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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAR 30 2012** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act; 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, with a fee of \$630. 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on April 8, 2010. The director dismissed the petitioner's motion to reconsider on July 13, 2010, and is now before the Administrative Appeals Office (AAO) on appeal.¹ 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.² Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" of his or her achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

At the initial filing of the petition, prior counsel claimed the petitioner's eligibility based on her receipt of a major, internationally recognized award pursuant to the regulation at 8 C.F.R. 204.5(h)(3), and the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i). In response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), counsel continued to claim the petitioner's eligibility for her receipt of a major, internationally recognized award, as well as the petitioner's eligibility for the awards criterion, the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), and the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). However, in the director's decision, she only discussed the petitioner's eligibility for the one-time achievement and the awards criterion and determined that no further documentation was submitted for any of the other criteria including the membership criterion and the judging criterion. Although the petitioner does not contest the decision of the director for these criteria, the AAO will review the record of proceeding to determine if the petitioner meets the plain language of the regulation at 8 C.F.R. §§ 204.5(h)(3)(ii) and (iv). 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).

I. INTENT TO CONTINUE TO WORK IN THE UNITED STATES

¹ The AAO notes that Form I-290, Notice of Appeal or Motion, was filed and signed by the petitioner. Although the petitioner was represented by [REDACTED] regarding her Form I-140, Immigrant Petition for Alien Worker, there is no evidence that [REDACTED] is involved with the filing of this appeal. Moreover, the appeal was not filed with a new and properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, as required pursuant to the regulation at 8 C.F.R. § 292.4(a). As such, [REDACTED] is not recognized as the attorney of record for this proceeding.

² According to information on Form I-140, the petitioner was last admitted to the United States on April 4, 2009 as a B-2 nonimmigrant visitor.

At the initial filing of the petition, counsel stated in her accompanying cover letter that the petitioner was seeking classification as an alien of extraordinary ability “based on her credentials and experience as a world class competitive ballroom dancer.” In addition, the petitioner submitted documentation that was based solely on her accomplishments as a competitive ballroom dancer. The AAO notes that the petitioner failed to complete Parts 5 and 6 of Form I-140 regarding the petitioner’s occupation and proposed employment. In response to the director’s request for additional evidence, counsel stated:

[The petitioner] has already gained recognition and respect in the ballroom dance community in the United States. She competes in international competitions for the United States name, and has won many first place awards. She also works as an instructor in a dance studio and pays taxes based on her earning. Further, due to her in-demand status she has created a business in her name and trains competitive ballroom dancers privately which she hopes to expand in the coming years.

Furthermore, the petitioner submitted an employment confirmation letter from [REDACTED] who stated that the petitioner has been employed since October 10, 2009, as a “dance coach/instructor.” Moreover, the petitioner submitted documentary evidence reflecting that the petitioner started a dance school entitled, [REDACTED] on October 10, 2009. The AAO notes that the petitioner filed the employment-based immigrant petition on September 23, 2009.

In the director’s decision dismissing the petitioner’s motion, she stated that “[t]he fact that the petitioner has trained young dancers is notable, but not considered as evidence in support of the petition as the petitioner is seeking permanent residence as a ballroom dancer and not a trainer or coach.” On appeal, the petitioner claims that “the evidence . . . should as well be reviewed as an extraordinary skill level, given that only a person with such extraordinary ability can produce champions for USA at such young age and such short time span.”

The statute and regulations require the petitioner’s national or international acclaim to be *sustained* and that she seeks to continue work in his area of expertise in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a ballroom dancer or competitor and ballroom instructor or coach share knowledge of the sport, the two rely on very different sets of basic skills. Thus, ballroom competition and ballroom instruction are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee’s extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. In the present matter, there is no evidence showing that the petitioner has sustained national or international acclaim through achievements as a ballroom instructor. While the AAO acknowledges the possibility of an alien's extraordinary claim in more than one field, such as a ballroom dancer and ballroom coach, the petitioner, however, must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." *See* the regulation at 8 C.F.R. § 204.5(h)(5). Although the petitioner intends to compete and instruct in the United States, the petitioner must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through her achievements as a ballroom dancer.

II. LAW

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international

recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.³ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

III. ANALYSIS

A. One-Time Achievement

The petitioner claims that she meets the one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3) based on her first place finish at the 2009 [REDACTED] in the amateur adult – under 21 – Latin Championship category. The petitioner submitted screenshots from www.embassyball.com that reflected photographs from the 2008 [REDACTED] and general information, announcements, and a list of the 2010 judges. Moreover, the petitioner submitted an article entitled, "Dance Championships Bring the World's Best to Irvine," dated August 28, 2007, by [REDACTED]. A review of the article refers to the [REDACTED] as "the United State's [sic] only 'grand slam' competition" and indicates that "a grand slam is a championship that gives awards to both amateur and professional dancers."

³ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. See H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. 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). 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 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 global in scope and internationally recognized in the alien's field as one of the top awards in that field. Although an award garnered by a professional at the [REDACTED] may be considered as a lesser nationally recognized award pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the documentary evidence submitted by the petitioner fails to demonstrate that such award is a major, internationally recognized award pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Accordingly, the petitioner failed to establish that she meets the one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

B. Evidentiary Criteria⁴

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) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence reflecting that she minimally meets the plain language of this regulatory criterion.

Accordingly, the petitioner 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.

⁴ On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

A review of the record of proceeding reflects that in response to the director's request for additional evidence, counsel claimed the petitioner's eligibility for this criterion based on her membership with the [REDACTED]. The petitioner submitted a letter from [REDACTED] who stated that the petitioner "is a respected regsistrant" whose "skills are outstanding." In addition, the petitioner submitted screenshots from www.embassyball.com reflecting the [REDACTED] rules for competitions.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

While the petitioner established that she is a member of [REDACTED] she failed to demonstrate that membership with [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts. A review of the screenshots simply reflects the rules for competitions, such as the age categories, proficiency classifications, and dress and costume requirements. However, the documentary evidence submitted by the petitioner fails to reflect the membership requirements of [REDACTED] so as to establish that outstanding requirements, as judged by recognized national or international experts, are required for membership with [REDACTED].

Moreover, even if the petitioner were to establish that her membership with [REDACTED] meets the elements of this criterion, which she has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires membership in more than one association. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). In the case here, the petitioner claimed eligibility based on only one association.

The petitioner cannot meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) by simply submitting documentary evidence reflecting her membership with an association. It is the petitioner's burden to establish eligibility for every element of this criterion. In this case, the petitioner failed to establish that her single membership requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

Accordingly, the petitioner failed to establish 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.

A review of the record of proceeding reflects that in response to the director's request for additional evidence, counsel claimed that the petitioner "has been licensed by the [REDACTED] [REDACTED]. The petitioner submitted a letter from [REDACTED] who stated:

[The petitioner] has been through the according studies, has passed the according exams and was assessed at the first time as [REDACTED] and [REDACTED] which you can find on [REDACTED] in the subtopic Directory of registered [REDACTED] from Ukraine.

The AAO notes that a review of the website provided by [REDACTED] fails to support his claims that the petitioner is licensed as a [REDACTED] or competitor.⁶ Regardless, [REDACTED] offers no other information to demonstrate that being an "adjudicator" equates to participation as a judge of the work of others consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Furthermore, the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the petitioner has served as "a judge of the work of others." Serving as an instructor or coach as part of one's job duties does not equate to participation as a judge of the work of others in the field. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of teaching in a classroom setting or coaching of athletes and performing artists.

In stark contrast, the AAO notes that in support of the [REDACTED] the petitioner submitted a screenshot from www.embassyball.com reflecting a list of judges at the dance

⁵ See http://www.wdcdance.com/index.php?set_reg_type_ID=2. Accessed on March 20, 2012, and incorporated into the record of proceeding.

⁶ See http://www.wdcdance.com/index.php?set_lastname_letter=K. Accessed on March 20, 2012, and incorporated into the record of proceeding.

competition. Clearly, these individuals served as a judge of the work of others; specifically a dance sport competition, as opposed to the petitioner who claims to have taught and coached students.

For the reasons discussed above, the petitioner failed to demonstrate that she has served as a judge of the work of others in the same or an allied field of specification for which classification is sought consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the petitioner failed to establish that she meets this criterion.

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

IV. CONCLUSION

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.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁷ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

⁷ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

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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.