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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 17 2009
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IN RE: Petitioner:
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:

[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).

Mari Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The petitioner seeks classification as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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, counsel submits a brief that does not address any of the deficiencies identified by the director other than to challenge the director's characterization of the petitioner's field. Specifically, counsel does not explain how the petitioner meets the requisite three of the ten regulatory criteria discussed below. The petitioner submits additional evidence. For the reasons discussed below, we uphold the director's decision.

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, 60898-9 (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 she has sustained national or international acclaim at the very top level.

The petitioner did not complete Part 6 of the petition regarding her proposed employment. In Part 5, however, she indicated that her current occupation is choreographer. The petitioner submitted a letter from , founder and director of the dance studio , advising that she would like to hire the petitioner in a "leading staff" position for the school and dance company. The director concluded that the petitioner had not demonstrated national or international acclaim as a choreographer or dancer.

On appeal, counsel asserts that the petitioner's field should be narrowed to "the embryonic field of Choreography/Dance Programming, specializing in choreography for disadvantaged, 'at-risk' and learning disabled youth." A petitioner may not narrow the field to such an extent that, given the small number of people in the field, rising to the top of the field is meaningless. Moreover, we are not persuaded that narrowing the petitioner's field as requested would benefit her as much of the evidence submitted does not relate to this very narrow and specific field. As such, we will review the evidence as it relates to the petitioner's recognition as a dancer or 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, 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. The petitioner has submitted evidence that, she claims, meets the following criteria.[1]

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) indicates that the petitioner herself must be the recipient of the award or prize, that it must be nationally or internationally recognized and that it must be for excellence in the field of endeavor, in this case dance or choreography. Thus, the award must come from an entity that has expertise in that field such that they are competent to judge excellence in the field. In addition, the absence of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). **Where primary evidence is documented as non-existent or** unavailable, a petitioner may submit secondary evidence. *Id.*

An article in *NOW Magazine* references choreography awards won by the petitioner but does not identify them. An article in an unidentified Brockville, Ontario newspaper indicates that the petitioner finished second at an unidentified competition in Syracuse. A caption in an unidentified newspaper indicates that the petitioner, as one of the top three "students," was selected to participate in the

[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

"Starpower Touring Company, which travels to Las Vegas or Ocean City and Disney's Magic Kingdom in Orlando. Another article in an unidentified newspaper indicates the petitioner won the opportunity to compete on the television series "Home Grown Café" on CJOH-TV. A caption in *The Brockville Recorder and Times* indicates that the petitioner finished second at the Another article in an unidentified newspaper indicates that the petitioner finished third place at an unspecified competition which qualified her to attend the Canadian national competition in Niagara Falls. An undated article in *The Brockville Recorder and Times* indicates that the petitioner won a scholarship for a two-week program of instruction by Broadway stars in New York. A photograph caption in the March 12, 1994 edition of *The Brockville Recorder and Times* identifies the petitioner as a winner at the Kiwanis Music and Dance Festival in Ottawa. A photograph caption in a March 7, 1999 edition of an unidentified newspaper indicates that the petitioner choreographed a winning number at the East Regional Footloose Dance Competition in the 12 and under novice category. The petitioner also submitted what appear to be photo album/scrapbook pages with handwritten notations about awards and prizes such as the Foot Loose Canadian Dance Championship.

The petitioner also submitted a May 26, 2006 Certificate of Excellence "for taking an outstanding part in our ongoing projects" from the Bergen Performing Arts Center in New Jersey. The petitioner also submitted several letters from local politicians commending the rebirth of the center. None of these letters are addressed to the petitioner or mention her name. Ms. is located at the center.

The record also includes a May 4, 2000 "Certificate of Merit, British Medallion" in jazz from the British Association of Teachers of Dancing (BATD). A note at the bottom of the certificate indicates that it "neither conveys nor carries any qualifications as a teacher." The record also contains a Certificate of Achievement for completion of an intensive performing arts program in New York City from the Performers Training Outlet in 1999. A "Special Merit Award" recognizes the petitioner's completion of the same program in 1998.

On April 26, 2007, the director requested that the petitioner provide a copy of any award believed to meet this criterion and evidence of the significance of the award. In response, the petitioner did not submit any new evidence about the above recognition. Rather, she submitted a joint resolution from the New Jersey Legislature commending her for artistic accomplishments and service to the community. An article in the community newspaper *Bergen News* reveals that the resolution was presented to the petitioner by a New Jersey assemblywoman on June 10, 2007. An unsigned message from congratulates the petitioner on the award, provides the assemblywoman's address and wishes the petitioner luck in obtaining a visa. The petitioner also submitted a June 18, 2007 letter from attesting to the petitioner's importance to the community and "contributions to our State and Nation."

The director concluded that the petitioner had not established the significance of her awards and noted that the commendation resolution from the New Jersey Legislature postdated the filing of the petition

and, thus, could not establish eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

On appeal, counsel merely asserts that the joint resolution honored the petitioner's work with disadvantaged youth without addressing the director's specific concerns. The petitioner submits an award from Universal Studios, Orlando, presented to the petitioner's business, , in 2005. Previously, however, the petitioner submitted evidence regarding the Lights Camera Music Program at Universal Studios. These materials reflect that children's groups selected for this program must demonstrate "average to above-average levels for their age group."

An article that references awards but does not identify them is insufficient evidence of an award or its significance. The news articles in community or local newspapers cannot serve as evidence that the awards or prizes are nationally or internationally recognized. Moreover, youth awards or awards in a "novice" category cannot serve to meet this criterion. We stress that the petitioner's age when she won these awards is not problematic. Rather, at issue is the pool of potential candidates. An award limited to youth excludes the most experienced members of the field and cannot demonstrate that the recipient is one of the small percentage at the top of the field. The record does not contain any evidence that "Home Grown Café" on CJOH-TV is broadcast nationally and seeks competitors from a nationwide pool. Scholarships for a two-week training program are not awards or prizes. As with youth awards, the most experienced and renowned members of the field do not compete for training opportunities.

The photo album/scrapbook pages with handwritten notations about awards and prizes such as the Foot Loose Canadian Dance Championship have no evidentiary value. 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'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). In addition, local letters of appreciation and certificates of training completion cannot be considered nationally or internationally recognized awards or prizes for excellence as a dancer or choreographer.

The record contains no evidence regarding the significance of the May 4, 2000 "Certificate of Merit, British Medallion" in jazz from BATD. While the petitioner submitted evidence about the association itself, the petitioner did not submit any information regarding the standards for the certificate of merit. As stated above, a note at the bottom of the certificate indicates that it "neither conveys nor carries any qualifications as a teacher."

We concur with the director that the New Jersey Legislature joint resolution cannot be considered as it postdates the filing of the petition. A petitioner must establish eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Regardles, while Assemblywoman Huttle asserts that the petitioner's depth of experience in dance and her service to the community served as the basis for the joint resolution commending the petitioner, she does not explain the requirements for obtaining a joint resolution from the New Jersey State Senate and Assembly. For example, it is not documented whether commendation resolutions, however sincere, are ultimately a constituent service

provided to most constituents who request such recognition either for themselves or a colleague. Moreover, does not indicate that New Jersey State Senate and Assembly Joint resolutions are nationally recognized awards in choreography or dance. That the petitioner's dance *experience* was a consideration for her commendation does not transform a general commendation to an award or prize for excellence in a specific field. does not suggest that dance experts nominate or evaluate candidates for such a resolution.

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.*

In response to the director's request for additional evidence, the petitioner submitted evidence that she is a member of BATD. The petitioner submitted a letter from BATD's secretary, indicating that membership is based on passing an examination. She explains that membership requires "complete knowledge of all the grades from pre-primary through to advanced syllabi including dance grades 1, 2, 3 & 4," a "keen sense of musicality," prominent teaching skills and an appropriate classroom etiquette for children and a passing score on the exam. Ms. asserts that the examination is difficult to pass, that membership in the association is prestigious and that the petitioner was awarded membership "because of her extraordinary ability to dance and ability to teach children."

The director concluded that the petitioner had not established that the association required outstanding achievements of its members. On appeal, the petitioner resubmits the letter from and Internet materials about the history of the association, which do not address the association's membership criteria.

Passing a competitive examination is not an outstanding achievement. Moreover, the record contains no evidence that potential members are judged by national or international dance or choreography experts. Thus, the petitioner has not established that she 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.*

The petitioner submitted several newspaper articles. As stated above, not all of the articles reflect the date or the publication in which the article appeared as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Most of the newspapers appear to be community or local newspapers. The petitioner submitted Internet materials about *NOW Magazine*, whose website is www.nowtoronto.com, but these materials do not reflect the magazine's circulation. The director expressly requested evidence regarding the source and circulation of these materials. In response, the petitioner submitted a DVD, purportedly of a January 30, 2007 edition of Evening Edition, 12 New Jersey. We attempted to review

the contents of this DVD but the copy appears defective. Regardless, for the reasons discussed below, even if the news story is primarily about the petitioner, it cannot serve to meet this criterion.

The director concluded that the petitioner had not complied with the request for additional evidence and, thus, had not established that she has been the subject of published materials in major media. On appeal, the petitioner submits evidence that News 12 serves 14 counties in New Jersey and 1.8 million homes. The petitioner also submits an article in a Canadian Hockey journal submitted by the petitioner's mother and authored by the petitioner. The article provides information about the petitioner's company, This article does not reflect independent journalistic coverage of the petitioner.

We uphold the director's determination that the petitioner has not demonstrated that any of the print materials about her career appeared in major media. Community and local newspapers with no significant national circulation cannot serve to meet this criterion. The January 30, 2007 news program postdated the filing of the petition and, thus, cannot serve as evidence of eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Moreover, the criteria are designed to demonstrate national or international acclaim. Fourteen counties in New Jersey are not indicative of a national audience.

Finally, we note that the petitioner initially submitted the results of a search of her first and last name on the website "Google." While the search produced 446 results, only three of them relate to the petitioner. The remaining results relate to a softball player at Southeastern Louisiana University with the same name or individuals with the same first or last name, but not both. While Internet websites can be accessed worldwide, we cannot ignore that anyone with a computer can create a website. Not every brief mention on a website can be considered published material about the petitioner appearing in major media. Rather, the petitioner must submit the full material and evidence as to the reputation of the website. Mentions of the petitioner on websites operated by a company or institution where the petitioner works, performs or attended school are not sufficient to meet this criterion.

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

In response to the director's request for additional evidence, the petitioner submitted a July 1, 2007 letter purportedly from , International Director of Foot Loose Dance Championships. The "signature" on this letter, however, is printed rather than signed by hand or electronically. As will be discussed below, several of the letters in the record are unsigned. The letter purportedly from Ms. Erwin acknowledges the petitioner's past service on a judging panel and invite the petitioner to serve again in 2007. A flier for the awards reveals that the competition involves several local competitions and national finals. The record does not establish whether the petitioner served as a judge at a local competition or for the finals.

The director concluded that without additional evidence about the Foot Loose competition, the petitioner could not demonstrate that she meets this criterion. Neither counsel nor the petitioner challenges this conclusion on appeal and we concur with the director, especially as an unsigned letter has no evidentiary value.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in 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. To be considered a contribution of major significance in the field of dance teaching and choreography, it can be presumed that the petitioner's methods would be widely acknowledged and adopted by at least some independent dance studios.

Moreover, letters from collaborators containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation are more persuasive than letters from colleagues or experts who had previously never heard of the petitioner but have been asked for purposes of the petition to review her credentials. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The petitioner submitted letters from renowned people with whom she has worked including . Mr. , however, briefly praises the petitioner's talent without explaining how she has contributed to the field as opposed to a single event. who has performed with several well known pop musicians, merely thanks the petitioner for her performance in show and praises her talent. , an assistant teaching professor at Brigham Young University where the petitioner obtained her baccalaureate, praises the petitioner's talent and professionalism. The letters from and are all unsigned. Thus, these letters have no evidentiary value and will not be considered.

On appeal, the petitioner submits a letter purportedly from of the Scott Newman Center, asserting that he came across the petitioner's article in *Dance Current.* He indicates that the petitioner was invited to teach at the in the Wall Gang Camp and would be invited back again. As this letter is unsigned, however, it has no evidentiary value.

Without additional evidence, such as documentation of the use of the petitioner's techniques at several dance studios or inclusion in the curricula of dance teaching programs at a selection of institutions of higher learning, we cannot conclude that the petitioner has demonstrated that her

dance teaching techniques have made a contribution of major significance on the way dance is taught.

Finally, we acknowledge the submission of materials regarding the petitioner's ability to work in her field, such as programs of her performances and those of her students. Successfully working in the field is not a contribution of major significance to the field. While the petitioner's students may have attended an open audition for ' in New York, there is no evidence that they were invited back for a more exclusive audition or ultimately cast. Regardless, a successful audition by a student is not necessarily a contribution of major significance to the field by the teacher.

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

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted an article on teaching dance to children appearing in *Dance Current.* While the petitioner asserted that the article received "critical acclaim," the record contains no evidence of such acclaim. For example, the petitioner did not submit reviews of the article or evidence that it is assigned reading for dance teaching students at any university. In fact, the circulation of *Dance Current* is not documented in the record. The director concluded that the petitioner had not demonstrated that this article is scholarly. On appeal, the petitioner submits the abovementioned article in a Hockey magazine. This article was authored by the petitioner and submitted by her mother.

Without evidence that the petitioner's articles were distributed nationally among dance teachers, we cannot conclude that her articles are significant. The record contains no evidence that *Dance Current* is nationally distributed or that the Hockey magazine enjoys a significant readership among dancers and choreographers. Moreover, the content of the article in the Hockey Magazine is clearly a promotion for the petitioner's company, inviting the registration of new students, rather than a scholarly analysis of teaching dance.

In light of the above, 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 director concluded that while the petitioner had performed in musicals and dance shows, the record lacked evidence of the significance of these performances. The director noted that performing is inherent to the field of dance and that not every dancer who has appeared on stage can meet this criterion. Counsel does not respond to these concerns on appeal.

We note that this criterion relates to the visual arts. 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.

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

The director concluded that the petitioner's roles in various musicals could not serve to meet this criterion. Counsel does not directly challenge this assertion on appeal. Not every production is an organization or establishment that has a distinguished reputation. The petitioner has been associated with distinguished venues and studios and is the founder of her own dance company. Without evidence explaining the nature of her role and demonstrating the national distinguished reputation of the organization or establishment for which she performed a critical or leading role, however, the petitioner cannot meet this criterion.

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

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

As noted by the director, while the petitioner submitted compact discs and DVDs, she did not submit any evidence of their sales. While she initially asserted that she had a compact disc "sold out in Canada," 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 (citing *Matter of Treasure Craft of California,* 14 I&N Dec. at 190).

The regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of actual sales numbers. Without such evidence, the petitioner cannot establish that she meets this criterion.

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/choreographer 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/choreographer and success at a very young age, 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.