U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 02 2009

SRC 07 131 50818

IN RE: Petitioner: [redacted]
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:

[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. Grisson, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 in the arts. 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, the petitioner argues that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.

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).

This petition, filed on March 23, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an aerial contortionist. The petitioner initially submitted a work schedule for 2007, a letter verifying her current employment, and an approval of a nonimmigrant visa petition (O-1). In response to a Request for Evidence ("RFE") dated July 20, 2007, the petitioner submitted a letter from her current employer, information about her current employment and employer including schedules, news articles, information

about the 2007 Diva Search, pictures from Country Music Television ("CMT") Loaded, information about the World Martial Arts Reality Combat Championship, flyers for performance events, seven letters of recommendation, information about the 1997 Canadian Dance Masters competition, a list of dance awards won, receipt of scholarship award, and her employment contract.

In her original submission, the petitioner relied heavily upon the approval of her O-1 nonimmigrant visa petition as the reason her immigrant petition for extraordinary ability in the arts should be granted. An approval of an O-1 nonimmigrant visa petition does not mandate the approval of a similar immigrant visa petition. The regulation at 8 C.F.R. § 214.2 (o)(3)(iv), relating to nonimmigrant aliens of extraordinary ability in the arts, provides different eligibility criteria than those for the immigrant classification discussed below. Section 101(a)(46) of the Act proscribes: "The term 'extraordinary ability' means, for purposes of subsection (a)(15)(O)(i) of this section, in the case of the arts, distinction." 8 C.F.R. § 214.2(o)(3)(ii) defines "distinction" as follows:

> Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field 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." While the ten immigrant criteria set forth at 8 C.F.R. § 204.5(h)(3) appear in the nonimmigrant regulation at 8 C.F.R. § 214.2(o)(3)(iii), those criteria apply only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The distinction between these fields and the arts, which appears in 8 C.F.R. § 214.2(o) does not appear in 8 C.F.R. § 204.5(h). As such, the petitioner's approval for a non-immigrant visa classification under the lesser standard of "distinction" is not evidence of her eligibility for the similarly titled immigrant classification. Each petition must be adjudicated on its own merits under the statutory provisions and regulations which apply to the classification sought. Thus, the petitioner's eligibility will be evaluated under the ten regulatory criteria relating to the immigrant classification.

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. The petitioner does not claim to meet any of the 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.

The petitioner submitted a list of dance awards that she won between 1993 and 1997, a PepsiCo scholarship award to be used at a university of her choice, and evidence of being crowned Miss Dance of Canada in 1997. We note that the last award was given almost a decade prior to the filing of this petition and does not demonstrate sustained acclaim. The petitioner provided no evidence outside of her self-generated list that she won the 1993 to 1997 dance competitions that she listed. The petitioner submitted photographs of medals and plaques, however, the photographs submitted are too dark to allow us to read their faces or ascertain for what they were awarded. The petitioner did submit evidence of her 1997 Miss Dance of Canada award, however, she failed to submit any evidence that this award or any other of her dance awards are nationally or internationally recognized. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In addition, the evidence submitted regarding the Miss Dance of Canada competition indicates that it is a "scholarship pageant competition" and the competition is a "'showcase' for talented young dancers" which indicates that the competition was not open to professional dancers or acrobats but was instead restricted to students or those below a particular age. The petitioner presented no evidence to show either who was eligible for the competition or how, if the competition was restricted to students or dancers of a particular age, how the award would constitute an award for excellence in the field if it did not allow those working in the field, i.e. professional dancers, to participate.

The PepsiCo scholarship award represents financial assistance for the petitioner's university study rather than her receipt of a lesser nationally or internationally recognized prize or award for excellence in the field of endeavor. University study is not a field of endeavor, but rather training for future employment in a field of endeavor. The petitioner's receipt of educational funding offers no meaningful comparison between her and experienced professionals in the field who have long since completed their academic studies.

The petitioner also claims that the award of Miss 105.3 constitutes a lesser prize, however, she provided no evidence that this award was bestowed upon her. The evidence she offered in support of this claim are a series of four photographs, none of which show any type of award such as a certificate, for example, and none of which give any information about the sponsoring agency or the type of contest involved. The petitioner states that the award was sponsored by CBS Radio and provides information about that organization, however, she provides no evidence to support her claim. 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)). In addition, the petitioner provided no information regarding the acclaim due to the recipient of any such award or any recognition afforded nor did the petitioner provide any information about the contest itself such as the number of participants, the qualification of the judges, the eligibility requirements for entry in the contest, or how the participants would be judged.

In counsel's brief on appeal, he argues that the petitioner is highly accomplished and was rewarded for her accomplishments by being chosen to be a choreographer and coach of two Canadian Olympic gymnasts. The letter submitted by [redacted], director of Kindernastic Kids and Choreography Plus, states that the petitioner was chosen for this position at age 16 and coached large groups of gymnasts and acrobats to

perform at halftime shows during professional sporting events. Although this position may have been awarded to the petitioner, it does not constitute an award as such nor does the petitioner present any evidence that this position garnered national or international recognition.

The petitioner submitted a picture of a Nashville Nightlife Award for Best Performance Artist, however, this award seems to be regional in nature and the petitioner has not submitted any evidence that the award is instead nationally or internationally recognized.

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulation, 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. 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.[1]

In her response to the RFE, the petitioner cited four documents that she felt demonstrated her eligibility under this criterion. The first document is a Bud Light advertisement, which the petitioner states appeared in the June 2006 issue of MAXIM. The advertisement states in the text that readers should attend the MAXIM Exposure Party, but bears no other indication of the magazine in which it was published or the date of publication or the author of the material. In addition, the advertisement is not *about* the petitioner or relating to her work as required by the regulation since the advertisement says nothing about the petitioner and does not include anything except her picture, including her name.

The next document, a piece by Allison Smith does not identify the publication in which the piece appears. According to the petitioner's response to the RFE, the piece is a "draft copy" and she submits no evidence that the piece was ever published.

The third document, a September 2007 picture of the petitioner with a one line caption, is not about the petitioner as it consists of only one picture of four and contains little information about the petitioner or her work. In addition, the petitioner states that the picture appeared in "Nashville's entertainment newspaper, 'The Rage'" and does not state how "The Rage" would qualify as major media as opposed to a local publication. Similarly, the petitioner failed to show how the last document submitted, a 2006 press release by the Durham College and University of Ontario, would qualify as major media as opposed to a local publication. The petitioner submitted

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[1] 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.

no evidence (such as circulation statistics) showing that the preceding articles were printed in professional or major trade publications or some other form of major media.

The petitioner submitted several webpages filled with search results on such websites as google and youtube. Although there appear to be numerous mentions of the petitioner on webpages, the petitioner did not submit these individual articles. An internet search of an alien's name does not amount to published material about the alien as it does not include the information required by the regulations including the title of the piece, the author's name, information about the publication so as to qualify it as a professional or major trade publication or other form of major media, or the date that it was published.

In light of the above, the petitioner has not established that she meets 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 claims that the award of the Miss Dance of Canada amounted to an original contribution of major significance in the field. First, as stated above under criterion (i), Miss Dance of Canada is a scholarship competition. Even if an award could be considered a contribution to the field, each criterion under 8 C.F.R. § 204.5(h)(3) are separate and distinct. The petitioner's argument that she made a significant contribution to the field by winning an award means that the awards considered under criterion (i) would also qualify as major achievements within the field under criterion (v). If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. In the response to the RFE, the petitioner presented no argument as to how her receipt of this title impacted the field and instead described the award and its requirements of her as the reigning champion. Similarly, the petitioner failed to show how her training awards for dance amount to an original contribution of major significance to 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 for its uniqueness by those offering letters of support, there is no evidence demonstrating that her work has 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.

The petitioner identified seven letters in the record purportedly supportive of her claim of eligibility under this criterion. While letters such as these 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 her field beyond the limited number of individuals with whom she 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 achieved sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

national administrator of the Canadian Royal Academy of Dance, wrote that the petitioner "achieved a high level of professional dance training" and achieved different levels of training in classical ballet that have "allowed her to move on to her chosen field." Similarly, the letters from national executive secretary of Dance Masters of America, and Tammy Roberts, president and artistic director of Durham Dance Center, state that the petitioner received a great deal of training and excelled in the field of dance. These letters make no representation that the petitioner made a contribution of major significance to the field of dance, but instead relay the training that the petitioner received.

The letter from , Director of entertainment and cruise programs for Celebrity Cruises, states that the petitioner "was one of the finest dancers ever to grace a Celebrity Cruises stage" and commended the petitioner's dancing abilities, but did not state that the petitioner made an original contribution to dance. The manager of entertainment operations for Celebrity Cruises, , echoed sentiments regarding the petitioner's dance abilities, but also did not state that the petitioner made an original contribution. We note that s letter was written in support of the petitioner's O-1 non-immigrant visa petition. , president and founder of Randolph Academy for the Performing Arts, stated that the petitioner was "one of the most versatile and talented students in dance" and that she "successfully achieved both an academic and very practical studio oriented dance, theatre / film training." Although Mr. has nothing but high praise for the petitioner's abilities, he did not state that she made an original contribution of major significance to the field of dance.

In both her response to the RFE and in counsel's brief on appeal, the petitioner cites praise given to her by a "star performer" of the Port Perry Dance Academy, however, no evidence appears to support the petitioner's assertion that such praise was given. 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)). Even if the praise had been supported, the praise given that the performer learned new tricks from the petitioner and enjoyed herself does not amount to a statement that the petitioner made an original contribution to acrobatics or to dance. Similarly, the invitation issued by the head of the Academy to teach in two week-long seminars alone does not amount to recognition of an original contribution to the field.

Even though the petitioner does seem to enjoy fan support from various countries around the world as evidenced by the fan mail she submitted, such fan support does not mean that the petitioner has made an original contribution of major significance to the field.

Accordingly, the petitioner has not established that she meets this criterion.

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

Although the petitioner does not specifically claim eligibility under this criterion, she presents evidence that she participated in artistic exhibitions or showcases. The petitioner submitted evidence of various performances made in conjunction with her work for Big Shoulders Digital Video Productions, Psychotrance Entertainment, and also with various independent venues and artists. Frequent performances are intrinsic to the acrobatic and dance professions. Duties or activities which nominally fall within a given criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent to the

occupation itself. The petitioner submitted information regarding the venues in which she performed, however, a dancer or acrobat would be expected to appear in exhibitions in venues such as these and the petitioner presented no evidence that her performance was highlighted by any of these venues. In addition, the petitioner failed to show that she was either the main attraction at any of the exhibitions or showcases or her participation was otherwise indicative of sustained national or international acclaim. The petitioner's role with these organizations is also considered under criterion (viii).

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

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment. The petitioner claimed eligibility under this criterion based on her work with Big Shoulders Digital Video Productions. No evidence was included regarding Big Shoulders' background, standing in the petitioner's field, or any other aspect of its reputation. Even if Big Shoulders' reputation had been established, the petitioner submits no evidence showing that she performs in a leading or critical role for that organization. An October 12, 2007 letter submitted from Frank Hanes, president of Big Shoulders, states that "there are no comparable contortionists currently available who are U.S. Citizens" and that the petitioner is "an attraction and star of [the] national show." An October 26, 2008 letter from [redacted] states that "no one else has the same drawing power or name recognition . . . [the petitioner] is truly the preeminent aerial contortionist." Neither letter states that the petitioner performs in a leading or critical role for the organization, however. Nor is there evidence demonstrating how the petitioner's role differentiated her from other types of performers employed by Big Shoulders, let alone its artistic management. The petitioner submitted no evidence to show that she was responsible for Big Shoulders' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim at the very top of her field.

Although employed by Big Shoulders, the petitioner claims that her work for one of Big Shoulders' clients, Anheuser-Busch, also qualifies her under this criterion. The petitioner fails to show how an aerial contortionist performs in a leading or critical role for a beer manufacturer. Even assuming that the Bud Bowls that the petitioner participated in constitute an integral part of Anheuser-Busch's business, the petitioner fails to show how she performed in a leading or critical role at the Bud Bowl when the press release that she submitted about the event fails to mention her participation and states that "one of the highlights of Bud Bowl is the appearance of the eight-horse Clydesdale hitch" and that "football is undoubtedly the focus of the week." Similarly, the petitioner submitted no evidence to show how her role in the opening event for the reality combat championship constituted a leading or critical role for the World Martial Arts association.

The petitioner states that she meets this criterion through her performance in association with other artists including Cowboy Troy, Snoop Dogg, Staind, Jimmy Buffet, and Paul Oakenfold. None of these artists can be defined as an organization or establishment as required under the regulation nor did the petitioner provide any information as to how her role in their live shows or music videos constituted a leading or critical role for these

musical performers. The petitioner presented information about the venues in which these performers appeared, and the petitioner's name does not appear in any of the submitted advertisements for these artists.

The petitioner cites her selection as a finalist in the 2007 WWE Diva Search as evidence that she performed in a leading or critical role. The competition operated somewhat as an extended job interview in that it was designed to lead to employment with the WWE for the winner of the Diva Search. The petitioner did not submit any evidence that she was chosen to participate as a WWE Diva or is affiliated with the organization. She did not submit any evidence that her participation in a contest constituted a leading or critical role for the WWE.

The petitioner submitted information about her employ as a dancer with Celebrity Cruises, however, she provided no information about how a dancer, dance captain, or acrobat could perform in a leading or critical role for a cruise ship. Similarly, the petitioner provided a letter from stating that the petitioner organized and performed in half time shows for sporting events in Toronto, Canada. The petitioner provided no information about how a role in a halftime show would be a leading or critical role for those sports teams competing or their sponsoring organizations.

The petitioner also states that she qualifies under this criterion by virtue of her standing as Miss 105.3. As discussed under criterion (i), the petitioner presents no evidence that she received this award. 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. In addition, she failed to present any evidence that a person who participates in a large media outlet for one year performs in a leading or critical role for the organization as a whole. Similarly, evidence of the petitioner's performances with TABU fail to show how she performed in a leading or critical role for the organization where she did not perform as a headliner and where no evidence was presented to establish TABU's reputation. Similarly, the flyer for an event sponsored by Psychotrance Entertainment and publicity information for "Decadence" with which the petitioner participated did not even list her name as a participant (although a small picture of her appears on the Psychotrance Entertainment flyer) nor was any evidence submitted regarding the organizations' reputations. The only evidence presented regarding the petitioner's participation at the Mod Club Theater is four out-of-focus pictures that do not evidence either the organization's reputation or the petitioner's role within it.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). 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.