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U.S. Citizenship  
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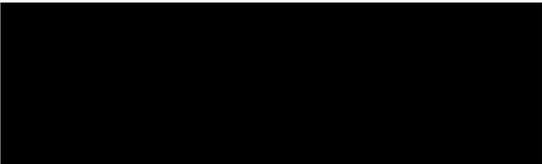
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FILE: EAC 03 069 50778 Office: VERMONT SERVICE CENTER Date: JUL 05 2005

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:



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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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 in athletics. 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.

Prior to the director's discussion of the regulatory criterion, the director noted the petitioner's lack of a degree in dance. On appeal, counsel notes that degrees in one's field are not among the type of evidence suggested in the regulatory criteria. While we concur with counsel that whether the petitioner has a degree in dancesport is irrelevant to her eligibility, we uphold the director's determination that the petitioner does not meet at least three criteria for the reasons discussed below.

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 she 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 dancesport 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). 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. In her

decision, the director stated that “meeting three of the ten categories of evidence suggested by regulation does not automatically establish the [petitioner’s] eligibility.”

While we may not agree with the exact working of the above statement, we do not read the director’s decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. A more rational interpretation of the director’s decision is that the petitioner submitted documentation that related to or addressed three criteria, but that the evidence itself was not indicative of national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or uniquely consistent with sustained national or international acclaim.

The petitioner has submitted evidence that, she claims, meets the following criteria.<sup>1</sup>

*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 two lists of her competition results. These lists do not appear to be official confirmation of the results listed. The petitioner submitted evidence of the following results:

1. First Place in Youth Latin at the United States Ballroom Championships in 1996,
2. First Place in the Latin American program at the Russian Open Championships, Youth-97 in 1997,
3. Ranked 17<sup>th</sup> at the EDSF World Youth Latin competition in Slovenia in 1997,
4. Ranked 14<sup>th</sup> at the IDSF International Open Latin in Miami in 1997,
5. First Place in the Latin Program at the Russian Closed Dance Sport Championships, Yunost 98 in 1998 (Organized by the Committee of Youth Involvement Physical Education and Sports),
6. Finalist in the Latin Open Amateur program at the Manhattan Dancesport Championships in 1998, and
7. Ranked 4<sup>th</sup> in the RI 2000 National Championship.

The petitioner also received certificates of “outstanding results” and “professional show” from Russian youth or young adult sports committees.

The director implied that the photocopied awards submitted were insufficient. Further, the director determined that the awards were not recent and concluded that they were issued to the petitioner and her partner and, thus, did not recognize the petitioner individually. The director also noted that while some of the materials indicate recognition of dancesport by the International Olympic Committee, the petitioner did not compete at that level. Finally, the director concluded that the petitioner had not established that the above awards constitute nationally or internationally recognized awards.

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

On appeal, counsel asserts that photocopied evidence is acceptable, that the director misstated the period during which the petitioner won awards and that the U.S. Ballroom Dancing Association competitions are national. Counsel notes that ballroom dancing requires a partner and that dancesport is not yet an Olympic sport.

While we accept the photocopied awards and published rankings submitted, we reiterate that the full list of the petitioner's competition results does not appear to be an official document and is not evidence of the petitioner's rankings at the undocumented events.

We concur with counsel that the director's concern regarding the lack of individual recognition is misplaced. We do not discount nationally or internationally recognized team awards.

While the director misstated the dates of the petitioner's awards, concluding that some were from the 1980's, the fact that the petitioner submitted no evidence of competition after 2000 is significant. We disagree with counsel's interpretation that "sustained" merely means over a period of time even if the acclaim is not recent. This office consistently holds that the word "sustained" relates to the time of filing. While the petitioner's lack of awards in the two years prior to filing the instant petition would not be problematic if other evidence relating to other criteria was more recent, that is not the case in this matter.

Finally, while some of the petitioner's awards are national in scope, the only documented awards are from youth competitions. We do not consider 4<sup>th</sup>, 14<sup>th</sup> and 17<sup>th</sup> rankings or finalist status to constitute awards or prizes. As the most accomplished and experienced dancers do not compete at youth events, these awards cannot serve to meet this criterion. In light of the above, the petitioner has not established that she meets this criterion.

*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.*

Initially, counsel asserted that the petitioner's selection to represent her country at overseas competitions and the competitions themselves serve to meet this criterion. Focusing on the U.S. Amateur Ballroom Dancers Association (USABDA), the director concluded that the petitioner had not established membership in associations in her field or that the associations require outstanding achievements of their members.

On appeal, counsel asserts that USBDA selected the petitioner for competitions and financed her participation. Counsel further asserts that the director failed to consider "the role that [the petitioner] played in Russian dancesport organizations."

The petitioner's role for an association is not relevant to this criterion. Rather, the plain language of this criterion requires *membership* in an association. Selection for and admission to a competition is not a membership. Thus, we concur with the director's conclusion that the record lacks evidence of the petitioner's membership in an association that requires outstanding achievements of its members.

*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.*

Counsel initially asserted that the petitioner meets this criterion through her television appearances and by being “featured or mentioned” in various publications, many of which do not appear to have a national circulation.

The director concluded that the published materials were not recent and did not appear to be major media. On appeal, counsel asserts that the director ignored the evidence of the television coverage of the petitioner and her partner. Counsel further asserts that *Dance Week*, *DanceBeat*, a USABDA Press Release, and *Amateur Dancers* constitute major media.

The print materials are not persuasive. The only publications that feature the petitioner in any meaningful way are not major media. The publications referenced by counsel on appeal did not publish articles primarily about the petitioner or the petitioner and her partner. Rather, the petitioner’s name is included in rankings published in these magazines and she appears in photograph spreads of several dancers performing at various competitions.

The petitioner did submit evidence that Russian television featured her and her partner in a documentary in 1996. While this evidence is more persuasive, it is not indicative of sustained acclaim as of the date of filing in 2003.

In light of the above, the petitioner has not demonstrated that she 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.*

The director concluded that no evidence was submitted relating to this criterion. On appeal, counsel notes that Olga Foraponova attested to the petitioner’s work as a judge. Counsel further notes that the petitioner has worked as a dance teacher.

Evaluating one’s students is inherent to the occupation of teaching and coaching. We cannot conclude that every teacher, instructor or coach has national or international acclaim. Thus, the petitioner’s work as a teacher is insufficient to meet this criterion.

In her initial letter, Ms. [REDACTED] states that the petitioner and her partner “were granted the right to judge regional competitions on level E, D and C in International Latin and Standard by the National Professional DanceSport Organization.” Ms. [REDACTED] does not claim to be affiliated with the National Professional DanceSport Organization or otherwise explain how she has first hand knowledge of this judging responsibility. The record does not include programs identifying the petitioner as a judge and Ms. [REDACTED] not identify specific competitions judged by the petitioner and the dates of those competitions. Without more specific information, we cannot conclude that the evidence relating to this criterion is sufficiently indicative of national or international acclaim as of the date of filing. Thus, the petitioner has not demonstrated 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.*

Counsel did not initially claim that the petitioner meets this criterion. The director concluded that the record lacked evidence of the petitioner’s influence on the field. The director also questioned the expertise of the petitioner’s references. On appeal, counsel states:

First, success at the highest levels of competition in both Russia and the United States does not support the conclusion that the [petitioner] lacks original contributions in her field. Ballroom dance competitions at this level are judged; judges rank competitors on the basis of skills, presentation and showmanship. Second, invitations such as performing a showcase at the Russian National Dancesport competition would normally indicate that the [petitioner] has influence[d] her field; likewise, being on Russian television suggest the same. Third, if the field is competitive ballroom dancing, then the success at the highest levels of competition by definition means national or international acclaim for her performances. Fourth, each of the dancesport experts who submitted letters summarized their accomplishments or included attachments and therefore documented their status as experts.

This criterion requires more than mere success and participation in high-level competitions. The petitioner's awards have been considered above. In order to meet this criterion, the petitioner must demonstrate an influence on the field recognized in the field as a contribution of major significance.

The petitioner's references, many of whom have demonstrated expertise in the petitioner's field by serving as coaches and judges, affirm the petitioner's talent, but do not attest to an influence on that field. The record contains no evidence that the petitioner has set a record or similar standard to which other competitive dancers aspire. Nor does the record establish that the petitioner's style has proven influential. Even assuming the strict rules of competition do not allow for innovation, the inapplicability of a criterion does not require us to accept lesser evidence to meet it. Thus, we concur with the director that the petitioner has not established that she meets this criterion.

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

The petitioner submitted evidence of her competitions and charity performances. The director concluded that the "quality and caliber of these venues is not documented in the record."

On appeal, counsel asserts:

First, the nature of ballroom dance competition is that it involves dancing before an audience and judges. To do so at the highest national levels in both Russia and the United States is a display at an artistic showcase. Second, [the petitioner] ha been featured in special performances at these competitions, such as a special show at the Russian DanceSport Championships in 1998.

We agree that dancing before judges and an audience is inherent to ballroom dancing. It is precisely because all competitive dancers perform for others that such performances cannot serve to meet this criterion. Specifically, they do not elevate the petitioner above others in her field.

As is evident from the consideration of dancesport for Olympic competition, dancesport is better classified as athletics than an art. Thus, it is not even clear that this criterion applies to dance competitors, as a dance competition is not an artistic exhibition or showcase.

Further, we acknowledge that the petitioner has competed at high-level competitions. We note, however, that the Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the “extraordinary ability” standard. . . . A blanket rule for all major league athletes would contravene Congress’ intent to reserve this category to “that small percentage of individuals who have risen to the very top of their field of endeavor.”

Thus, merely competing at the highest level is insufficient evidence of extraordinary ability.

Moreover, the petitioner submitted a certificate recognizing the petitioner “for a professional show in Russian Dance Sport Championships.” This certificate does not indicate that the petitioner was selected to showcase her dancing exclusive of the other competitors at that competition.

Finally, volunteer performances at schools and charity events do not constitute the type of exclusive artistic exhibitions or showcases contemplated by this criterion.

In light of the above, the petitioner has not established 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.*

Counsel initially asserted that the petitioner meets this criterion through her employment as a dance instructor with the Fred Astaire Dance Studio. According to [REDACTED] the petitioner holds the title of Fred Astaire National Youth and Amateur International Latin Champions, a championship limited to the staff at the 150 affiliated schools. The record does not contain an award certificate confirming this recognition, but [REDACTED] Director and Manager of the Fred Astaire affiliated school where the petitioner teaches, provides similar information. Counsel further asserts that the petitioner’s competitive accomplishments constitute a critical role for the school that trained her.

Referencing his discussion for the published materials and judging criteria, the director concluded that the petitioner had not established that she meets this criterion. On appeal, counsel asserts that the director ignored the evidence submitted.

We find that this criterion is a distinct criterion and we are not persuaded that the petitioner’s failure to meet the published materials and judging criteria impact this criterion. Thus, more discussion is warranted than provided by the director.

According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the relevant factors for this criterion are the nature of the role the petitioner was hired to fill and the reputation of the entity that hired her. We do not contest the distinguished reputation of the Fred Astaire schools. The role of dance instructor, however, is not an intrinsically leading or critical role for the studios beyond the obvious fact that a studio must employ dance instructors. The fact that as a dance instructor, the petitioner has successfully competed against other instructors, does not change the nature of the role she was hired to fill.

Finally, while we do not contest the distinguished reputation of the petitioner's school, we do not find that competing successfully upon graduation constitutes a leading or critical role for one's former school.

*Comparative evidence pursuant to 8 C.F.R. § 204.5(h)(4)*

Throughout the proceedings, counsel has asserted that the stature of the petitioner's coaches serves to meet this criterion. The director did not consider this assertion.

Counsel acknowledges that comparable evidence is appropriate "if the listed standards do not readily apply to the beneficiary's occupation." Yet counsel does not explain why the regulatory criteria, most of which counsel asserts the petitioner meets, are not readily applicable to the petitioner's field. Moreover, counsel does not identify the criterion to which the stature of the petitioner's coaches is comparable. While we do not contest that the top coaches in a sport will typically limit themselves to the most promising individuals, we will not infer the petitioner's acclaim from those with whom she is affiliated.

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 herself as a dancer 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 indicates that the petitioner shows talent as a dancer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.