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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 19 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petition is now before the Administrative Appeals Office (AAO) 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 has 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 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 he has sustained national or international acclaim at the very top level.

This petition, filed March 19, 2003, seeks to classify the petitioner as an alien with extraordinary ability as an Irish dancer. In the cover letter accompanying the petition, counsel stated that the petitioner intended to establish an Irish dancing academy where he will instruct dancing if his petition for visa classification preference is approved. In his request for evidence (RFE) dated July 7, 2003, the director advised the petitioner that, as with athletes and coaches, CIS notes a difference in performing in the arts and instructing. The director sought clarification of the petitioner's intention to continue working in his field of endeavor, dancing, if his petition was approved.

In response, the petitioner stated that the opportunities for an Irish dancer are many, including dancing, teaching and choreographing. The petitioner's response is vague as to his intention to dance professionally in

the United States. As noted by the director, the skills employed by the dancer and that of the dance instructor are not necessarily the same. If his intention is to instruct in Irish dance upon approval of his visa classification preference petition, the petitioner must establish his extraordinary ability as an instructor of "Irish dance." We could then also consider the acclaim he has achieved as a dancer in support of his previous accomplishments in a similar field. See *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002).

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.

On the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, and in the accompanying letter, counsel indicated that a supporting brief and additional evidence would be submitted within 30 days of the date of the appeal. However, as of the date of this decision, no further documentation has been received by the AAO.

In response to the RFE, counsel asserts that the petitioner has won three major national and international dancing awards, including being the undefeated All-England Champion (1983-1992), the undefeated Great Britain Champion (1983-1986), placing second in the All-Ireland Championship in 1992, and placing third in the World Championship in 1986. As evidence of these awards, the petitioner submits a letter from Deirdre McAleer of the McAleer School of Irish Dancing, who states she taught the petitioner from 1978 until 1993. Ms. McAleer "confirms" that the petitioner "achieved" the aforementioned results while under her instruction. The petitioner also submits a letter from Sally Houston, who states she is a certified teacher, an adjudicator of Irish dance, and a vice president of An Coimisiún le Rincí Gaelacha, the governing body of Irish dance [redacted] tates that during his competitive career, the petitioner obtained the titles of Great-Britain Champion, All England Champion, second in the All-Ireland championships and third in the World Championships.

On appeal, counsel argues that the director failed to give proper weight to the petitioner's receipt of these awards.

We note first that in order to meet this provision, the petitioner must be in receipt of a major internationally recognized award. This highly restrictive provision is limited to those awards recognized by the public as awards for excellence, such as the Nobel Prize, an Oscar or an Olympic medal. The petitioner submitted no evidence to establish that the awards named are major internationally recognized awards.

Further, the petitioner submitted no corroborating evidence of his receipt of the awards. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

No evidence establishes these awards as major internationally recognized awards.

Through counsel, the petitioner has submitted evidence that he claims also 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.

The director determined that the petitioner met this criterion, although he had not won any championships for the past ten years. We withdraw the director's determination.

The petitioner claims to meet this criterion based on the same awards that he claims are major internationally recognized awards. indicates that competition at these various championships are by age groups, and that at the world championships, the entrants have qualified at other championships. The petitioner also includes a letter from Michael Smith, who is an adjudicator and teacher with An Coimisiún le Rincí Gaelacha. He states that competition in the various age groups at the championships can range from 100 to 500 participants, and placing in the top three represents extraordinary achievement.

A page from the website of An Coimisiún le Rincí Gaelacha appears to indicate that the organization sponsors some of the competitions that the petitioner states he won. However, the petitioner submits no corroborating evidence of the nature of the competitions or the competitors, or the criteria used for judging.

While these awards appear to be nationally or internationally recognized awards for excellence, the petitioner submitted no corroborative evidence of having won these awards. As nationally or internationally recognized awards, independent evidence, such as trophies, medals, certificates of award or other contemporaneous evidence should exist to show that the petitioner was a recipient of the awards.

The petitioner's evidence does not establish that he meets this criterion. The petitioner submitted no evidence of having won a nationally or internationally recognized award or prize for excellence as an instructor.

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.

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner claims to meet this criterion based on his membership in An Coimisiún le Rincí Gaelacha and that his acceptance as a registered instructor of Irish dance by that organization and its subsidiary, the Irish Dance Teachers' Association of North America (IDTANA). As evidence of his membership in these organizations, the petitioner submitted a copy of a letter from An Coimisiún le Rincí Gaelacha congratulating him on his registration and a copy of his membership card in the IDTANA. The petitioner submits no evidence from either organization as to its membership requirements. According to Ms. Houston and Mr.

Smith, to become an instructor of Irish dance, one must pass a rigorous teachers examination, and that a teacher's certificate, by definition, places the individual at the top of the field of Irish dance.

The record reflects that the qualifications to take the teacher's examination are not based on outstanding achievement. The applicant must obtain a recommendation from a registered teacher or adjudicator of Irish dance who certifies he or she is satisfied that the applicant can perform the required dances for the practical dancing portion of the test "to a reasonably good standard." Nothing in the requirements for the teachers' examination establish that membership in the An Coimisiún le Rincí Gaelacha and the IDTANA require outstanding achievement as a perquisite for membership. The petitioner has not established that he meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

In his letter accompanying the petition, counsel indicated that as a registered teacher, the petitioner judged "numerous" class competitions in Irish dance schools. Counsel did not present any evidence and the petitioner does not appear to claim that he meets the requirements of this criterion. As counsel did not further address this issue in response to the RFE or on appeal, we will not consider it further.

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

In order to meet this criterion, the petitioner must show that he performed a leading and critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner claims to meet this criterion based on his role as a principal dancer in the Irish dance show *Lord of the Dance* and as a member of the dance troupe in *Riverdance* and *Dancing on Dangerous Ground.* The petitioner submitted copies of contracts that he signed with Dranagh LLC and Battlefield LLC to perform in *Lord of the Dance.* The record reflects that there are three separate dance troupes that perform *Lord of the Dance*, with one troupe touring Europe, another touring the United States and one in Las Vegas. All of these performances are under the direction of Michael Flatley, who developed the show. While the petitioner performed as a principal dancer in a production performed by one of these troupes, a production is not an organization or establishment within the meaning of this criterion. The petitioner presented no evidence that he performed in a leading or critical role in the dance troupe, for Mr. Flatley's organization, or for the companies producing the performances.

Additionally, the petitioner served as a member of the dance troupe in *Riverdance* and *Dancing on Dangerous Ground.* The record reflects that the petitioner contracted with Abhann Productions Limited as a stage performer in *Riverdance* and with Tricky Feat Ltd. as a performer in *Dancing on Dangerous Ground.* The evidence does not indicate that the petitioner served in a leading role in the dance troupes staging these productions, or that he played a leading or critical role with Abhann Productions Limited or Tricky Feat Ltd.

The petitioner also performed with the group Rince na Mara in a single performance during a welcoming event for a local yacht race. The evidence indicates that the petitioner is not a member of the group, and has no role in its organizational structure. The petitioner has not established that he meets this criterion.

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

To establish that he meets this criterion, the petitioner submitted copies of his contracts with the various production companies that produced *Lord of the Dance*, *Riverdance* and *Dancing on Dangerous Ground*. His last contract with Abhann Productions Limited shows that he was to be paid $508 for each performance week before September 18, 2001 and $635 thereafter. His last contract to perform in *Lord of the Dance* was with Battlefield LLC and indicated he would receive GBP £500 for each performance week. Aiden McLaughlin of Dranagh LLC states that the petitioner's salary for *Lord of the Dance* was approximately 25% more than that of other dancers in the troupes who performed in these productions and, as far as he is aware, of those who danced in other Irish dance troupes. The petitioner submits no corroborative evidence of the salary earned by other dancers, or those who perform in high profile productions like *Lord of the Dance*.

Sean O'Brien of Abhann Productions Limited stated the entry level salary for new dancers in the *Riverdance* show was $508, and that the petitioner's rate was increased to $635 so that the company could maintain his services "in the long-term." The petitioner must establish that he is compensated at a rate significantly high in relation to others in the field, and not just of those in the same dance production. The petitioner has not established that he meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as an Irish dancer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner is a talented dancer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.