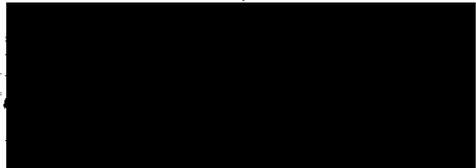




U.S. Department of Justice
Immigration and Naturalization Service

B2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: Texas Service Center Date:

AUG 23 2000

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

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

Public Copy

IN BEHALF OF PETITIONER:



Identifying Data Deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

Aug 23 2000 - 012222

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. 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 in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

The petitioner seeks employment as a dance instructor and choreographer for the National Cheerleaders Association ("NCA"). The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international

recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. In denying the petition, the director found that the petitioner had satisfied, at most, one of these criteria (pertaining to judging the work of others). On appeal, counsel addresses the criteria point by point; therefore, counsel's appellate response will be considered within each criterion, alongside the petitioner's initial evidence.

The petitioner has submitted evidence which, she claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

██████████ executive director of personnel at ██████████ states that the petitioner placed 7th in the Dance Soloist event at the 1998 Collegiate National Championship. ██████████ does not indicate that the petitioner received any prize or award in recognition of this ranking.

A "Most Valuable Player" award from Florida Atlantic University is not national or international; its scope is restricted to students at that one school.

The petitioner submits copies of several "Certificates of Merit" from the British Association of Teachers of Dancing ("BATD"). While the certificates mention "Annual Stage Competitions," the certificates also state that the petitioner "has . . . attained the required standard for" various classifications of dance instruction. The certificates are identical "form" documents, with pertinent information handwritten into blank spaces. These certificates appear to represent credentials of qualification, rather than national or international prizes or awards in any meaningful sense.

The petitioner won prizes in three categories at the 1989 BATD Festival in Toronto, Canada. In two of these categories, the prize was a donated trophy; in the third, the prize was a \$50.00 scholarship. The petitioner was also named Best All Round Senior Solo Dancer. Nothing in the record indicates that this festival/competition was national or international in scope, rather than a local Toronto event. The same can be said of the petitioner's Secondary Prize from the Toronto Argonauts SUNDancers, the cheerleading squad for Toronto's professional football team.

Subsequent to the petition's April 1999 filing date, the petitioner was "selected as one of the NCA TOP ROOKIE INSTRUCTORS for the

summer of 1999." NCA documentation does not indicate how many Top Rookie Instructors are named annually, nor is there any indication of the significance of the title except that it guarantees "priority in scheduling for camps in the year 2000." This prize, presented in September 1999, cannot establish that the petitioner was eligible for the visa classification as of April 1999. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

On appeal, counsel discusses the above awards but offers no new evidence to show that the petitioner has ever received a nationally or internationally recognized award of any significance within the field. An award does not necessarily satisfy this criterion simply because it is presented by a national or international body.

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.

On appeal, counsel asserts that the petitioner satisfies this criterion through her membership in BATD and NCA. The record contains nothing from either organization that would establish their membership criteria. Passing an audition and paying dues are not outstanding achievements.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner appears in a captioned photograph in the University Press, the newspaper of Florida Atlantic University, which the petitioner attended at the time of the article's publication. A college newspaper does not constitute major media; its circulation would presumably be limited to the university campus and, possibly, university alumni. The petitioner's photograph also appeared in Palm Beach Plus, a supplement to the Sun-Sentinel. The masthead of this publication indicates that it serves "Boca Raton, Delray Beach, Highland Beach and surrounding areas." Clearly, Palm Beach Plus is also a local publication. Both of the articles in question focus not on the petitioner, but on the formation of a new dance squad at [REDACTED]. These articles do not establish that the petitioner was already nationally acclaimed at the time of publication, and their limited circulation would not allow the petitioner to gain such acclaim as a result of the articles.

Beyond the above articles, on appeal counsel notes that the petitioner was among the competition winners listed in a 1989 BATD bulletin. This newsletter does not constitute major media; it is an internal publication issued only to BATD members (indeed, it is labeled "confidential"), and therefore at the very most could result in acclaim only among members of that organization. Even then, the published piece is a list of competition winners which does not single out the petitioner from the many other winners of various events.

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.

NCA official Buffy Miller verifies that the petitioner "was an official judge in 1998-at the State of Florida Dance Championship."

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

On appeal, counsel draws attention to the petitioner's volunteer activities as a dance and cheerleading teacher at summer camps in southern Florida. The petitioner did not create the volunteer programs in question, and there is no evidence that the petitioner's volunteer work has had major significance in the field; the impact of such work would seem to be limited to the handful of children whom the petitioner actually taught at the camps.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Counsel asserts on appeal that the petitioner satisfies this criterion as a former member of the SUNDancers, the Toronto Sun-sponsored cheerleading and dance squad for the Toronto Argonauts. Counsel notes that, as a SUNDancer, the petitioner appeared on television during nationally-broadcast games of Canadian-rules football.

A football game is neither an artistic exhibition nor a showcase; it is not apparent that a cheerleader/dancer could satisfy this criterion. Furthermore, the primary focus of these events is the football game itself. While the cheerleading squad plays a role in encouraging fan spirit, the squad is not the central feature of the game. While the petitioner appeared on television, the same can be said of the rest of the squad and, presumably, large segments of the crowd as well.

Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Given that not every major league athlete qualifies for the classification, it is clear that the same rule applies to the cheerleaders for major league teams.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel, on appeal, states that the petitioner was a volunteer instructor, and later a head instructor, for NCA and its affiliated organization NCA DANZ. Counsel states "[o]f the 1200 NCA/NCA DANZ employees worldwide only 200 are recognized as qualified enough to be considered for the position of Head Instructor." Counsel, thus, seems to suggest that one in six NCA employees plays a leading or critical role for the organization. This assertion is untenable. The record contains no indication that the petitioner has held any position of national importance within NCA, or indeed that she has ever held any position at NCA that was not of a short-term, temporary nature. Even the head instructor position (which was not offered to the petitioner until after the filing date) is for "the summer of 2000."

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submits copies of various invoices documenting payments to the petitioner for services rendered. Most of the invoices are for less than \$100. There is no indication of the petitioner's total earnings, nor has the petitioner provided comparative evidence to allow the conclusion that her remuneration is significantly high in relation to others in the field. The petitioner has shown only that she has been paid for her work.

On appeal, counsel abandons this criterion, stating that it does not apply to the petitioner.

The evidence of record indicates that the petitioner was gainfully employed as a cheerleader in Toronto, and has been active in Florida both at her alma mater and at local summer camps. The petitioner also ranked highly at a national competition, but does

not appear to have won any actual prize at that competition. The record does not show that the petitioner has earned a lasting reputation at a national or international level as one of the top cheerleaders/dancers/instructors in her field. To qualify for this highly restrictive visa classification, the petitioner must demonstrate that she is among the best-known figures in her field, and the record simply does not support such a finding.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished herself as a dance instructor or cheerleader to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent in her field and has enjoyed some measure of success, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The 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.