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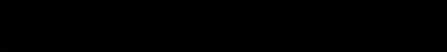
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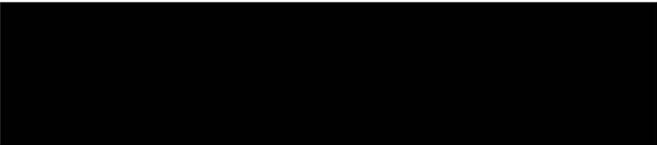


Dg

FILE: WAC 07 273 54624 Office: CALIFORNIA SERVICE CENTER Date: **MAR 11 2009**

IN RE: Petitioner: 
Beneficiary: 

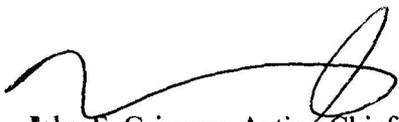
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:


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, California Service Center denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, a ballroom dance instruction school, filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i) as an alien with extraordinary ability in the arts. The petitioner seeks to employ the beneficiary as an advanced ballroom dance instructor for a period of three years.

The director denied the petition on November 15, 2007, concluding that the petitioner failed to establish that the beneficiary satisfied the standards for nonimmigrant classification as an alien with extraordinary ability in the arts as a ballroom dance instructor. In denying the petition, the director determined that the petitioner failed to establish that the beneficiary has been nominated for or been the recipient of a significant national or international award, pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), or that he has met three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

The petitioner subsequently filed a timely appeal on December 18, 2007. The director treated the appeal as a motion to reopen or reconsider, and dismissed the motion on January 16, 2008, without disturbing the original decision.

The regulations at 8 C.F.R. §§ 103.3(a)(2)(ii) and (iii) provide that the official who made the unfavorable decision being appealed shall review the appeal unless the affected party moves to a new jurisdiction, and shall decide whether or not favorable action is warranted. The reviewing official, in this case, the service center director, may treat the appeal as a motion to reopen or reconsider and take favorable action. However, pursuant to 8 C.F.R. § 103.3(a)(2)(iv), if the reviewing official will not be taking favorable action or determines favorable action is not warranted, the reviewing official shall promptly forward the appeal and the related record of proceeding to the AAO.

The director did not have authority to treat the petitioner's appeal as a motion in order to render a decision unfavorable to the petitioner. Instead, the regulations required that the director forward the appeal directly to the AAO. Accordingly, the director's decision dated January 16, 2008 will be withdrawn. The AAO will adjudicate the timely filed appeal.

On appeal, the petitioner asserts that the director misapplied the regulations, inappropriately disregarded the advisory opinion provided, and did not carefully review the facts of the case. The petitioner submits a brief in support of the appeal.

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 extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991).

As a preliminary matter, the AAO will address the appropriate standard for review for a petition involving the field of competitive ballroom dance, also known as "DanceSport."

In this matter, the petitioner sought to classify the beneficiary as an alien of extraordinary ability in the arts, and the director applied the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv). However, while the petitioner sought to classify the beneficiary in the arts, the petitioner simultaneously claimed that the beneficiary meets the evidentiary criteria for aliens of extraordinary ability in athletics, as set forth at 8 C.F.R. § 214.2(o)(3)(iii), although it never specifically cited to this section of the regulations. The petitioner indicates that the beneficiary meets the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (2), (7) and (8). By contrast, the petitioner claims that the beneficiary meets only one of the six evidentiary criteria for aliens of extraordinary ability in the arts set forth at 8 C.F.R. 214.2(o)(3)(iii)(B). Nevertheless, rather than classifying the alien as an athlete, the petitioner requested that the director apply the "comparable evidence" provision at 8 C.F.R. § 214.2(o)(3)(iv)(C), and evaluate the evidence according to the standard of "distinction" applicable to aliens of extraordinary ability in the arts.

The director strictly applied the evidentiary standard for aliens for extraordinary ability in the arts, without acknowledging the petitioner's claim that it had "comparable evidence" to establish the beneficiary's eligibility. Upon review, the director should have evaluated the instant petition as a petition for classification of the beneficiary as an alien of extraordinary ability in athletics.

First, the petitioner indicated that the petitioner meets more than three of the eight evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B), which are applicable to athletes. It appears the only reason the petitioner chose to classify the beneficiary in the field of arts was to take advantage of the lower standard of review applicable aliens of extraordinary ability in the arts. These two categories of O-1 classification have their own separate statutory definitions and evidentiary criteria. The petitioner cannot choose to submit evidence applicable to the criteria for the athlete category and then argue for the lesser standard applicable to aliens in the arts field. Based on the petitioner's claims, the director had a sufficient basis to evaluate the instant petition under the standard for aliens with extraordinary ability in athletics.

Further, the International Olympic Committee (IOC) has formally recognized DanceSport as a sport under consideration for inclusion in the Olympic games, although it is not yet a medal sport in the Olympic Games.¹ The recognition of DanceSport by the IOC is a clear indication that DanceSport or competitive ballroom dance, has evolved into a form of athletic competition. Therefore, the beneficiary should be held to the more stringent requirements for aliens of extraordinary ability in athletics rather than to those for artists and artistic expressions.

As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility pursuant to the standard and evidentiary requirements for aliens of extraordinary ability in

¹ See "Recognised Sports," available at <http://www.olympic.org/uk/sports/recognized/index_uk.asp> (accessed on January 30, 2009). The International DanceSport Federation (IDSF) received full recognition in 1997 from the IOC and is a member of the Association of the IOC Recognised Sports Federations. See "About IDSF," at <<http://www.idsf.net/index.tpl?id=5>> (accessed on January 30, 2009).

athletics. As the petitioner claims to meet the evidentiary criteria applicable to athletes, it would serve no useful purpose to remand the petition to request further evidence.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

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

Evidentiary criteria for an O-1 alien of extraordinary ability in the field of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
 - (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) 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 or international experts in their disciplines or fields;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

- (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
 - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
 - (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, an appeal and an appellate brief. The beneficiary in this case is a native and citizen of Russia is described by the petitioner as "a champion ballroom dancer, teacher, choreographer and judge." He attended the Khabarovsk State Institute of Art and Culture, graduating in 2006 with the qualification "Lead Instructor of Choreographical Artistic Group/Teacher." The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as an advanced ballroom dance instructor.

The director determined that the beneficiary did not meet the regulatory criteria for an alien of extraordinary ability in the field of ballroom dance instruction. On appeal, the petitioner asserts the following:

It may be true that the alien did not provide three of the required categories as an instructor, it is also true that such proof is not required in the instant case. Notwithstanding the fact that we submitted this petition for a teacher/instructor, our level of proof/level of distinction was required for a dancer/instructor/teacher and choreographer and not solely for an instructor.

Prevailing law does not require the alien to establish distinction as a "ballroom dancing instructor" which is the basis of your denial. Distinction as a ballroom dancer rather than [sic] as a ballroom instructor [although that is the offered position] should be sufficient to qualify the alien in the visa category.

In support of this assertion, the petitioner notes that there is no requirement that the beneficiary is coming to the United States to perform services requiring a person of O-1 caliber.

The petitioner's argument that the petitioner need only demonstrate that the beneficiary qualifies as an athlete of extraordinary ability based on his career as a competitive ballroom dancer is not persuasive. The regulation at 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, petitioner clearly indicates that the beneficiary will be employed in the United States as a ballroom dance instructor . While a competitive dancer and a dance instructor share knowledge of dance, the two rely on very different sets of basic skills. Thus, competitive dancing and dance instruction are not the same area of expertise and the USCIS will not assume that an alien with extraordinary ability as an competitive dancer has the same level of expertise as a coach or instructor in the sport. 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 sport as a competitor and coaching or instructing. 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.

Based on the above, we will address the evidence regarding the beneficiary's accomplishments as both a competitive ballroom dancer, and as a ballroom dance instructor.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award, such as the Nobel prize, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. Here the petitioner has not established that the beneficiary has received such an award, nor does the evidence demonstrate that the beneficiary has coached, instructed or trained any competitive dancers who have received a major internationally-recognized award.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

In order to meet the first criterion, at 8 C.F.R. 214.2(o)(3)(iii)(B)(1), the petitioner must submit documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. With respect to the beneficiary's career as a competitive dancer, the petitioner provided copies of more than 15 first, second and third place awards he received between the years 1996 and 2002 for ballroom dance

competitions and events held in the cities of Khabarovsk and Komsomolsk-on-Amur in the Khabarovsk region of Russia. In a letter dated November 6, 2007, the petitioner emphasized that the awards submitted establish the beneficiary was the champion of the "entire city" on numerous occasions, finished second in city competition on many occasions, and placed third in the entire Far East region of Russia among all dancers who have achieved competition status. The petitioner stated that the beneficiary "is the best there is in his entire city," and that "being the first place winner in a championship event hosted by the entire and for the entire state or region is tantamount to having reached the cream of the crop status which is not normally encountered." Upon review of the awards and the petitioner's explanation regarding the awards, it cannot be concluded that the city, regional or state awards the beneficiary earned are nationally or internationally recognized awards.

The AAO notes that the beneficiary's resume refers to his achievement of the level of finalist in the "Championship of Russia" in the years 2004 and 2005, and as "Champion of the Far East Championship" in 2005. While these events appear to be more significant than the beneficiary's various city and regional competitions, the record does not contain copies of any awards the beneficiary received at such events or background information regarding these events.² 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)).

Finally, the AAO notes that the record contains a "Certificate of Representation" issued to the beneficiary by the Federation of Sport Ballroom Dances of Khabarovsk Region. The letter refers to the beneficiary as the "Absolute Champion of Latin-American Program in Khabarovsk region," and "the champion of dance shows in Siberia and the Far East," and indicates that he was selected to represent the Khabarovsk Dance Sport Federation at the Russian Open Championship of Dance Shows in the city of Irkutsk. While this evidence appears to show that the beneficiary was selected to compete in his sport at a national level, it is insufficient to establish that he has received nationally or internationally recognized prizes or awards for excellence in his field. The petitioner has not established that the beneficiary meets the first criterion as a competitive athlete.

The AAO will now turn to the question of whether the beneficiary can establish this criterion as a ballroom dance instructor. The record contains a recommendation letter from the Federation of Sport Ballroom Dances of Khabarovsk Region which states that the beneficiary worked as a trainer at the "Fantazia" Center of Ballroom Sport Dances in Khabarovsk, Russia from 1999 until 2007. According to the letter, the beneficiary taught Latin American ballroom dances to children ages seven to 12 and to dancing pairs ages 13 to 18, and was ranked Best Teacher of Ballroom Dances in Siberia and the Far East in 2006. Finally, the letter indicates that the beneficiary's students have been "prizewinners at big international competitions," and identifies two

² The AAO notes that the record does contain several documents in the Russian language, not accompanied by English translations, which may be copies of additional awards received by the beneficiary. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

first place finishes in "world" competitions, one second place finish in a "world" competition, and one third place finish in national competition.

The petitioner also submitted a letter referencing The Center of Dance Sport Club "Fantazia," which states that among its 375 students are the champions of the Khabarovsk Regional Competition of 2005-2006, finalists of the Open World Championship in England in 2005, winners of the Italian Championship of 2006, and champions of the ballroom dance tournaments of Russia, Siberia and the Far East. The letter indicates that the club's success depends on the beneficiary as an instructor of ballroom dances.

The petitioner also submitted various photographs of the beneficiary with his students, who all appear to be children or teenagers, at various competitions, some of which depict the students with trophies or awards.

In denying the petition, the director observed that the petitioner did not identify the names of the students who have won national or international prizes or provided corroborating documentary evidence in the form of certificates, awards, or publications to establish that the beneficiary's students were prizewinners at "big international competitions."

On appeal, the petitioner asserts that the director did not give sufficient weight to the recommendation letter from the Federation of Sport Ballroom Dances of Khabarovsk Region or the beneficiary's ranking as the best teacher of ballroom dancing in the region in 2006.

Upon review, the AAO finds insufficient evidence to establish that the beneficiary has won national or internationally recognized awards or prizes as a ballroom dance coach or that his students have won nationally or internationally recognized prizes or awards. The evidence shows that the beneficiary has been regionally recognized as being an outstanding ballroom dance instructor, but there is no evidence of any national or international prize or award issued to him based on his accomplishments as an instructor or teacher.

Further, the AAO concurs with the director that additional documentary evidence is needed to establish that the beneficiary's students have won nationally or internationally recognized prizes or awards for excellence in the field. The petitioner has opted not to provide the names of the beneficiary's claimed award-winning students or documentary evidence of their awards. Again, 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. Finally, the evidence indicates that the beneficiary has only been teaching dancers competing at the junior level. Even if the petitioner had submitted copies of the awards, an international award received by a 9-year-old student would not carry the same evidentiary weight as an international award received by a competitor at the adult, professional level, without some additional explanation as to how the sport is governed at the junior level. The petitioner has not established that the beneficiary meets this criterion.

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(ii), the petitioner must document 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. The petitioner does not claim that the beneficiary meets this criterion. The AAO notes that the petitioner has provided evidence that the beneficiary has been issued a "Grade III" adjudicator's license by the Dance Sport Federation of Russia on June 20, 2005. While it appears that issuance of the license would entail membership in the Federation, the record does not contain any explanation to demonstrate that the beneficiary's membership required outstanding achievements, as judged by national or international DanceSport experts. Therefore, the AAO concludes that the beneficiary does not meet this criterion.

To meet the third criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), the petitioner must submit published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation. Again, the petitioner does not claim that the beneficiary meets this criterion. The petitioner provided partial translations of what appear to be three newspaper articles that mention the beneficiary's performance in dance competitions as a teenager. The petitioner did not provide the title, date or author of the articles. It cannot be concluded that this evidence constitutes published material in a professional or major trade publication or "major media." The petitioner provided no recent materials that would show that he has sustained national or international acclaim as a competitive dancer or coach, nor did it provide any articles relating to the work of the beneficiary's students in the sport of competitive dance. The petitioner has not established that the beneficiary meets this criterion.

To meet the fourth criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), the petitioner must submit evidence of the beneficiary's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought. As noted above, the beneficiary was granted a "Class III" adjudicator's license by the Dance Sport Federation of Russia in 2005. The license shows that the beneficiary officiated in six events since his license was granted. Five of those events were regional competitions with participants at the junior, pre-teen and juvenile level (between the ages of seven and 18), one was a regional competition that included juniors, "pre-teens/D1 and amateurs," and one was a "Russian competition" that included juniors, and "juvenile/D1, D2" couples.

As noted above, evidence submitted to satisfy the criteria at 8 C.F.R. § 214.2(o)(3)(iii) must demonstrate sustained national or international acclaim and recognition for achievements in the field. Therefore, while the petitioner has submitted evidence that the beneficiary has served as a judge in ballroom dance competitions, USCIS must also evaluate the evidence qualitatively to determine whether it supports a finding that the beneficiary is one of the small percentage of people who have risen to the very top of his field. Given that the beneficiary obtained an adjudicator's license from the Dance Sport Federation of Russia, the fact that he was subsequently invited to judge at Dance Sport competitions is not in and of itself indicative of his sustained national or international claim and recognition for achievements in the field. The record contains no evidence of the requirements for obtaining an adjudicator's license and no explanation as to the significance of the beneficiary "Class III" license. Absent such evidence, it cannot be determined that award of the license is consistent with a level of sustained national or international recognition. Further, the beneficiary has a relatively short history of serving as a judge in DanceSport competitions, appears to have only judged juniors, pre-teens and juveniles, and has acted as an officiator at only one national competition. The evidence submitted is not indicative of the beneficiary's sustained recognition for achievements in the field, and, accordingly, does not meet the fourth criterion.

The fifth criterion requires the petitioner to submit evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). The petitioner does not claim that the beneficiary meets this criterion, and the AAO finds no evidence in the record relevant to this criterion. The record contains reference letters that acknowledge the beneficiary's skills and success as a dancer and dance instructor, but none of the letters indicate that the beneficiary has made original contributions of major significance to the field.

Similarly, the petitioner has not attempted to establish that the beneficiary has authored scholarly articles in the field in professional or major trade publications or other major media, or otherwise claimed that the beneficiary meets the sixth criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

The petitioner does claim that the beneficiary meets the seventh criterion, which requires the petitioner to submit evidence that he was employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). Counsel refers to the "Certificate of Representation" from the Federation of Sport Ballroom Dances of Khabarovsk Region, which indicates that the beneficiary was selected to represent the Khabarovsk Dance Sport Federation at the Russian Open Championship of Dance Shows in the city of Irkutsk. While the beneficiary's selection to represent his region in a national competition is notable, the petitioner did not demonstrate that his participation in a one-time athletic event should be equated to employment in a critical or essential capacity.

The petitioner has submitted evidence that the beneficiary has been employed as a ballroom dance instructor at two DanceSport clubs, "Fantazia," and "Eldorado." However, the petitioner has not claimed that this employment was in a critical or essential capacity or provided evidence that these establishments have a distinguished reputation. In a recommendation letter discussing the beneficiary's employment with "Fantazia," the Federation of Sport Ballroom Dances of Khabarovsk Region described the beneficiary as a "highly qualified professional" and "master teacher with limitless ability to teach ballroom sport dances to children and adults."

The petitioner also provided a letter from Eldorado, indicating that the beneficiary is "very talented, hard-working, creative and efficient," "very appreciated by his pupils," and "very helpful in organization of festivals in the organization."

While these statements are highly complimentary, they do not establish the beneficiary's employment in a critical capacity, demonstrate the distinguished reputation of the employer, or reflect the beneficiary's sustained national or international recognition for his achievements in the field.

The eighth and final criterion requires the petitioner to establish that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

The petitioner provided a letter dated September 1, 2006 from Eldorado, which indicates that the beneficiary's annual salary of 210,000 rubles per year is twice the amount of median salary for a director of ballroom dances in the Khabarovsk region of Russia. The letter indicates that the beneficiary's salary is based on consideration of his "extraordinary talent" and "commendable input" as a teacher and performer. The petitioner has not provided any

documentary evidence supporting the claim that 210,000 rubles is a high salary for a ballroom dance instructor, and it is not clear from where the employer, Eldorado, obtained its information. At a minimum, the employer could have provided evidence of how the beneficiary's salary compares to other instructors within its organization. Without additional evidence, the AAO cannot conclude that the beneficiary has previously commanded a high salary. The petitioner does not claim that the proffered salary of \$30,000 per year constitutes a high salary for an advanced ballroom dance instructor. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

The record does not establish that the beneficiary has extraordinary ability in athletics, which has been demonstrated by sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition must be denied.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level.

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, the petitioner has not met that burden.

ORDER: The director's decision dated January 16, 2008 is withdrawn. The appeal is dismissed.