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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



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date:
SRC 08 082 51101

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:
[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. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas 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 athletics, 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 and additional evidence, including evidence of accomplishments that postdate the filing of the petition. For the reasons discussed below, while the petitioner has overcome the director’s concerns that the petitioner has not demonstrated his intent to continue in his occupation, we uphold the director’s finding that the petitioner has not demonstrated the necessary national or international acclaim. Specifically, while we concur with the director that the petitioner meets the lesser nationally or internationally recognized awards criterion, the petitioner falls far short of meeting any other criterion and has not demonstrated a one-time achievement.

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.

The regulation at 8 C.F.R. § 204.5(h)(5) provides:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement

from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

While the requirements set forth in this regulation are minimal, the initial filing did not include any of the prescribed evidence. On appeal, the petitioner submits evidence confirming that he continues to compete in the United States and we are satisfied that he intends to continue his work here. Thus, we will now address whether or not the petitioner has demonstrated the necessary national or international acclaim.

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 he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a dance sport competitor. 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).

Congress’ example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (September 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a very large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien’s field as one of the top awards in that field.

Counsel’s initial cover letter listed the petitioner’s awards but did not explicitly claim that any of these awards constituted a one-time achievement. Thus, the director concluded that the petitioner did not have such an achievement. On appeal, counsel asserts for the first time that the petitioner’s “Olympic Award” issued by the United Kingdom Alliance (UKA) in 1996, when the petitioner was 11 years old, constitutes a one-time achievement. The certificate states that the “award” is issued “to commemorate the International Olympic Committee’s recognition of Dancing as a Sport.” In 1997, at age 12, the

petitioner received three certificates in standard, Latin and freestyle divisions, confirming a “highly commended” or “gold” grade. The certificates “certify that the Candidate has demonstrated by examination to the required standard for this grade” or that the dancer was examined and “passed to the satisfaction of the Examiner.”

On appeal, counsel asserts that the UKA Olympic Award, which counsel asserts is affiliated with the Blackpool competition, is “the highest award ever to be recognized in all of the ballroom dance field.” The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In support of her assertion, counsel submits materials from the website of a tour company promoting its own tour package to the Blackpool Dance Festival. The materials do not mention the UKA or an “Olympic Award.” The materials do assert that Blackpool, England hosts “what many believe is the most prestigious dance competition in the world.”

Even assuming that the UKA certificates issued to the petitioner were issued at the Blackpool Dance Festival, the record does not suggest that these certificates constitute awards or that the petitioner, at ages 11 and 12, competed for these certificates against the most experienced and renowned dancers in the world. Specifically, the Olympic Award is merely a commemoration of the IOC’s recognition of ballroom dancing. The certificate for this award does not list a place or metal, such as “first” or “gold.” While the 1997 certificates reference “gold,” it is clear from the certificates that this metal or color represents examination results assigning skill levels rather than competition results awarding rankings. The record does not suggest that the petitioner was the only dancer to be graded at the “highly commended” or “gold” grade level.

As the UKA certificates appear age-restricted commendations based on participation and examination rather than competitive awards, they cannot constitute a major internationally recognized award. Thus, we concur with the director that the petitioner has not demonstrated a one-time achievement.

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, he 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 director considered the petitioner’s awards that were not age-restricted and concluded that the petitioner meets this criterion. This conclusion is consistent with the record. On appeal, counsel submits more evidence of awards won after the petition was filed and evidence relating to the significance of competitions where the petitioner won prizes. First, we cannot consider awards and

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

prizes won after the petition was filed. The petitioner must establish his 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). Regardless, we do not contest that the petitioner meets this criterion.

The petitioner, however, must meet at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) in order to be eligible for the classification sought.

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.

While counsel has never asserted that the petitioner meets this criterion, we acknowledge the submission of a letter from the Dance Sport Federation of the Khabarovsk Territory affirming that the petitioner is a member of the International Federation of Sport. The record, however, does not reflect that the federation requires outstanding achievements of its members as judged by recognized national or international dance experts. Thus, 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.

The petitioner submitted foreign language articles and summary certified translations of those articles. This evidence includes articles from 1999, 2000 and 2002 in the allegedly weekly newspaper, *Star of Pacific Ocean* and a 1997 interview in the allegedly daily newspaper, *News of Preamursk*.

The director concluded that the articles could not be considered "about" the petitioner as they did not include "a discussion" about the petitioner. On appeal, counsel asserts that the article need only relate to the alien's work in the field. Counsel further notes that the 1997 published material was an interview with the petitioner.

Counsel mischaracterizes the plain language at 8 C.F.R. § 204.5(h)(3)(iii). The regulation clearly requires that the published material be "about the alien." The articles in *Star of Pacific Ocean* are about the competitions where the petitioner competed and mention him only in the context of reporting his inclusion (among others) or the overall results.

While the interview may be considered "about" the petitioner, the evidence submitted under this criterion does not conform to the regulatory requirements for other reasons. Specifically, the petitioner provided summary translations rather than full translations as required under 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3). The petitioner also failed to provide the authors of this material as required under 8 C.F.R. § 204.5(h)(3)(iii). Most significantly, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) clearly states that an element of meeting this criterion is that the published materials appear in professional or major trade publications or other major media. Thus, it is the petitioner's burden to

demonstrate that the publication in which the materials appeared is a professional or major trade publication or other major media. The petitioner did not submit any evidence of the circulation of either the *Star of Pacific Ocean* or *News of Preamursk*, which, given the name, appears to be a local publication. Finally, the record contains no evidence of any published material after 2002, nearly six years before the petition was filed. Thus, the evidence in the aggregate for this criterion is not indicative of or consistent with sustained national or international acclaim.

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

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

As evidence to meet this criterion, counsel initially referenced four "letters of gratitude." The director did not specifically address this criterion. On appeal, counsel asserts that the director ignored the letters. We will consider the letters below.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be both 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 an original contribution of major significance in the field of dance sport, it can be presumed that the influence of the contribution would be apparent in the field at the national or international level.

██████████, President of the Dance Sport Federation of Khabarovsk Territory, asserts that the petitioner and his partner are "the best representatives of the Far East Federal Territory on International Sport Ballroom Dance competition" and lists places where the petitioner has won prizes. ██████████ also asserts that the petitioner has attained the rank of Candidate for Master of Sports of Russia. Awards and prizes fall under a separate criterion, set forth at 8 C.F.R. § 204.5(h)(3)(i), which the petitioner in this case meets. We will not presume that awards and prizes also serve to meet the original contributions of major significance criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three separate criteria. The petitioner has not explained how winning awards and prizes at established competitions is original or how it has impacted the field of dance sport.

██████████, expresses gratitude for the petitioner's participation in a concert for orphan children. ██████████ expresses gratitude for the petitioner's participation in a charity concert for the Clinic of Restorative Medicine and Rehabilitation and ██████████ expresses appreciation for the petitioner's participation at several charity concerts "that unified all talented children that had limited physical abilities." While commendable, humanitarian contributions are not included under the regulation at 8 C.F.R. § 204.5(h)(3)(v). The letters do not explain how the petitioner's participation in charity events is original or constitutes a contribution that has had a major impact on the field of dance sport.

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

Initially, counsel referenced a letter from [REDACTED], Director of the Fantasia Ballroom Dancing Center. [REDACTED] asserts that the petitioner and his partner were “the face of the advertisement [for the] company ‘Fantasia.’” [REDACTED] further asserts that the petitioner and his partner are “the most needed trainers-consultants of ‘Fantasia,’” that their students win competitions and that they “have the highest salary and they have the highest number of financial rewards in the amount of \$10,000 for one month for jobs that are done by them in ‘Fantasia’ Ballroom Dancing Center.” The petitioner also submitted promotional materials for the center featuring photographs of the petitioner and his partner.

The director did not expressly address this criterion. On appeal, counsel reiterates her initial claim.

At issue for this criterion are the role the petitioner was selected to fill and the reputation of the entity that selected him rather than any subsequent success in that role. In other words, the selection of the petitioner for that role should, in and of itself, be indicative of or consistent with national or international acclaim. The record contains no evidence regarding how many trainers/consultants are employed by Fantasia. Most significantly, however, the record lacks any evidence that Fantasia enjoys a distinguished reputation nationally. As Fantasia’s reputation is an integral element of the criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii), the failure to submit evidence addressing the nature of the center’s reputation precludes a finding that the petitioner meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

As stated above, [REDACTED] asserts that the petitioner and his partner “have the highest number of financial rewards in the amount of \$10,000 for one month for jobs that are done by them in ‘Fantasia’ Ballroom Dancing Center.” This statement is ambiguous. Specifically, it is not clear whether the petitioner and his partner each individually earned \$10,000 in one month and whether or not any of these funds derived from prize winnings rather than employee remuneration for services. In a separate letter, [REDACTED] asserts that the petitioner and his partner were “awarded in the amount of [a] \$5,000 premium” for their participation in a regional concert. Once again, it is not clear if the \$5,000 represents prize winnings or remuneration for services.

The director questioned the use of dollar amounts by Russian entities and concluded that these claims were not substantiated by more objective evidence. On appeal, the petitioner submits a new translation confirming the U.S. dollar amounts. Counsel asserts that Russian companies sometimes do pay in dollars. Counsel concludes: “As far as substantiating the money awards normally it is a letter or an award that substantiates remunerations.” Thus, counsel herself is not clear whether the \$10,000 and \$5,000 dollar amounts represent prize money or remuneration for services.

Awards and prizes are a separate criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), a criterion that we have already acknowledged that the petitioner in this case meets. We will not also consider prize money under this criterion as prize money is not remuneration for services. Given both letters quoted above and counsel's characterization of the \$10,000 and \$5,000 amounts, the record strongly suggests that these amounts represent prize money. Thus, we will not consider these amounts under this criterion.

If the \$10,000 and \$5,000 represent remuneration for services such as salary, pay statements, pay checks or tax documents would substantiate the claims that the petitioner actually earned these amounts. Moreover, the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires evidence that the petitioner's remuneration is significantly high in relation to others in the field. Thus, it is the petitioner's burden to demonstrate what others in the field earn nationally and establish that the petitioner's remuneration is comparable with the most experienced and renowned members of the field. [REDACTED] bare assertion that the petitioner and his partner "have the highest salary" is insufficient. [REDACTED] does not explain whether he is comparing the petitioner's remuneration to other Fantasia employees or ballroom dancers nationwide. The record lacks labor data for Russia documenting the average and high-end wages of ballroom dancers nationally.

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

Counsel initially asserted that the petitioner was submitting promotional materials and tickets featuring photos of the petitioner and non-commercially released videos of the petitioner's performances to meet this criterion. The director did not specifically address this criterion. On appeal, counsel questions why this evidence was ignored.

First, this criterion relates to the performing arts. The record reflects that dance sport ballroom dancing is a sport, not a performing art. Regardless, the regulation at 8 C.F.R. § 204.5(h)(3)(x) explicitly states that a claim to meet this criterion must be supported by "box office receipts or record, cassette, compact [disc] or video sales." The petitioner did not submit any of this type of evidence. Thus, the evidence submitted does not relate to this criterion.

Without box office receipts for events promoted with the petitioner's image or evidence that commercially released videos featuring the petitioner have sold well nationally, we cannot conclude that the petitioner meets the plain language of 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 himself as a dance sport competitor 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 indicates that the petitioner shows talent as a dance sport competitor, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.