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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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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER Date: **OCT 04 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*UDeadndc*

Perry Rhew  
Chief, Administrative Appeals Office

2. A letter from [REDACTED] University of [REDACTED], and program certifying the petitioner's participation in several performances for the CORE 101 class in 2003;
3. A program from [REDACTED] featuring the petitioner;
4. An admission ticket and program from [REDACTED] for A [REDACTED] Dance Recital performed by the petitioner and the [REDACTED] Performing Theatre Students in 2000;
5. Documentation from the [REDACTED] Dance Festival reflecting the petitioner's performance with the [REDACTED] in 2004;
6. A program from the [REDACTED] School of [REDACTED] Dance reflecting the petitioner's performance in 2006;
7. A letter from [REDACTED] Trustee of the [REDACTED] Educational Trust [REDACTED]), certifying that the petitioner performed and later conducted a lecture for SSET;
8. A letter from [REDACTED], Retired Deputy Director of [REDACTED] reflecting that the petitioner performed at the [REDACTED] of [REDACTED] in 1993; and
9. A letter from [REDACTED] President of [REDACTED] [REDACTED] certifying that the petitioner has performed for [REDACTED]
10. A certificate from [REDACTED] certifying that the petitioner performed in [REDACTED] temple in 2000;
11. A letter from [REDACTED] Associate Professor at [REDACTED] [REDACTED] University, stating that the petitioner performed and taught classical Indian dances at a presentation at the university.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. While the documentation submitted by the petitioner demonstrates her performances and instruction at various events, the documentation, however, fails to establish that her performances or teaching were leading or critical to organizations or establishments with distinguished reputations consistent with the plain language of the regulation. For example, regarding item 9 and 10, the documentation merely reflects that the petitioner performed at the temples. The petitioner failed to establish that she performed in a leading or critical role, and [REDACTED] and the [REDACTED] Temple have a distinguished reputation. In addition, item 2 states:

This letter is [to] certify your participation in several performances for the CORE 101 class at the University of [REDACTED] in the fall of 2003. The program illustrated the music described in [REDACTED] A River [REDACTED] (see attached description). It is my recollection that you choreographed and danced the various moods according to the [REDACTED] and beat patterns [REDACTED] [REDACTED] of 4, 5, 5, 7, and 9) while your father, [REDACTED] [REDACTED], played on the [REDACTED] [REDACTED] played the [REDACTED]

documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Although the petitioner failed to establish eligibility for the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the record of proceeding reflects the petitioner's membership with local organizations and are not reflective of national or international acclaim.

While the petitioner submitted evidence demonstrating her participation as a judge pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner's eligibility was based on her participation as a judge for the [REDACTED] Competition in 2007. Judging local, amateur, or student competitions is not indicative of "that small percentage of individuals that have risen to the very top of their field of endeavor." USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.<sup>4</sup> Likewise, it does not follow that a dancer and teacher like the petitioner who, on a single occasion, judged a student competition should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor." Evaluating the performances of accomplished [REDACTED] dancers as a member on a national panel of experts, for instance, is of far greater probative value than evaluating the work of student dancers.

Furthermore, 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." 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

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<sup>4</sup> While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). We are not persuaded that the petitioner’s judging a single competition is sufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

Moreover, while the petitioner failed to establish eligibility for the “original contributions” criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(v), we note again that the petitioner’s claim is based entirely on recommendation letters. While such letters can provide important details about the petitioner’s role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have “sustained national or international acclaim” necessitates evidence of recognition beyond the alien’s immediate acquaintances. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Matter of Caron International*, 19 I&N Dec. at 795.

In addition, we cannot ignore that the statute requires the petitioner to submit “extensive documentation” of sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The petitioner failed to submit evidence demonstrating that she “is one of that small percentage who have risen to the very top of the field.” In addition, the petitioner has not demonstrated a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Finally, beyond the decision of the director, the record does not contain sufficient documentation to persuade the AAO that the petitioner will continue in her area of expertise. The regulation at 8 C.F.R. § 204.5(h)(5) states:

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.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(5) requires the petitioner to submit “clear evidence that the alien is coming to the United States to continue work in the area of expertise.” In this case, while the record reflects that the petitioner has participated in various events as a [REDACTED] dancer, teacher, and choreographer, the record reflects that the petitioner has not been employed since at least 2002. According to the petitioner’s Form G-325A, Biographic Information, the petitioner has been residing in [REDACTED] since May 2002.

and has never been employed in the United States. Further, a review of the petitioner's 2005 – 2007 federal income tax returns submitted by the petitioner in support of her adjustment of status application reflects that the petitioner listed her occupation as a “homemaker,” and fails to reflect that the petitioner had any wages for those years. In addition, the record of proceeding reflects that the petitioner last entered the United States on an H-4 nonimmigrant visa on July 1, 2007. The absence of detailed information regarding the petitioner's prospective plans or any of the other evidence mandated under 8 C.F.R. § 204.5(h)(5) is of concern given the documentary evidence contained in the record demonstrating the lack of any recent work history. For these reasons, we do not find that the petitioner has established that she will continue in her area of expertise in the United States under section 203(b)(1)(A)(ii) of the Act and the regulation at 8 C.F.R. § 204.5(h)(5).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 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.

### **III. Conclusion**

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 and 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.