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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

Administrative Appeals Office
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

File: LIN 02 227 50960 Office: NEBRASKA SERVICE CENTER Date: MAY 23 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Nonimmigrant Worker Pursuant to 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:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a dance studio and artist manager, which seeks to employ the beneficiary as a ballroom dancer for a period of one year. The director determined that the petitioner had not established that the beneficiary qualifies as an alien of extraordinary ability in the arts.

On appeal, counsel states that the beneficiary is qualified for the classification sought. Counsel submits a brief and additional evidence, some of which had been previously provided.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), 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 . . . and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability.

In order 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 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
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> (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 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 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.

8 C.F.R. § 214.2(o)(3)(iv).

The regulations define extraordinary ability in the field of arts to mean distinction. Distinction, in turn, is defined as "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." 8 C.F.R. § 214.2(o)(3)(ii). Pursuant to 8 C.F.R. § 214.2(O)(3)(ii), arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

The beneficiary is a 30-year old ballroom dance competitor and instructor. According to the evidence on the record, the beneficiary has been participating in dance competitions since 1987. According to the record, the beneficiary competed in numerous national and international competitions in his native Bulgaria. Since his entry into the United States, he has competed in at least six dance championships.

The beneficiary has neither been nominated for, nor has he been the recipient of, any significant national or international awards or prizes. The petitioner provided evidence that the beneficiary has placed in numerous dance competitions but failed to establish that these placings constitute significant national or international awards in the field of ballroom dance.

Counsel asserts that the petitioner, Second Street Dance Studio, has become "one of the most respectful dance studios and promoters in the United States . . . among the top ten in the nation." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains four articles about the beneficiary, one of which also features the petitioner. The evidence consists of letters from the petitioner and its colleagues that speak highly of the beneficiary's skill as a ballroom dancer and choreographer and refer to his placings in competitions. The evidence is insufficient to establish that the alien has and will perform in lead, starring or critical roles for the petitioning organization. It is noted that the petitioner failed to provide corroborating evidence in the form of critical reviews and media.

The record contains insufficient evidence to establish that the beneficiary has a record of major commercial or critically acclaimed successes as a ballroom dancer. Similarly, the record does not demonstrate that the

beneficiary has received significant recognition for his achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Although the petitioner provided the Bureau with numerous letters from ballroom dance experts, they fail to establish that the beneficiary has received significant recognition for his achievements.

The record contains no evidence showing that the beneficiary has commanded a high salary in the past. The petitioner has not established that the proposed annual wage of $35,000 plus a percentage for every staged performance constitutes a high salary in relation to other ballroom dancers.

A representative of the American Guild of Musical Artists has stated in a letter dated July 9, 2002 that his organization finds the beneficiary to be of extraordinary ability in the arts based upon his Form I-129 and supporting documentation. Consultations are advisory in nature and are not binding on the Bureau. 8 C.F.R. § 214.2(o)(5)(i)(D).

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 the arts.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the director's decision will not be disturbed.

ORDER: The appeal is dismissed.