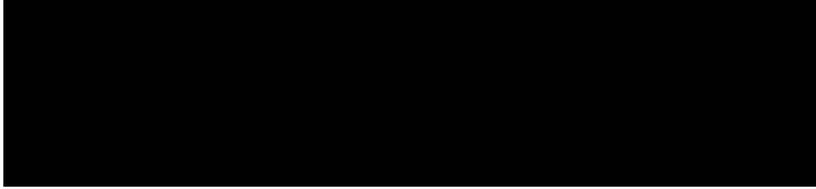




U.S. Citizenship
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FILE: LIN 06 039 53131 Office: NEBRASKA SERVICE CENTER Date: JUN 29 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a school which provides instruction in ballroom dance. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to temporarily employ her in the United States as a "competitive dancer" for a period of approximately three years at an annual salary of \$52,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has "generated sustained acclaim for her performances or that she has [sic] achieved prominence in her field. Additionally, the director noted that at least part of the duties to be performed by the beneficiary include instruction and that the beneficiary's skills "lie in the area of competitive ballroom dancing, not in training or coaching ballroom dancers."

On appeal, counsel for the petitioner submitted a brief with no additional documentation. Counsel asserts that the director erred in determining that the beneficiary was not prominent in her field, that the decision was contrary to established decisions, and that the director incorrectly applied the standard for aliens of extraordinary ability in athletics rather than the lesser standard for artists of distinction. We do not find any of counsel's arguments to be persuasive.

Counsel's argument that the director applied an erroneous standard is based upon a single sentence contained in the director's decision in which the director stated that the beneficiary has "yet to gain the most coveted status available in the sport." The point of the director's statement was that while the beneficiary's prominence was "on the rise," she did not have sustained acclaim or distinction. While the director may have overreached in this one sentence, we find the director properly cited and applied the regulations pertinent to an alien of extraordinary ability in the arts. The director's conclusion was not based upon the above-cited sentence, rather, in concluding that the record was not sufficient to establish eligibility, the director analyzed the evidence in accordance with the criteria related to the arts and ultimately determined that the beneficiary has not "generated sustained acclaim for her performances or that she has yet achieved prominence in her field." Therefore, despite the single sentence noted above, the director's discussion and ultimate conclusion are not erroneous.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability in the arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements;
or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

The beneficiary has neither been nominated for, nor has she been the recipient of any significant national or international awards or prizes in her field of endeavor. The majority of the awards received by the beneficiary consist of awards she received while competing in the "Rising Star" class of competition. While we acknowledge that many competitors compete in both the "Rising Star" and "Open Professional" class, by counsel's own admission, the "Rising Star" class is not as "important" as the "Open Professional Class" which contains the world's "best professional dancers." Further, as indicated by John Kimmons, the petitioner's expert in the field of competitive dance, "[m]ost of the major Rising Star winners then graduate purely to Open championships." Given the distinctions made between these two classes, we do not find the beneficiary's competition in or her receipt of awards while competing in the "Rising Star" class to be evidence of the beneficiary's receipt of a significant national or international awards or prizes in her field. Similarly, the

beneficiary's receipt of a \$1000 scholarship from the Polish Century Club of Detroit and a choreography award from her community college are not considered to be national or international prizes or awards. It is also noted that as at least two of these competitions took place in 2006, after the filing of the instant petition, such evidence cannot be used in support of this petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The remaining awards consist of the following:

- 1st Place at the Holiday Dance Classic in Nevada and finalist in the Open Professional Championship 2004
- 1st Place Heritage Classic 2005
- 5th Open Professional Championship 2005
- 2nd Place at the Embassy Ball
- Among the top 24 couples in the 2000 Germany Open Championship
- 2005 Blackpool competition
 - 22nd (out of 237) Professional Latin – Jive
 - 29th (out of 237) Professional Latin – Samba
 - 33rd (out of 237) Professional Latin – Cha Cha
 - 33rd (out of 237) Professional Latin – Rumba
 - 35th (out of 237) Professional Latin - Paso

Counsel claims that the beneficiary's "consistent finish . . . in the top 15% of the world in five dances in the world's most prestigious and competitive dance competition surely meets" the statutory requirement that the beneficiary has received "distinction." We do not agree that such a claim establishes that the beneficiary is an alien of extraordinary ability. First, placing from 22nd to 35th place in an international dance competition is not indicative of extraordinary ability. Moreover, the statute requires "*sustained* national or international acclaim." [Emphasis added.] In this instance, all of the competitions listed by the petitioner, with the exception of the 2000 Germany Open Championship, took place within one year of the filing of the petition.

The beneficiary does not satisfy this criterion.

Further, upon review of the record, we do not find the evidence establishes that the beneficiary has met at least three of the remaining regulatory criteria.

Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

No evidence was submitted in relation to criterion number one.

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.

For criterion number two, the petitioner submits several articles and photographs. The majority of the articles and photographs come from a magazine called *Dance Beat*. Counsel asserts that this magazine is “the only nationally circulated and distributed newspaper in the United States covering the field of ballroom dance competitions.” However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Regardless, while the articles and photographs in *Dance Beat* may mention the beneficiary's name, she is presented as just one of many competitors. Accordingly, we do not consider any of the submitted materials to be *about* the beneficiary.

Moreover, the criterion requires evidence that the beneficiary has *achieved national or international recognition* as evidenced by the published material. None of the submitted materials indicate that the petitioner has achieved national or international recognition. Instead, the articles make statements such as, the beneficiary “faces a bright future,” and “will be . . . very effective.”

The record also contains an advertisement for the California Open, a dancesport championship competition. The advertisement contains an uncaptioned picture of the beneficiary among several other dancers. Such evidence is not considered to be about the beneficiary or to be published in a major newspaper, trade journal, magazine, or other publications.

The remaining article, contained in the “Lifestyle” section of the *Press and Guide*, and entitled “Przybyl twins join the HFCC for 17th annual Dance Revue,” can be considered to be about the beneficiary. Again, however, the petitioner has failed to establish that this is a major newspaper and that this article is evidence that the beneficiary has achieved national or international recognition for achievements.

The beneficiary does not satisfy this criterion.

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.

No evidence was submitted in relation to criterion number three.

Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.

As evidence to satisfy this criterion, the petitioner submits several articles and photographs which, as indicated above, mention the beneficiary and her performance in competitions. While the articles do provide some general praise of the beneficiary's performances, the articles do not indicate that the beneficiary has a record of major commercial or critically acclaimed successes. Instead, the articles make statements such as that once the beneficiary's “foot alignments are improved” she will be part of an effective team. A second article indicates that during the competition, the beneficiary suffered “a temporary set back” because she “kept looking at the floor.” Such statements are not indicative of a person who has a record of success and is critically acclaimed.

The beneficiary does not meet this criterion.

Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

Although the petitioner submits letters from prominent people in the field of competitive dance indicating their praise of the beneficiary, the letters do not indicate that the petitioner has received significant recognition for her achievements.

The letter from [REDACTED], President of the American Ballroom Co., Executive V.P. of [REDACTED] International, and a member of several dancesport councils, indicates that the beneficiary "has as much talent as many of the couples in the top 24 British championship."

The letter from [REDACTED], Chairman of the International Dance Board for [REDACTED], and owner and organizer of the Ohio Star Ball attests that the beneficiary "posses [sic] extraordinary ability" and that the "knowledge she has obtained as a competitors [sic] over the years without a doubt will benefit the American dancers greatly." The letter from [REDACTED] a former competitive dancer and current teacher and lecturer lists the competitions that the beneficiary has placed in and states that he has judged the beneficiary and her partner for "over a two year period competing here in the U.S." and "witnessed their tremendous improvement as dancers and competitors." Ms. [REDACTED] concludes that "as a judge and over 20 years of experience in our dance business, [the beneficiary] has proven herself over the last two years to be a strong competitor with extraordinary ability and with a real and great potential of becoming future professional World Champion." [REDACTED], owner of the Champion Ballroom Academy and national dance judge, states that the beneficiary is an "extremely high level International Latin Ballroom Dancer" and indicates that the beneficiary is "an exceptional dancer with exquisite technique." Other letters indicate that the beneficiary "would be a great benefit," that her "contribution could be tremendous," and that she and her partner "are likely to be contenders for the U.S. national championship in a very short time." While these writers indicate that they are "impressed" with the beneficiary and her "discipline, hard work and...great passion," such letters are not indicative of the beneficiary's receipt of *significant recognition* for her achievements.

The beneficiary does not establish this criterion.

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

While the petitioner has offered to pay the beneficiary a yearly salary of between \$52,000 and \$57,000, the petitioner has provided no evidence to establish that this salary is a high salary compared to other similarly employed dancers. In the absence of such information, the AAO is unable to evaluate whether the proffered wage may be considered high in relation to others in the beneficiary's field of endeavor. The petitioner's assertion that this is a high salary is not sufficient to establish that the beneficiary meets this criterion. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based upon the above discussion, we concur with the finding of the director that the petitioner has failed to demonstrate that the beneficiary has won significant national or international awards or prizes or that she meets at least three of the regulatory criteria.

In addition to finding that the beneficiary did not meet any of the regulatory criteria, the director further noted that from the evidence in the record, it appeared that although the beneficiary “may have garnered favorable notices for her performances as a ballroom dancer,” the position offered to the beneficiary appeared to be “at least partly a teaching or coaching position.” 8 C.F.R. § 214.2(o)(1)(ii)(1) requires the beneficiary to “continue work in the area of extraordinary ability.” In this instance, we concur with the director that the beneficiary’s job description appears to require skills of both a competitive dancer as well as an instructor or coach. While a competitive dancer and instructor share knowledge of dance, the two rely on very different sets of basic skills. Thus, competitive dancing and coaching or instructing 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.

Despite the consistent history noted by the Court on this issue, we recognize that there exists a nexus between participating in a particular skill and coaching or instructing that skill. To make a determination on the issue, we have found the following balance to be appropriate; in a case where an alien has clearly achieved national or international acclaim as an athlete or in a particular skill such as competitive dancing and has sustained that acclaim in the field of coaching or instructing at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that instructing or coaching is within the petitioner’s area of expertise. An instructor who has an established successful history of instructing dancers who compete regularly at the national level has a credible claim; an instructor of novices does not. In this instance, the record contains no evidence that the petitioner has demonstrated her extraordinary ability as a competitive dancer, much less as an instructor or coach.

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.