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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 22 2009  
LIN 07 245 54288

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)

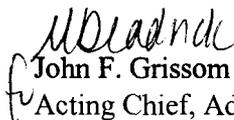
ON BEHALF OF PETITIONER:

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.

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in dance and choreography. 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 he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). In addition, the petitioner claims that the director gave him a “very limited time” to respond to the Request for Evidence (“RFE”) and denied his request for an extension of time with no explanation. With regard to the director’s issuance of an RFE, the regulation at 8 C.F.R. § 103.2(b)(8)(iii) permits USCIS to request additional evidence to be submitted “within a specified period of time as determined by USCIS.” As the regulations do not mandate any specific minimum period of time in which to afford a petitioner the opportunity to respond to an RFE, the petitioner’s argument is not persuasive. Further, 8 C.F.R. § 103.2(b)(8)(iv) indicates that a petitioner may not be granted additional time to respond to an RFE. It is noted that even if the director had committed a procedural error by failing to provide the petitioner additional time in which to respond to the RFE, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner had the opportunity to supplement the record on appeal as of July 10, 2008 (more than five months after the RFE was issued), and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on July 23, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a dancer and choreographer.

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 under 8 C.F.R. § 204.5(h)(3).

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

To fulfill this criterion, the petitioner initially submitted the following documents:

1. A Labour Book, dated January 2, 1999, indicating that the petitioner moved to the Georgian Song and Dance State Ensemble “Kutaisi,” as a dancer of the highest category, 15th;
2. A First-Degree Diploma dated December 29, 2005 for the petitioner’s participation in a New Year’s concert in the Kutaisi Opera and Ballet Theatre;
3. A diploma for the The Bukhuti Darakhvelidze Prize, dated April 16, 2006, from the Union of Choreographers of the Republic of Georgia given to the petitioner for winning the regional competition of the Georgian National Dances;
4. A diploma indicating the petitioner’s receipt of a “Golden Eagle – 2005” Medal and “Golden Eagle” Diploma for his choreography of the Dance company “Sonari” as a Laureate of the New Stars of the New Century Music Festival “Golden Eagle;”

5. A reference letter from the Art Managers and Conductor of the Georgian Song and Dance Ensemble, dated November 6, 2007, stated that the petitioner is a “grand prix holder of the International Festivals held in Palma-de-Maliorka, Spain and Agrigento, Italy” and a newspaper article, without a date or source indicated, entitled “Georgian Spirit, Georgian Heart, History of the Boy from Tkibuli” which similarly noted that the petitioner is a “grand-prix holder of the international festivals held in Palma-de-Maliorka and Agrigento, Italy;”
6. A certificate from the Mamuka Aslanikashvili Youth Palace dated November 28, 1996 for the petitioner’s successes gained at the Georgian 5<sup>th</sup> Folk Dance Republican Festival;
7. A certificate, dated May 23, 1994, confirming that the petitioner completed the full academic course of Tkibuli Choreographic Studio;
8. A certificate, dated November 11, 1996, from The Republican Center of Folk Creative Work and Culture at Georgian Ministry of Culture for the petitioner’s participation in the 3<sup>rd</sup> Republican Competition with Dance “Kartuli;”
9. A reference letter from the Art Managers of the Ensemble “Bagrati” stating that the petitioner was a soloist in the 1999 performance at the Dijon World Folk Festival in France for which he and his ensemble won a silver medal; and
10. A certificate, dated 1998, from the Head of Tkibuli Department of Education awarding the petitioner as a part of the best dance couple of Secondary School No.1 for successes gained in the Pupils’ Amateur Collectives.

After a review of the initial evidence submitted, the director issued an RFE dated February 1, 2008. In the RFE, the director notified the petitioner that the evidence provided was insufficient to fulfill this criterion. More specifically, the RFE requested documentation including, but not limited to, evidence explaining the reputation of the organization granting the award, the significance of the award, and the criteria used to select the recipient, as well as evidence documenting the number of competitors for each award. In response to the RFE, the petitioner provided a reference letter from the Director of Vasadze Kutaisi State College of Culture and Education that stated the petitioner completed a full course of college, and then went on to work in a choreography studio where he taught for the college. He further stated that the petitioner founded an ensemble which became famous in the region and the whole Republic.

The director, in his decision dated June 11, 2008, stated that the record lacked evidence of the “prestige” of the awards given to the petitioner and of the festivals in which he participated. Additionally, the director found that the petitioner failed to establish the awards he reviewed brought him national or international acclaim as a dancer or choreographer. On appeal, the petitioner provided no new evidence.

We concur with the director’s finding that the petitioner has failed to provide evidence showing that these prizes constitute nationally or internationally recognized prizes for excellence in the petitioner’s field, such as supporting evidence showing the prestige associated with receiving the awards or some other evidence consistent with national or international acclaim at the very top of the field. 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 places the burden on him to establish every element of this criterion. Further, item 3 is a regional

competition or was based on his winning a regional competition and item 10 represents an award won by the petitioner in secondary school. Neither of these items can be equated with nationally recognized awards. The record lacks general information about the competitions, such as the New Century Music Festival or Dijon World Folk Festival, such as the award criteria, the area from where participants were drawn, the number of entrants, or the percentage of entrants who earned some type of recognition to demonstrate the national or international recognition associated with being awarded a prize at these festivals. In addition, items 2, 7 and 8 only reference the petitioner's participation in various competitions or completion of schooling, and do not indicate that he won a prize or award. This evidence, therefore, cannot be considered for this criterion. Finally, it is noted that the newspaper article discussed in item 5 does not contain a date and that items 1, 6, 7, 8, 9 and 10 are all dated over ten years ago and such a lapse in time would be insufficient to demonstrate *sustained* national or international acclaim in the petitioner's field.

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

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication or broadcast, or from a publication printed in a language that the vast majority of the country's population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>1</sup>

The petitioner submitted a single newspaper article, without a date, author or source indicated, entitled "Georgian Spirit, Georgian Heart, History of the Boy from Tkibuli." In his RFE, the director requested the name of the publication in which the article appeared and documentary evidence of the publication's significance, such as its readership or circulation. In addition, the director specifically requested the petitioner provide the date and author. The petitioner responded to the RFE by providing a reference letter purportedly from the publisher of the newspaper, "Tkibulis Droit." The letter states,

[T]he newspaper of the LTD "Tkibulinformi" "Tkibulis Droit" was established in 2005 year. The newspaper is administrative, published in Georgia – municipality of Tkibuli with a high circulation.

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<sup>1</sup> 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.

In his decision, the director found this additional evidence was insufficient to overcome the deficiencies with regard to this criterion also noting that a single article is insufficient to establish eligibility for this highly restrictive classification. On appeal, the petitioner provided no new evidence. However, in his brief, he clarified that the term “administrative” referred to in the letter means that the publisher is the city’s municipality.

The petitioner failed to provide the date, author and publication name with the original document. This criterion specifically requires an author and date. As the petitioner failed to provide the requisite evidence for the article, it is not considered probative and is therefore, insufficient to establish the petitioner’s eligibility under this criterion. The date and the author of the article were never provided in response to the RFE or on appeal despite the director’s specific request.

Moreover, the petitioner failed to submit evidence such as circulation statistics showing that the article submitted by the petitioner was printed in professional or major trade publications or some other form of major media. Further, regional coverage or coverage in a publication read by only a small ethnic segment of a country’s total population is not indicative of national or international acclaim. The article appears to have been published in a regional newspaper of the Tkibuli municipality, rather than a nationally or internationally circulated publication. Although the newspaper’s publisher states that its publication is in “high circulation,” it is unclear whether this refers to high circulation among the region or throughout the country. Moreover, the publisher’s claim that his paper is in “high circulation” is not supported with any other evidence to substantiate its validity.

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

At the time of filing, the petitioner failed to submit evidence regarding this criterion. However, in response to the RFE, the petitioner provided a reference letter from the Director of Vasadze Kutaisi State College of Culture and Education stating that the petitioner completed a full course of college, and afterwards worked in a choreography studio where he taught for the college. In his letter, the Director of the College wrote that the petitioner:

[H]as been invited many times as a member of jury in Regional Contests. He is characterized as a high-qualified specialist in the field of choreography.

Although the director found this evidence insufficient to satisfy this criterion, the petitioner failed to provide any new evidence on appeal.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the

petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends 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). For example, judging a national competition for top choreographers and/or dancers is of far greater probative value than judging a local competition for youth or novices.

The petitioner also failed to submit any primary documentary evidence of his participation as a judge other than the reference letter that generally states that the petitioner judged "Regional Contests," with no reference to any specific contest. Moreover, as detailed above, a regional competition is of less evidentiary value than proof of acting as a judge in a national competition. The fact that the petitioner evaluated regional contests is not indicative of the evidence required for this highly restrictive classification.

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

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

The petitioner initially submitted four reference letters that discuss his performances. He submitted a letter from [REDACTED], a restaurant owner, who said that the petitioner performed for the opening of her restaurant on November 23, 2006. She noted that it was such a "great success with the Philly public and Georgian community," that the petitioner now performs weekly at the restaurant. A letter from the Art Manager and Conductor of the Georgian Song and Dance Ensemble wrote a letter dated November 6, 2007 stating that the petitioner, with his ensemble, performed in many different countries. Similarly, in a letter dated June 18, 2007, [REDACTED], Chairperson of the Tkibuli Municipality, wrote that the petitioner "participated in Town different cultural and social activity." Lastly, a reference letter from the Art Managers of the Ensemble "Bagrati" stated that the petitioner performed dances at Kutaisi Choreographic Ensemble "Bagrati" and was a soloist in the 1999 performance at the Dijon World Folk Festival in France.

In his RFE, the director requested evidence which explains the significance of the competition or performance, and the venue in which he performed. No new evidence for this criterion was produced in response to the RFE or on appeal. However, the petitioner in his appeal brief stated that he "participated in many festivals and competitions and earned worldwide fame and recognition, especially ensemble Kutaisi which is the second leading ensemble in Georgia."

The plain language of this criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. It is inherent to the performing arts to perform. Therefore, not every performance is a showcase or exhibition of the work of every performer. Without evidence that the petitioner's performances were comparable to

the exclusive artistic showcases that might serve to meet this criterion for a visual artist, we cannot conclude that the petitioner meets this criterion. Moreover, even if his performances were comparable, in addition to the record lacking evidence about the actual details of each performance, the petitioner failed to provide documentary evidence such as the prestige of these festivals or their exposure on a national or international level as evidence indicative of this highly restrictive classification.

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

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

The petitioner submitted a Labour Book, dated January 2, 1999, indicating that he advanced to the Georgian Song and Dance State Ensemble "Kutaisi," as a dancer of the highest category, 15<sup>th</sup>. He also submitted a reference letter from the Art Managers of the Ensemble "Bagrati," stating that the petitioner was a soloist in the 1999 performance at the Dijon World Folk Festival in France for which he and his ensemble won a silver medal.

The director requested additional information in his RFE including documentary evidence showing the petitioner played a leading or critical role in the ensembles for which he was a member. In response to the RFE, the petitioner's brief argued that soloist means leading. The director in his decision points out that although the reference letter indicates the petitioner was a soloist, the evidence fails to demonstrate that the petitioner was the only soloist to perform during the ensemble and to specify how a soloist dancer provides a leading or critical role in comparison to the other dancers. No new evidence was submitted on appeal.

In order to establish that the petitioner performed in a leading or critical role for an organization or establishment with a distinguished reputation, he must establish the nature of his role within the organization or establishment and its reputation. The position should also be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. Although the petitioner provides evidence of his soloist performance in an ensemble and his advancement in an ensemble to the highest category, he fails to show that such positions were commensurate with a leading or critical role. The petitioner has failed to provide evidence which distinguishes himself from other performers in his ensemble such that his role can be considered leading or critical.

The evidence further lacks proof that the organizations for which the petitioner served had "distinguished reputations." For example, no evidence was included regarding the ensembles' background, standing in the community or world, or any other aspect of their reputations. Moreover, sustained acclaim cannot be demonstrated through evidence of his participation in ensembles, which occurred in 1999, almost a decade prior to the filing of his petition.

As such, the petitioner has not established that he meets this criterion.

Finally, we note the petitioner's submission of photographs and what appears to be an advertisement pamphlet. The petitioner does not explain this evidence or identify the criterion, if any, to which this evidence relates. It is further noted, that even if the petitioner provided an explanation regarding this evidence, the evidence itself is not probative. First, as it relates to the photographs, the petitioner has not provided any dates or captions to describe the occasion documented in the photograph. Second, as it relates to the pamphlet, the material is not in the English language and is unaccompanied by the translation required by 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is of no probative value and will not be considered in the proceeding.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he 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 himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.