



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF L-V-B-

DATE: OCT. 31, 2018

**CERTIFICATION OF NEBRASKA SERVICE CENTER DECISION**

**PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER**

The Petitioner, a ballroom dance instructor, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center initially approved the petition. Subsequently, the Director issued a “Decision,” advising that the approval was not “clearly correct,” moving to reopen and affording the Petitioner 30 days to rebut the bases of the motion. After receiving a response from the Petitioner, the Director revoked the approval of the petition, finding that it had been approved in error. The Petitioner appealed, asserting that she meets six of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and that the Director improperly reopened the proceeding. After review, the Administrative Appeals Office (AAO) found that the Director did not follow the revocation procedures set forth at 8 C.F.R. § 205.2, and therefore remanded the proceeding back to the Director for issuance of a notice of intent to revoke (NOIR). In addition, we directed the Director to consider whether the evidence establishes that the Petitioner’s intent to continue working in her area of extraordinary ability, and to re-evaluate the evidence submitted under 8 C.F.R. 204.5(h)(3)(iii) and (vii). The Petitioner submitted a brief in response to the NOIR, referencing the evidence submitted in response to the Director’s request for evidence (RFE). After review of the response, the Director issued a decision revoking the initial approval of the petitioner, and certifying the proceedings to the AAO as directed. To date, the Petitioner has not submitted a response to the certification notice.

Upon review, we will deny the petition.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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 into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

## II. ANALYSIS

The Director found that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Since we did not receive a brief from the Petitioner in response to the notice of certification, we will consider the seven evidentiary criteria reviewed by the Director in her certification decision, and the entirety of the record.

*Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner submitted two groups of awards in support of her claim under this criterion. First, she submitted several certificates earned by her students at ballroom dancing competitions. Many of

these are team awards which do not name individual dancers, but only the Petitioner as the “team trainer.” Others identify the team as [REDACTED] and some are additionally supported by photographs of trophies. Still other certificates were awarded to specific dance couples, but identify the Petitioner as the “head” of the [REDACTED] school. The certificates are also supported by a letter from [REDACTED] President of the [REDACTED] who lists 33 certificates awarded to dancers under the Petitioner’s training from 2000 to 2008. To the extent that the Petitioner is named on these certificates, they may be considered as an acknowledgement of her contribution as a dance instructor to the awards received by the dancers, but not as awards received by her. In addition, the evidence does not establish that these awards were nationally or internationally recognized. Although some of the competitions are described as being international, the inclusion of competitors from more than one country does not, by itself, connote national or international recognition. Without evidence of recognition beyond the competition itself, we do not find that these awards meet the requirements of this criterion.

The record also includes copies of certificates awarded specifically to the Petitioner, supported by another letter from [REDACTED] dated March 24, 2010. The first is a nomination as “Best teacher-trainer of the year,” given at the [REDACTED] 2008” dance sport competition. An article which accompanies this certificate states that the Petitioner received the award, which it indicates “was taken [REDACTED] and distributed throughout the Russian Federation.” However, although a date, publication title and author are included at the bottom of this article, it is not a photocopy of printed material with page numbers, headers and other verifying indicators, nor is a website address included in the copy. Further, a handwritten website address, [REDACTED] is not complete and could not be verified. Without evidence of publication or dissemination of the article, the veracity of its contents cannot be verified and it is of minimal probative value. Furthermore, the record does not establish that the Petitioner won this award, instead of just being nominated for it. A nomination for an award does not meet the plain language of this criterion.

[REDACTED] letter also names several other awards given to the Petitioner “for professionalism in preparation and development of dance couples.” In support of this letter, the record includes three certificates issued by the [REDACTED] that acknowledge her for “contestant’s preparation” in three competitions in 2004, 2006 and 2007. These certificates are accompanied by a press release from the same committee that acknowledges the Petitioner’s receipt of this award in 2007, with a handwritten website address that also could not be verified. This evidence is insufficient to establish that these awards are nationally or internationally recognized, or that they were awarded for excellence in the field of dance sport.

In addition, while the Petitioner is acknowledged as the trainer of awarded dance couples in certificates granted at other competitions listed in [REDACTED] letter, such as [REDACTED] 2008,” she is not named as the recipient of these awards. As the plain language of this criterion states that the Petitioner must have received a qualifying award, she cannot meet this requirement based upon such certificates.

Accordingly, the evidence does not establish that the Petitioner meets this criterion.

*Documentation of the individual'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. 8 C.F.R. § 204.5(h)(3)(ii)*

In her response to the Director's NOIR, the Petitioner reiterated her claim to this criterion based upon her membership in the executive committee, or presidium, of the [REDACTED]

[REDACTED] She submitted a copy of an identification card identifying her as a "Leading Specialist" of the [REDACTED] and a letter from the [REDACTED] verifies that she was elected by vote to the presidium of leading specialists. The letter also explains the criteria by which candidates for the presidium are selected, which include work experience as a teacher/trainer, professional achievements, judging experience and letters of recommendation. Four of the eight listed criteria are based upon the total number of scored points in dance sport competitions, and thus are weighted more towards experience and activity than for outstanding achievement, and the final determination of membership is done by a vote. This evidence does not establish that outstanding achievements are required of the members of the presidium. In addition, the evidence does not establish that the auditing committee of the [REDACTED] which selects candidates for the presidium, or the delegates who ultimately vote for members of the presidium, are composed of nationally or internationally recognized dance sport experts. Therefore, the record is insufficient to establish that the Petitioner meets this criterion.

*Published material about the individual 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. 8 C.F.R. § 204.5(h)(3)(iii)*

The Petitioner submitted an article titled [REDACTED] which was published in the newspaper *Evening Petersburg* on [REDACTED] 2009. This article describes the Petitioner's career as a dance trainer, lists some of the same information as in the letters from [REDACTED] regarding competition wins by her students, and does not name an author, instead stating that it was issued by the [REDACTED]. Also, the Petitioner submitted a second article, titled [REDACTED] which was published in *Arguments of the Week* [REDACTED] 2008.

While both of these articles are clearly about the Petitioner and her work as a dance trainer, the evidence submitted regarding the publications in which they appeared does not establish that they qualify as professional or major trade publications or other major media. Pages from Wikipedia about these newspapers, written in Russian, are accompanied by Google translations of the pages, together with translator's certifications that the Google translations are accurate. Regarding *Evening Petersburg*, the page indicates that the newspaper was established in 1917 as *Evening Leningrad*, but provides no further data such as circulation or readership which might substantiate its status as major media. The page about *Arguments of the Week* states that it has a circulation of 570,000, but no

comparative evidence regarding other Russian newspapers was submitted.<sup>1</sup> In addition, as there are no assurances about the reliability of the content from this open, user-edited Internet site, information from *Wikipedia* will be accorded no evidentiary weight. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008).<sup>2</sup>

Because it has not been established that either of the newspapers in which articles about the petitioner were published qualify as major media, this criterion has not been met.

*Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

The Petitioner highlighted the article from *Arguments of the Week* when claiming this criterion in her response to the Director's NOIR. This article, which lists the names of dance sport judges as its authors, describes aspects of the Petitioner's teaching method, including her use of established ballroom dance terminology, "biomechanics of the dance," and specialized exercises and training. However, this evidence does not indicate that her teaching method is an original contribution to dance sport, especially since it is described as being at least partially based upon existing standards. Further, while she may have employed these techniques with her own dance students to some degree of success, this article does not indicate that her teaching method has been adopted by other dance sport trainers, or has been widely disseminated to others in the dance sport community.

Moreover, the Petitioner had previously based her claim to this criterion upon the certificates and press release mentioned above from the [REDACTED]. Although the Petitioner claimed that this evidence shows that she founded the [REDACTED] competition, neither the certificates nor the press release support that claim. In addition, the evidence does not establish that, even if the Petitioner had shown that she founded this dance sport competition, that that would qualify as an original artistic or athletic contribution of major significance.

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<sup>1</sup> In her response to the Director's NOIR, the Petitioner refers to this publication as *Argumenty I Fakty (Arguments and Facts)* and describes it as "the most popular Russian weekly edition with circulation close to 3 million." The evidence does not support these assertions, or any relationship between the two publications.

<sup>2</sup> See also the online content from [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on October 24, 2018,, and copy incorporated into the record of proceeding is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

Accordingly, the Petitioner does not meet this criterion.

*Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)*

In her decision, the Director stated that this criterion was not met because the Petitioner did not submit properly certified translations of documents submitted in support of her claim. However, upon review, the translations of the documentation submitted in support of this criterion include all relevant portions of the evidence. The article from the [REDACTED] 2008 edition of the magazine "Sobaka" describes the Petitioner's career as a dancer and dance teacher at the [REDACTED] school, as well as her role as [REDACTED] senior trainer. In addition, the letter from [REDACTED] dated January 18, 2009, confirms the Petitioner's leadership role for the school and describes her as "the face of our school." In addition, the record includes several awards received at regional and national dance sport competitions by individual dancers and dance groups from [REDACTED] demonstrating that it enjoys a distinguished reputation in the Russian dance sport community. As such, the Petitioner has established that she meets this criterion.

*Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)*

The Petitioner states in her response to the Director's NOIR that she earned 910,754 rubles in 2007 and 1,023,989 rubles in 2008 as a dance sport trainer. In support of her claim under this criterion, she submitted several documents intended to verify her earnings claim and establish an average salary in her field for purposes of comparison. However, the 2007 Russian Federation tax return she submitted is only partially translated, as is the evidence submitted from the [REDACTED] 2008 edition of the magazine *Social Security Questions*, which includes a table showing the average monthly salary for dance teachers in [REDACTED]. The regulation at 8 C.F.R. § 103.2(b)(3) states:

Any document containing foreign language submitted to USCIS shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Without a complete translation of these documents, we are unable to conduct an accurate analysis of their content.

Also submitted under this criterion is an audit report of the Petitioner's earnings in 2006, 2007, and 2008. The report repeats the Petitioner's claims for her earnings for 2007 and 2008, but indicates that her taxes were audited for only 2008. Further, the audit report does not provide a detailed breakdown of the sources of the Petitioner's earnings, rendering the data included of limited evidentiary value for purposes of comparison to others in the Petitioner's field. This is especially relevant since the translated portions of the Petitioner's 2007 tax return indicate that her earnings

were broken down into her salary from [REDACTED], her income from “performing the private practice individual training with couples,” and awards “received at the conducted competitions.”

In addition to the already mentioned audit report and [REDACTED] 2008 article, several other sources of comparative salary information for dance teachers in Russia and more specifically, the St. Petersburg area, were submitted. However, this evidence is inconsistent in its scope and unclear in its methodology. The audit report states, citing an unnamed “database on tax declarations of physical persons of the Russian Federation,” that average total annual earnings for ballroom dance teachers in [REDACTED] is between 190,000 and 249,000 rubles. Also submitted was a webpage and chart from the Federal State Statistic Service of the Russian Federation dated October 31, 2011, showing that in 2008, workers in education in Russia earned a monthly salary of 11,316 rubles, or more than 135,000 rubles annually. However, this data is not sufficiently specific to the Petitioner’s location and position, and is therefore not relevant for purposes of comparison. A second table titled “Average salary in Russia in 2007-2008” also provides data which is too broad in scope to provide a comparison to the Petitioner’s claimed figures.

Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. Rather, the petitioner must submit documentary evidence of the earnings of those in his/her occupation performing similar work at the top level of the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). We note that in *Matter of Racine*, 1995 WL 153319 at \*1, \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Finally, a letter from [REDACTED] deputy of the [REDACTED] for the city of [REDACTED] indicates that as of 2010, the average monthly salary for a ballroom dance teacher is 20,450 rubles, or approximately 245,000 rubles on an annual basis. While this is comparable to the data provided in the audit report, it is not clear whether these figures include all sources of income, or only base salary from a particular employer. Since the translated portions of the Petitioner’s 2007 tax return indicate that multiple sources of income were combined to calculate her total earnings, it is not apparent that the figures provided in the return or in the audit report can be compared with the comparative figures described above.

Based on the above, the evidence does not sufficiently establish that the Petitioner meets this criterion.

### III. CONCLUSION

The evidence does not establish that the Petitioner received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in its entirety, concluding that it does not support a finding that she has established the acclaim and recognition required for the classification sought. For these reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability.

**ORDER:** The petition is denied.

Cite as *Matter of L-V-B-*, ID# 1668665 (AAO Oct. 31, 2018)