, Code of Federal Regulations (8 C.F.R.) 214.2(o)(2)(ii) provides that petitions for O aliens shall be accompanied by the following evidence:

> (A) The evidence specified in the particular section for the classification;
>
> (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;
>
> (C) An explanation of the nature of the events, or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and
>
> (D) A written advisory opinion(s) from the appropriate consulting entity or entities.

Pursuant to 8 C.F.R. § 214.2(o)(2)(i), an O-1 petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. An O alien may not petition for himself or herself.

The regulatory requirements for agents as employers are set forth at 8 C.F.R. § 214.2(o)(iv)(E):

> A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent.

The first issue to be addressed in this matter is whether the petitioner is a United States employer or agent eligible to file a nonimmigrant petition on behalf of an alien worker.

The petitioner filed the nonimmigrant petition on August 7, 2007. The petitioner indicated that it is a dance instruction/competition/promotion company with one employee and gross annual income of $526,971. The petitioner stated on Form I-129 that it will employ the beneficiary on a full-time basis as a dance instructor/competitor at an annual salary of $96,000, and indicated that the beneficiary would receive additional compensation in the form of competition prize money and awards. In a letter dated July 31, 2007, the petitioner provided a list of approximately 44 dance competitions in which the beneficiary would compete between August 2007 and December 2009, and stated that the beneficiary would also compete in various international championships during this period. The petitioner further indicated that the beneficiary would "instruct and coach amateur and professional dancers in Dancesport." The beneficiary in this matter is a professional ballroom dancer who was previously granted O-1 status to work for a different employer.

The petitioner's letter included a section titled "The Terms of Employment," in which it stated the following:

> [The petitioner] proposes to employ [the beneficiary] to continue to compete, instruct and coach DanceSport on behalf of my organization. This is a full-time position requiring 40 hours per week. We will pay [the beneficiary] $50.00 per hour or $96,000.00 per year.

The petitioner did not submit a copy of its contract with the beneficiary, nor did it claim to have an oral agreement with the beneficiary and provide a summary of its terms.

The director initially approved the petition on August 10, 2007. On December 19, 2007, the director issued a notice of intent to revoke the approval, advising the petitioner that USCIS determined that the approval of the petition involved gross error, in accordance with 8 C.F.R. § 214.2(o)(9)(iii)(A)(5). The director referred to the regulations at 8 C.F.R. § 214.2(o)(2)(i) and 8 C.F.R. § 214.2(o)(2)(iv)(E), and advised the petitioner that it had failed to establish that it will act as the beneficiary's employer or agent.

First, the director noted that although the petitioner proposes to employ the beneficiary, there was no evidence that the petitioner had executed a contract with the beneficiary, nor did the petitioner submit a summary of terms of employment in the absence of a contract.

Second, the director acknowledged that although the petitioner indicated that the beneficiary would be performing and teaching at "Studio B" in Scottsdale, Arizona, the petitioner did not provide any documentary evidence establishing that it owns or leases the premises and is actually occupying and maintaining the facility as its official business.

Finally, the director noted that the record indicates that the petitioning entity has been inactive and dissolved since 2003, which therefore calls into question whether the petitioner has an official work address and the ability to employ the beneficiary as a full-time dance instructor and coach at an annual salary of $96,000, as claimed in the petition.

The director alternatively considered whether the petitioner could qualify as a United States agent, and found that the petitioner had not submitted the evidence required by the regulations. The director granted the petitioner 30 days to respond to the notice of intent to revoke.

In a response dated January 11, 2008, counsel for the petitioner stated the following:

> Please be advised [the petitioner] is employing [the beneficiary] at a rate of $50.00/hr. as a ballroom dancer instructor and coach. . . . [The beneficiary] is also competing on behalf of [the petitioner]. . . . The summary of terms of employment was included in the O-1 letter submitted by [the petitioner] dated July 31, 2007 on page 9. . . . As indicated on current paycheck stubs in Exhibit B, [the beneficiary] is being paid the proper rate of $50.00/hr. by [the petitioner]. Furthermore, as indicated in Exhibit C, [the beneficiary] is competing on behalf of [the petitioner] as indicated in the summary of employment terms.

Counsel indicated that the beneficiary teaches and coaches ballroom dance/dancesport on behalf of the petitioner at "Studio B," where the petitioner rents floor time.

In support of its response, the petitioner submitted copies of the beneficiary's recent paycheck statements. The documents show that for the month of September 2007, the petitioner paid the beneficiary $1,600 in wages and a $1,737 bonus. For the month of October 2007, the beneficiary was paid $3,950 in wages and a bonus of $1,566.75. The petitioner submitted two payroll statements for the beneficiary for November 2007. One indicates that she received no wages and a $1,000 bonus for the month, and the other indicates that the beneficiary was paid $550 for 11 hours of work and received a bonus of $1,585.95. The year-to-date totals on the November statement indicate that the beneficiary received a total of $8,928.75 in wages and bonus payments of $5,889.70.

As evidence that the beneficiary is competing on behalf of the petitioner in competitions, the petitioner submitted results from the Ohio Star Ball, in which the beneficiary competed in the "female teacher" category and placed 12th out of 644 competitors.

Finally, the petitioner submitted a copy of an un-dated letter signed by [redacted] on behalf of Studio B, located at [redacted] in Scottsdale, Arizona. Ms. [redacted] stated the following: "[The petitioner] rents the floor space at Studio B. Floor fee is $15.00 per lesson and dance floor is available Monday thru Friday 10:00 a.m. – 10:00 p.m., Saturday 10:00 a.m.-2:00 p.m."

After reviewing the petitioner's rebuttal evidence, the director revoked the approval of the petition on February 22, 2008, concluding that the evidence of record was insufficient to establish that the petitioner will act as the beneficiary's employer or as an agent performing the function of an employer. The director first noted that the petitioner has been inactive and dissolved since 2003, has no official business address, business license, or proof of doing business in the United States. The director therefore found that the petitioner had not established that it would be able to employ the beneficiary as a full-time dance instructor and coach as claimed in the petition.

The director noted that the letter from provided in lieu of an official lease agreement, did not support a conclusion that the petitioner is actually occupying and maintaining Studio B as its official business location. The director further found that the information provided did not confirm that the dance studio has been exclusively reserved for the petitioner to facilitate a full-time working environment for the beneficiary, as the petitioner merely rents the space on an hourly basis.

In addition, the director determined that the petitioner failed to provide evidence that it has executed a contract with the beneficiary. The director noted counsel's reference to the "terms of employment" summarized in the petitioner's July 31, 2007 letter in support of the petition, but found the letter to be insufficient to be accepted in lieu of the contractual agreement required by regulations. The director observed that there was no evidence that the petitioner's "terms of employment" were disclosed to the beneficiary, and emphasized that the evidence of record does not show that the claimed terms of employment have been truthfully enforced. The director noted that the limited evidence submitted showed that the beneficiary was employed on a less than part-time basis during the three-month period for which the petitioner submitted payroll records.

The director noted that in light of the inconsistencies in the record, the petitioner should have provided official documentary evidence in support of its claims that it is employing the beneficiary according to the terms stated in the petition, such as copies of its State of Arizona quarterly wage reports.

On appeal, counsel for the petitioner asserts that the director failed to consider all of the evidence submitted, and contends that the petitioner submitted more than enough documentation to evidence both the employer-employee relationship and the "business success and viability" of the petitioning company. Counsel asserts that the "terms of employment" stated in the petitioner's letter dated July 31, 2007 represented the summary of the terms of an oral agreement between the petitioner and beneficiary.

With respect to the petitioner's business premises, counsel states that the company's principal place of business is located at [redacted] in Scottsdale, Arizona. Counsel argues that the petitioner is required to have a flexible agreement for the use of a dance floor, as it employs three dance instructors. Counsel further asserts that the petitioner has the flexibility to use the "extra floor space" as needed by the three instructors and their students. Counsel contends that there is no requirement that the petitioner have exclusive use of the floor space to evidence the viability of the employer-employee relationship. Finally, counsel asserts that a number of students can and do use the dance floor simultaneously.

In addition, counsel asserts that the offered position is full-time, and that the Form I-129 "evidences that the beneficiary will be employed full-time as an instructor and competitor." Counsel asserts that "the issue is not the actual wage, but rather the fact that a legitimate employer-employee relationship exists and the beneficiary has the proper credentials to evidence O-1 eligibility." Counsel asserts that when the beneficiary is not teaching, she is preparing for and competing in national and international DanceSport competitions as a representative of the petitioner. Counsel asserts that the petitioner issued a Form W-2 to the beneficiary and withheld the proper taxes, which further evidences the employer-employee relationship.

In support of the appeal, the petitioner submits partial copies of its corporate tax returns for the years 2005, 2006 and 2007, and additional payroll journals, none of which show that the beneficiary has been paid for 40 hours of work in any given week.

The petitioner also submits copies of IRS Forms W-2, Wage and Tax Statement, issued to the beneficiary and the petitioner's two other employees in 2007. The amount paid to the beneficiary was $14,818.45. The AAO notes that two different IRS Federal Employer Identification Numbers appear on each Form W-2. The petitioner indicated on its Form I-129 that its FEIN is The FEIN indicated on the petitioner's tax returns is . Both numbers are indicated, at item B and item 15, respectively, on the Forms W-2.

The petitioner also submits evidence that the petitioner registered a service mark with the U.S. Patent and Trademark Office on January 15, 2002 for the use of the term: "People's Choice Dance-Sport Competition."

Finally, the petitioner submits an "Employment Contract," signed and dated by the beneficiary and the petitioner on April 12, 2008. The contract indicates that the beneficiary will teach ballroom dancing and represent the petitioner at local and national ballroom dance/dancesport competitions on a full-time basis, and that she will teach all classes at Studio B "under the direction" of the petitioner. The contract indicates that the beneficiary will be compensated at a rate of $50.00 per hour for teaching and retain all awards or prize monies from participation in dance competitions.

Upon review, and for the reasons stated herein, the petitioner has not established that it is a qualifying United States employer or agent for the purposes of this visa classification.

As noted by the director in both the notice of intent to revoke and the notice of revocation, it has been discovered that the petitioning company was administratively dissolved by the State of Arizona. The dissolution was effective on April 7, 2003, before the instant petition was filed, and the company has not been reinstated as of this date. *See* Arizona Corporation Commission, State of Arizona Public Access System, <http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/history-detail.p?corp-id=08079140> (accessed on December 29, 2008).

According to the Arizona Revised Statute §10-1421, a corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 10-1405 and notify claimants under sections 10-1406 and 10-1407. If the corporation has not applied for reinstatement within six months after the effective date of the dissolution, the commission shall release the corporate name for use. *Id.*

As the petitioning company was therefore not legally entitled to carry on any business at the time of filing, the petition was clearly approved in error. A company that has been dissolved by the state cannot qualify as a U.S. employer for purposes of employing a nonimmigrant worker.

The petitioner has failed to acknowledge the director's observation that the company has in fact been administratively dissolved, and has not otherwise attempted to overcome this finding. While the petitioner has submitted tax returns and Forms W-2 to show that it continues to carry on business, there is no evidence

that any of these tax returns have actually been filed with the Internal Revenue Service, and the petitioner's use of two different FEINs raises questions regarding the validity of these documents. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director noted in the decision that the petitioner failed to establish that it has an official business address, business license or proof of doing business. On appeal, counsel for the petitioner simply indicates that the petitioner has a primary place of business at [redacted] but submits no evidence to establish that this the company owns or leases this premises for commercial purposes, or evidence that the beneficiary would be working at this "primary" location. Furthermore, although the director specifically advised the petitioner that the brief, un-dated letter from [redacted] was insufficient to establish that the petitioner was providing the beneficiary with a work location, the petitioner has not sought a more detailed letter from Ms. [redacted] or the studio clarifying the petitioner's typical usage of the Studio B space on a weekly basis, nor has it submitted other evidence, such as evidence of payments made to the studio for the beneficiary's use of the premises.

Instead, the petitioner noted that the beneficiary was being sued by her former O-1 employer for breach of employment and noncompetition agreement as of October 2007. The petitioner submitted a copy of the summons and complaint filed in connection with the lawsuit and counsel stated that the documents "clearly evidence that [the beneficiary] is employed by [the petitioner] and teaching on behalf of [the petitioner] at Studio B." The complaint filed by the beneficiary's former employer alleges that, beginning in August 2007, the employer learned that the beneficiary and her dance partner began soliciting the employer's clients and teaching ballroom, swing and Latin dances to such clients at Studio B in Scottsdale, Arizona. While this evidence appears to confirm that the beneficiary provided dance lessons at Studio B, it is not persuasive evidence that the beneficiary is working for the petitioner at this location on a full-time basis.

The AAO concurs with the director that petitioner has not provided evidence that it has reserved physical premises to provide a full-time work environment for the beneficiary. 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 AAO will next turn to the director's finding that the record contained no evidence that the petitioner had executed a contract with the beneficiary. Prior to the director's issuance of the notice of revocation, the evidence of record consisted of the petitioner's letter dated July 31, 2007, in which it stated that it would employ the beneficiary 40 hours per week at an hourly wage of $50.00. The petitioner did not submit a contract with the initial petition or in response to the notice of intent to revoke, nor did it indicate that the "terms of employment" in the letter represented a summary of the terms of an employment agreement that had been disclosed and agreed to by the beneficiary.

Furthermore, as evidence that the petitioner was complying with the "terms of employment" stated in the petitioners' initial letter, the petitioner submitted evidence that it paid the beneficiary only $8,928.75 in wages

over a three-month period. While it appears from the submitted pay statements that the petitioner paid the beneficiary $50.00 per hour, it also appears that she worked approximately 180 hours in three months, or an average of approximately 14 hours per week. The AAO acknowledges that the petitioner claims to have paid the beneficiary an additional $5,890 in "bonus" payments. However, the petitioner failed to provide an explanation for such payments, nor did the terms of employment indicate that the beneficiary would receive bonuses in addition to her hourly compensation. Again, 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. at 165. The petitioner indicated on Form I-129 that the beneficiary would receive "other compensation" in the form of competition prize money/awards. The record does not contain evidence of competition prize monies awarded to the beneficiary subsequent to the approval of the petition.

Overall, based on the evidence of record at the time of the director's decision, the AAO finds that the director correctly determined that the petitioner failed to submit a valid contract or evidence that it was complying with the terms of employment as stated on Form I-129.

On appeal, counsel for the petitioner asserts that the beneficiary is employed in a full-time position and that "[t]he issue is not the actual wage, but rather the fact that a legitimate employer-employee relationship exists." Counsel cites to no authority to support her suggestion that the petitioner does not have to pay the actual wage as stated on Form I-129, which was signed by the petitioner under penalty of perjury. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submits a written contract between the petitioner and beneficiary dated April 12, 2008, but does not indicate that a contract was in effect at the time the petition was filed. Nor does the petitioner indicate that the written contract represents the terms of a pre-existing oral agreement between the two parties. Moreover, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the director issued the notice of revocation. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Based on the foregoing discussion, the petitioner has not established that it is a qualifying U.S. employer with a valid employment offer, or that it is acting as the beneficiary's agent. For this reason, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner provided an explanation of the beneficiary's proposed events and activities, with beginning and end dates, and a copy of any itinerary, as required by 8 C.F.R. § 214.2(o)(2)(ii)(C).

The regulation at 8 C.F.R. § 214.2(o)(3) defines "event" as the following:

> . . . an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event. A group of related activities may also be considered to be an event. In the case of an O-1 athlete, the event could be the alien's contract.

The petitioner stated that the beneficiary will serve as a full-time instructor, competitor and coach. It provided the beneficiary's competition schedule in its letter dated July 31, 2007, a list of 44 U.S. dance competitions scheduled between August 2007 and December 2009.

In the notice of intent to revoke, the director acknowledged the competition schedule, but found that the record was insufficient to establish that the beneficiary has been and will be participating in the events listed. The director noted that it appeared that the beneficiary was seeking a dance teaching job rather than coming to perform services related to an event or events.

In response, counsel for the petitioner emphasized that the petitioner did in fact submit a detailed itinerary of dance competitions in which the beneficiary would be participating, in addition to her teaching and coaching commitments. The petitioner provided evidence of the beneficiary's results at several dance competitions that appeared on her competition schedule.

The director acknowledged that, while it may be true that the beneficiary has been participating in competition events, the record is lacking in evidence that the beneficiary competes in these events on behalf of the petitioner, or that the petitioner represents the beneficiary at these events. The director noted that an O-1 alien must be coming to the United States for specific events, and the petitioner must establish that it represents and engages the beneficiary in performing or competing in specific events. The director found that without a contractual agreement, the beneficiary has made no commitment to participate in the listed competition events, and thus the competition schedule has little evidentiary value.

The director concluded that the petitioner seeks to employ the beneficiary as a dance instructor to occasionally serve its clients, and that this is not the type of specific event contemplated for the temporary employment of an alien with extraordinary ability in the arts. The director emphasized that O-1 classification may not be granted to an alien to enter the United States to freelance in the open market.

On appeal, counsel for the petitioner emphasizes that the petitioner hired the beneficiary as an instructor and as a competitor, and states that "the beneficiary will be representing [the petitioner] at all of the competitions."

Upon review, the record remains devoid of documentation to support the petitioners' claim that the beneficiary will be engaged in qualifying "events" on behalf of the petitioner. If the beneficiary is in fact "representing" the petitioner in dance competitions, then it is reasonable to expect the petitioner to be able to produce some documentary evidence in support of its claims. Such evidence is particularly critical, given the petitioner's administrative dissolution, the lack of a contract between the parties, and the other discrepancies casting doubt on its status as a valid U.S. employer. The petitioner has not provided evidence that it

compensates the beneficiary in any way for her competitive dancing, nor does the petitioner claim to receive anything in return.

Based on the evidence of record, it appears that the beneficiary, at most, may be working part-time as a dance instructor for the petitioner and independently entering dance competitions. As discussed above, the beneficiary's employment with the petitioner in any capacity is suspect due to the lack of evidence of the petitioner's viability as an employer, the lack of evidence of a full-time work location, and the inconsistent employer identification numbers used on the company's documentation. The AAO therefore concurs with the director's conclusion that the beneficiary's proposed activities are not the types of specific events contemplated for an alien with extraordinary ability in the arts. Accordingly, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.