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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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

[redacted]

File: EAC 02 255 52646 Office: VERMONT SERVICE CENTER Date: FEB 28 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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 that 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a professional ballet company and school. The beneficiary is a ballet dancer and performer. 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 employ her for three years at a weekly salary of $275.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts.

On appeal, the petitioner provides additional documentation.

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 beneficiary is a native and citizen of Venezuela. Following her graduation from the National Ballet School of Havana in 1999, the beneficiary joined the National, Metropolitan, and the Contemporary Ballet companies of Caracas, Venezuela. In June 2000, she was selected to represent her country at the New York International Ballet Competition.

At issue is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts within the meaning of this provision.

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 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.

8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability, 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 that 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 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 the alien is engaged. Such testimonials must be in a form 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)(iv) 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 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 beneficiary has participated in numerous ballet competitions including an international ballet competition in Venezuela in April 2000. She took second place in an international ballet competition held in Havana, Cuba in 2000. This is not a significant national award as contemplated by the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A).

In response to a request for additional documentation, the petitioner provided the Service with two untranslated newspaper articles and three reference letters. The three reference letters state that the beneficiary performed as a soloist for three different dance companies.

The petitioner failed to establish that the beneficiary satisfies criteria numbers one and three. Although the evidence indicates that the beneficiary has performed as a lead participant in several productions, the petitioner failed to establish that the beneficiary has and will perform as a lead or starring participant in productions that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, endorsements, articles in newspapers, trade journals, publications, or testimonials.

The evidence is insufficient to establish that the beneficiary has achieved national or international recognition for achievements evidenced by critical reviews or other published materials about the beneficiary in major newspapers, trade journals, magazines, or other publications. On appeal, the petitioner provided the Service with partial translations of the news articles. One article mentions "the excellent performance" of the beneficiary as a principal dancer. Another notes that the beneficiary shared a lead role with another dancer. A third states that the beneficiary performed the role of Sugar Fairy in the Nutcracker. A fourth notes that the beneficiary plays the character of Bernarda in a ballet written by [redacted] A fifth states that the beneficiary "was fast and gracious" in her role as Spring. The beneficiary does not satisfy criterion number two.

No evidence was submitted in relation to criterion number four.

The petitioner failed to establish that the beneficiary has earned a position of prominence in her field by virtue of her achievements. The articles and reference letters are not evidence that the beneficiary has achieved national or international acclaim for her achievements in the field of ballet. The beneficiary does not satisfy criterion number five.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in ballet.

The burden of proof in these proceedings rests solely 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.