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FILE: EAC 04 070 51124 Office: VERMONT SERVICE CENTER

Date: MAR 01 2006

IN RE: Petitioner:  
Beneficiary:



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:

SELF-REPRESENTED

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 the arts as a Romanian folk dance performer and instructor. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. On appeal, the petitioner submits a letter and additional evidence of his accomplishments, which occurred after the petition was filed on January 13, 2004 and consequently cannot be considered. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner's claims made on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed for the following reasons.

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

(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.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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).

We address the evidence submitted and the petitioner's claims in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not discussed below.

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

In his letter submitted with his Form I-140, the petitioner states that he was a member of an internationally acclaimed Romanian folk dance group, *Datina*, which participated in several contests and festivals. The petitioner submitted a copy of a diploma certifying *Datina's* attendance at a cultural event in Hjørring, Denmark in 1996, but the record does not indicate that the group, or the petitioner himself, won any nationally or internationally recognized prize or award at this event. The petitioner also submitted a diploma presented to him by the County Council of Botosani on December 14, 2003 in recognition of his activities as a folk dancer with [REDACTED] Company of Botosani County Center for Cultural Support and Preservation." The record contains no evidence regarding the significance of this certificate or documentation that the diploma reflects the petitioner's national acclaim as a folk dancer, rather than his regional recognition in Botosani. The petitioner submitted no other evidence of folk dancing prizes or awards won by *Datina* or himself individually. Accordingly, the petitioner does not meet this criterion.

*(ii) 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 his letter submitted with his Form I-140, the petitioner states that in 2000 he became a full member of the Romanian Christian Society, *Dorul*, due to his contribution to the preservation of Romanian culture and folklore in the Romanian-American community of New York. Mr. [REDACTED] President of *Dorul*, confirms that the petitioner has actively contributed to *Dorul*, an organization he describes as working to preserve Romanian ethnic culture and heritage in the United States by organizing cultural activities for the Romanian community in New York. Mr. [REDACTED] confirms that the petitioner made valuable contributions to *Dorul's* 100<sup>th</sup> anniversary celebration in New York. Yet Mr. [REDACTED] does not confirm the petitioner's membership in *Dorul*. The petitioner submitted no primary evidence of his *Dorul* membership and no documentation that outstanding achievements, as judged by national or international experts, are prerequisite to *Dorul* membership. Accordingly, the petitioner does not meet this criterion.

*(iii) 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.*

The petitioner submitted copies of several editions of [REDACTED] a review of Romanian spirituality and culture published by the Romanian Institute of Orthodox Theology and Spirituality in New York, which include photographs of the petitioner and his students at various performances. One edition briefly mentions the petitioner's direction of the Romanian youth folk dancing group, [REDACTED]. The record contains no evidence that *Gracious Light* is a professional, major trade publication or a form of major media, publication in which could reflect national or international acclaim. The petitioner also submitted a pamphlet from what appears to be a Romanian cultural festival. This pamphlet is printed in a foreign language and was not submitted with a

certified English translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On appeal, the petitioner submits translations of two articles about him and his work published in Romanian newspapers in March and April 2004 and a videotape of some of his performances from December 2004 to January 2005 broadcast on Romanian Voice Television. We cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Accordingly, the petitioner does not meet this criterion.

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

The petitioner submitted recommendation letters from [REDACTED] President of Romanian Voice International Enterprises, Incorporated; [REDACTED] President of R.V.M. Incorporated and the Transylvania Restaurant in Sunnyside, New York; [REDACTED] President of the Romanian-American Dacia Television Station in New York; Father [REDACTED] Priest-In-Charge of the Romanian Institute of Orthodox Theology and Spirituality, Chapel of Saint Apostles Peter and Paul; [REDACTED] President of the *Dorul* Society; [REDACTED] Visiting Professor of Romanian language and literature at Columbia University in New York City; [REDACTED] Reference Librarian for International and Foreign Law at New York University Law Library; [REDACTED] a journalist for Romanian-American magazines; and [REDACTED] President of the Romanian Voice Television Station and the Romanian Journal. On appeal, the petitioner describes these individuals as his friends.

While recommendation letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

The letters praise the petitioner's skills and accomplishments as a Romanian folk dancer and instructor and attest to his contributions to preserving the Romanian cultural heritage in the United States. Yet the letters do not identify any original contributions of major significance that the petitioner has made to his field. Moreover, the letters indicate that the petitioner's field is limited to Romanian folk dance and instruction and that his reputation and accomplishments in the United States do not extend beyond the Romanian-American community on the East Coast. The submitted documentation of the petitioner's work in the United States further shows that the petitioner's achievements have only been recognized within the Romanian-American community, predominately in the New York region. While they may be meaningful and valuable, contributions recognized only by a regional ethnic minority population in the United States do not demonstrate the requisite national or international acclaim. The petitioner submitted no evidence, for example, that his work has been critically acclaimed or covered by national media or that national folk dance journals or organizations have recognized the petitioner's contributions. In addition, although the petitioner himself and several of his recommendation letters state that he was a highly acclaimed folk dancer in Romania, the record is devoid of any documentation that the petitioner made original artistic contributions of major significance to his field in Romania in a manner

consistent with sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

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

While frequent performances are intrinsic to the dancing profession, the regulation requires that evidence under this criterion demonstrate sustained national or international acclaim and not simply document an alien's continued activities in his or her field. In this case, the record documents the petitioner's performances at one festival in Denmark in 1996 and at various events in the United States between 2001 and 2003 at Romanian restaurants and religious and cultural celebrations. On appeal, the petitioner submits evidence of additional performances in the United States that we cannot consider because they occurred after the petition was filed. **The petitioner must establish eligibility at the time of filing.** See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. The petitioner submitted no evidence that any of his performances took place at major folk dancing competitions or festivals, participation in which might demonstrate national or international acclaim. Accordingly, the petitioner does not meet this criterion.

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

The petitioner states that he was a co-founder of the Romanian folk dance group, *Datina*, and the record shows that the petitioner formed a Romanian youth folk dance group, *Dragalina*, in the United States. While the petitioner may have performed a leading or critical role for these groups, the record is devoid of any evidence that *Datina* or *Dragalina* have distinguished reputations consistent with national acclaim in Romania or national acclaim in the United States that extends beyond the Romanian-American community. Consequently, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The record in this case does not establish that the petitioner has achieved sustained national or international acclaim as a Romanian folk dance performer and instructor placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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.