

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Room 3000
Washington, DC 20529-2090

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

25



FILE: WAC 07 007 52758 Office: CALIFORNIA SERVICE CENTER Date: **FEB 02 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:

SELF-REPRESENTED

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

The petitioner, a dance 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), as an alien with extraordinary ability in the arts. The petitioner seeks to employ the beneficiary as a dance teacher for a period of three years.

The director denied the petition, 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.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the beneficiary is qualified for O-1 classification. The petitioner submits a letter and copies of previously submitted evidence 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). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is “at the very top” of her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii).

Section 101(a)(46) of the Act states that the term “extraordinary ability” means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.

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

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the field of 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, in pertinent part:

Evidentiary criteria for an O-1 alien of extraordinary ability in the arts. To qualify as an alien of extraordinary ability in the field of 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 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, government 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; or
- (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.

In addition, the regulation at 8 C.F.R. 214.2(o)(2)(ii) provides that the petitioner must also submit copies of any written contracts between the petitioner and the beneficiary; an explanation of the nature of the events or activities, along with an itinerary; and a written advisory opinion(s) from the appropriate consulting entity or entities.

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 Poland who last entered the United States in May 2005 in J-1 status and later was granted a change of status to F-1 status. The evidence of record shows that the beneficiary competed as a ballroom dancer in Poland between 1993 and 1999. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a dance instructor. The petitioner indicates that the beneficiary will be teaching ballroom dance to children and adults.

In denying the petition, the director found that the petitioner had failed to satisfy any of the eligibility requirements set forth at 8 C.F.R. §§ 214.2(o)(3)(iv)(A) or (B). The director noted that although the petitioner submitted evidence in relation to three of the six requirements set forth at the 8 C.F.R. § 214.2(o)(3)(iv)(B), the quality of the evidence submitted was insufficient to establish that the beneficiary's achievement in the arts has risen to the level of distinction.

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary ability in the arts.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or received a significant national or international award or prize in his or her field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(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 submitted evidence that the beneficiary has been nominated for or received a *significant national or international award or prize comparable to an Academy, Emmy or Grammy Award*.

In cases such as this one, where petitioners seek O-1 classification of an alien performer and instructor, USCIS will consider the success of dancers instructed by the alien as comparable evidence. The record also does not demonstrate that the beneficiary has instructed, trained or coached any dancers who have been nominated for or received significant national or international awards or prizes.

As there is no evidence that the beneficiary has been nominated for or received a significant national or international award or prize, the petitioner must establish the beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

In order to meet criterion number one, the petitioner must submit evidence that the beneficiary 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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

The petitioner submitted the beneficiary's curriculum vitae, which indicates that he began taking dance instruction in 1989 at the age of 9 and became a member of the Polish Ballroom Dance Association in 1993. The beneficiary competed in regional ballroom competitions and national Polish tournaments between 1993 and 1998, and progressed from dance category "E" to "B" (which is described as "USA pre-champ"). The beneficiary's curriculum vitae indicates that he also participated in summer dance camps, local events, and

coaching younger dancers. The beneficiary was enrolled in the Lodz University of International Studies from 1999 until 2004 and has been in the United States in J-1 and F-1 status since 2005. Based on the evidence submitted, it does not appear that the beneficiary has engaged in any competitive dance competitions since 1999. The petitioner submitted copies of certificates and awards received by the beneficiary in Poland between 1994 and 1998. The petitioner did not submit evidence that any of these events have a distinguished reputation, such as critical reviews, advertisements, publicity releases or other documentation. It appears that the beneficiary was primarily a competitive ballroom dancer at the junior or youth level and there is no evidence that he performed as a lead or starring participant in any production or event.

The petitioner submitted support letters from four individuals who praise the beneficiary's skills as a dance instructor, but they do not discuss his work as a lead or starring participant in any distinguished musical productions or events. While the record indicates that the beneficiary has sometimes served as a dance instructor for children there is no evidence that any of the beneficiary's students have served as lead or starring participants in productions or events with a distinguished reputation. Accordingly, the beneficiary does not meet this criterion.

In order to establish that the beneficiary meets the second criterion, the petitioner must submit 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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

The petitioner submitted two articles from unidentified Polish magazines or newspapers, and highlighted a portion of each article where the beneficiary was mentioned. One article indicates that the beneficiary and his partner participated in the "yearly dance revue "ATA 94" in Poland, and notes that the couple was a part of the winning dance formation in the competition. The other article mentions that the beneficiary and his partner achieved a sixth place finish in the B category at a competition held in Tomaszow, Poland. The names and dates of the publications were not provided, and the petitioner submitted incomplete translations. This evidence is of little probative value and is insufficient to establish that the beneficiary has achieved national or international recognition. Furthermore, the petitioner has not submitted evidence that the beneficiary has instructed dancers who have achieved national or international recognition. The beneficiary does not meet this criterion.

In order to establish that the beneficiary meets the third criterion, the petitioner must submit 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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). Again, the evidence of the beneficiary's achievements in dance is limited to copies of awards he received in competitions held between 1994 and 1998, when he was between the ages of 14 and 18 years old. The record does not establish that the beneficiary has performed in a lead, starring or critical role for organizations and establishments that have a distinguished reputation. While the petitioner has submitted testimonials from clients of its dance school who are familiar with the beneficiary's skills as a dance instructor, they do not attest to his distinguished reputation in a lead or starring role or establish that he has instructed students of such caliber.

On appeal, the petitioner emphasizes that its dance school has produced students who have competed on national television, won U.S. championships and participated in world championships. The petitioner states that the beneficiary “would qualify to compete in either of these performances.” However, the petitioner has not submitted documentary evidence in support of its claim that its organization has a distinguished reputation in the field, or identified or submitted evidence regarding its dancers’ participation in national and international-level competition. Moreover, the petitioner initially indicated that the beneficiary would serve as an instructor, not as a performer. The petitioner now indicates that he would participate in U.S. competitions as a performer. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not contain evidence that the beneficiary has performed or will perform in a lead, starring or critical role for organizations and establishes that have a distinguished reputation, or that he has instructed or will instruct dancers with such achievements. The beneficiary does not meet this criterion.

To establish that the beneficiary meets the fourth criterion, the petitioner must establish that the beneficiary 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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(4). The petitioner did not submit any evidence to establish that the beneficiary meets this criterion. As noted above, the petitioner submitted excerpts of two undated articles from unidentified Polish magazines which very briefly addressed the beneficiary’s tournament results in two youth ballroom dance competitions. This evidence is of little probative value for the reasons already discussed. There is no evidence that any other publications have reported on the beneficiary’s commercial or critical success in the field of dance or dance instruction. The beneficiary does not meet this criterion.

In order to meet the fifth regulatory criterion, the petitioner may submit evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government 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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

The petitioner initially submitted four support letters, none of which indicated the beneficiary’s achievements or the authors’ authority, expertise or knowledge of the beneficiary’s achievements. For example, the petitioner submitted letters from eleven-year-old [REDACTED] and her father, who both take lessons from the beneficiary at the petitioner’s school. [REDACTED] describes the beneficiary as a “great teacher” and notes that she enjoys her lessons with him, and [REDACTED] describes the beneficiary as a highly competent, talented and gifted instructor. The petitioner submits two other letters from parents of children who receive ballroom dance lessons from the beneficiary, who describe him as an excellent teacher and role model. While it appears that the beneficiary is well-respected, these letters fail to demonstrate that the beneficiary has received significant recognition for his achievements. Further, none of the letters are from recognized experts in the beneficiary’s field.

The record contains one additional testimonial letter, which appears to have been submitted to satisfy the regulatory requirement for a written advisory opinion from an appropriate consulting entity. *See* 8 C.F.R. 214.2(o)(2)(ii)(4). The letter was provided by [REDACTED], director of the Polish School at Holy Cross Church in Trenton, New Jersey. [REDACTED] states that she has reviewed the beneficiary's awards from Poland and finds him to be "qualified in all aspects of dance." She notes that the beneficiary is professional and knowledgeable, has a great rapport with children and parents, is a great instructor, and brings music with him to lessons. She does not indicate that the beneficiary has received any significant recognition for his achievements, nor does she indicate the authority of a Polish school to render an advisory opinion in the field of dance. The beneficiary does not meet this criterion.

The sixth and final criterion requires the petitioner to submit evidence that the beneficiary 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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(6). The petitioner indicated on Form I-129 that the beneficiary will work 30 hours per week and receive weekly wages of \$300 for his services as a dance teacher, but did not submit a contract.

In response to the director's request for a copy of the beneficiary's contractual agreement with the petitioner, the petitioner submitted an undated contract which states that the beneficiary would serve as a dance performer and dance instructor on a part-time basis. The contract indicates that he will work 20 hours per week at a salary of \$30 per hour. The petitioner provided no explanation regarding the change in the terms of employment stated on Form I-129. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

As noted by the director, the petitioner did not establish through the submission of objective evidence that the beneficiary's offered salary of either \$10 or \$30 per hour meets the criteria of a "high salary" in his field. Such evidence could include statistical comparisons of the salaries in the field of endeavor.

Overall, the record does not establish that the beneficiary has extraordinary ability in the arts which has been demonstrated by a high level of achievement in the field, and that his 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 significant national or international award or prize, and the documentation submitted does not satisfy three of the six evidentiary criteria specified in the regulations at 8 C.F.R. § 214.2(o)(3)(iv)(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 critical and commercial achievements in the field of dance 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 appeal is dismissed.