U.S. Citizenship and Immigration Services

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

In Re: 17522107

Date: JUL. 22, 2021

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a dance studio, seeks to classify the Beneficiary as a foreign national of extraordinary ability in athletics. To do so, the Petitioner seeks O-1 nonimmigrant classification, available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the alternative evidentiary criteria applicable to individuals of extraordinary ability in athletics, either a major, internationally recognized award or at least three of eight possible forms of documentation pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner asserts that the Beneficiary meets at least three criteria along with comparable evidence of the Beneficiary's eligibility.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

## I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that 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. Department of Homeland Security (DHS) regulations define "extraordinary ability in the field of science, education, business, or athletics" as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. 8 C.F.R. § 214.2(o)(3)(iii). A petitioner must submit evidence either of "a major, internationally recognized award, such as a Nobel Prize," or of at

least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). If the petitioner demonstrates that the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, it may submit comparable evidence in order to establish the individual's eligibility. 8 C.F.R. § 214.2(o)(3)(iii)(C).

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) ("The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met."). Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[1]

## II. ANALYSIS

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, seeking to employ the Beneficiary as a DanceSport (competitive ballroom dancing) professional for a period of three years. The record shows that the Beneficiary is a 20-year-old DanceSport practitioner who began competing in DanceSport [redacted] in 2010 at the age of ten years old, and that he has competed in numerous international, national, regional, and municipal DanceSport competitions. Documents submitted by the Petitioner also indicate that the Beneficiary has worked in [redacted] as a dance instructor of children. In its initial letter, the Petitioner describes the Beneficiary as "an O-1A Athlete of Extraordinary Ability" who has achieved "extraordinary competitive success" and "recognition as one of the leading Ballroom and Latin Dancers and instructors in [redacted]." It indicates his duties in the proffered position will be to compete in "national, international, and world-level DanceSport competitions and showcases as a professional competitive Ballroom and Latin Dancer on behalf of our studio, and . . . serve as a Ballroom and Latin Dance Instructor at our Studio." The Petitioner's agreement with the Beneficiary states that he will be employed in the United States as a dance instructor and a competitive dancer. The initial submission contained an itinerary for the Beneficiary that included annual DanceSport competitions throughout the United States.

### A. Evidentiary Criteria

In denying the petition, the Director determined that the Petitioner did not claim the Beneficiary met the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A), and she further found that the Beneficiary fulfilled two of the initial evidentiary criteria, receipt of nationally or internationally recognized prizes or awards at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) and membership in associations at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*). Although we agree with the Director's determination regarding the awards criterion, we do not concur with the Director's finding relating to the membership criterion, discussed below.

[1] *See also Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

On appeal, the Petitioner maintains that the exhibits satisfy two additional criteria and that it also submitted comparable evidence of the Beneficiary's eligibility under 8 C.F.R § 214.2(o)(3)(iii)(C). As explained below, we find that the exhibits do not satisfy at least three of the evidentiary categories described at 8 C.F.R. § 214.2(o)(3)(iii)(B) or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iii)(C).[2]

> *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.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*).

As discussed earlier, the Director found that the Petitioner satisfied this criterion. In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based only on employment or activity in a given field, minimum education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion, as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue is membership requirements rather than the association's overall reputation.

The Petitioner contends that the Beneficiary meets this criterion based upon his membership in the [redacted] and the World Dance Sport Federation (WDSF). While the record includes documentary evidence that reflects the Beneficiary's membership in [redacted] and registration with WDSF, it does not reflect that either organization requires outstanding achievements of its members, as judged by recognized national or international experts.

First, the Petitioner referenced several letters in support of this criterion. [redacted] president of the [redacted] the governing body of the sport [redacted] states that the Beneficiary "is considered one of the leading members of our Federation and has been accorded an "S" class dance classification, the highest such classification accorded to Dance Sport athletes by [redacted] The record contains additional letters from [redacted] a WDSF Adjudicator and coach, [redacted] Region Director for [redacted] Dance Studios, [redacted] head coach of [redacted] in [redacted] and [redacted] a DanceSport athlete with [redacted] all of whom contend that DanceSport, unlike other sports, does not have a "Hall of Fame" that only accepts as its members "the very best in the field." As previously stated, however, to meet this criterion a petitioner must show that the associations require outstanding achievements of their members. As the Petitioner maintains that the Beneficiary's membership in [redacted] and WDSF satisfies the requirements of this criterion, it is the Petitioner's burden to establish every element of this criterion. The authors of the aforementioned letters also emphasize that the Beneficiary was accorded an 'S' Class dance classification, which they assert is based on his outstanding achievement in the sport. Although the

[2] We note that the Director determined that the Petitioner claimed, but did not establish, that the Beneficiary meets the criterion related to high salary under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*). On appeal, the Petitioner does not contest the Director's finding that the Beneficiary does not meet this criterion or offer additional arguments. Therefore, we consider this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.,* 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Beneficiary's "S" Class dance classification may be a commendable achievement in the field, the documents submitted do not establish that either the WDSF or [redacted] require outstanding achievements in the field as an essential condition for admission to membership.

Regarding the WDSF, the Petitioner provided screenshots from the WDSF website that show that the [redacted] is a national member association of the WDSF, and the Beneficiary's registration with WDSF as a licensed "athlete" and member of [redacted] The Petitioner also submitted a copy of the WDSF Competition Rules, within which rule "D.1 (Membership)" indicates that "[e]ach competitor in a WDSF competition must be a Member of, or formally affiliated with, a WDSF Member body representing a country." The WDSF Competition Rules submitted by the Petitioner do not specifically define the requirements for "athlete" designation. Accordingly, the Petitioner has not established that WDSF requires outstanding achievements of its "athletes" as judged by recognized national or international experts in the field.

Regarding the [redacted] the Petitioner provided several screenshots from the association's website that provide general information about the organization. The record does not contain evidence, such as a translated copy of the official rules or selection procedures from the bylaws or constitution of the [redacted] showing the association requires outstanding achievements of its members, as judged by recognized national or international experts. The Petitioner provided a foreign-language document that it claims contains the Rules of the [redacted] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* In addition, the Petitioner provided what it claims is an English translation of a portion of that document, but it is not accompanied by the required certification from the translator. Because the Petitioner has not submitted full and certified English language translations, it did not comply with this regulation. As such, we cannot determine whether the evidence supports the Petitioner's claims.

Further, the record contains a letter from [redacted] of the [redacted] who states that in the [redacted] "the highest level of dancesport is the S-class (in order starting from the lowest – E, D, C, B, A and S classes)."[3] Moreover, the Petitioner provided a copy of several pages of the Beneficiary's [redacted] "Competitive Dancer Competition Book," in which his dancer classification is recorded. The Beneficiary's [redacted] competition book shows he joined the organization as a "Class C" dancer in 2010 at the age of 11, and that his dancer classification level progressed from "C" and "B" in 2010 to "A" and "S" in 2013. Although the Beneficiary was eventually accorded the S-Class dancer classification in 2013, it is evident that such designation is not a condition for membership in this association. Absent evidence to the contrary, it appears that membership in the organization is held by competitive dancers of all ages and levels, rather than being reserved for those dancers who have recorded outstanding achievements in the field. Thus, the documentation submitted does not show that [redacted] requires outstanding achievements of those accepted for admission, as judged by recognized national or international experts in the field.

[3] We note that [redacted]s letter is addressed to the Beneficiary's dance partner, [redacted]

For the reasons outlined above, the record does not reflect that the Petitioner submitted documentation sufficient to demonstrate that the Beneficiary meets this criterion, and the Director's determination on this issue will be withdrawn.

> *Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*).

In order to fulfill this criterion, the Petitioner must demonstrate published material about the Beneficiary in professional or major trade publications or major media, as well as the title, date, and author of the material. The Petitioner argues, regarding the published materials submitted, that "each and every article mentioned and highlighted the Beneficiary's top awards and placements at prominent national or international-level DanceSport competitions." The Petitioner does not address any specific articles on appeal.

We note that several of the articles do not include the author of the material. Furthermore, none of the articles show published material about the Beneficiary relating to his work. The articles mention the Beneficiary's competition results, among those of other competitors. For example, two articles from [redacted] and [redacted] respectively, noted that the bronze medal in the Youth Class 2 "was earned by [the Beneficiary] and [redacted] from [redacted]'s French Dance School" at the 2012 [redacted] Latin American dance championship in [redacted]. An item from [redacted] reported the Beneficiary's 6th place finish at the 2016 World DanceSport Federation [redacted] dance competition in [redacted]. A piece from [redacted] provides that the Beneficiary and his partner were the highest-placing [redacted] couple in the Latin-American dances of the 2018 [redacted] Dance Championship in [redacted], finishing 9th out of [redacted] couples. An article dated 2019 from [redacted] indicates that the Beneficiary and his partner finished 2nd at a Latin American dance competition. Articles from [redacted] and [redacted] indicate that the Beneficiary and his partner placed 38th at the 2019 [redacted] Championships in Latin American Dance in [redacted] France. Although he is referenced, the articles are not about the Beneficiary and do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

An additional article, titled [redacted] was published by the website [redacted] in 2019. Although the Petitioner provided data from *SimilarWeb* indicating that [redacted] ranks 5th in [redacted] and appears to qualify as major media, it did not provide data for [redacted] Regardless, the article from [redacted] is not about the Beneficiary; it was written about the 2019 [redacted] Championships in Latin American Dance, mentioned above. The article reports that the [redacted] couple [redacted] placed 8th and provides the identities of the [redacted] and [redacted] couples who had podium finishes in the event. The article also mentions that the Beneficiary and his partner placed 38th out of [redacted] pairs in the championships. Again, articles that are not about a beneficiary do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008).

Moreover, with the possible exception of the article from [redacted] the Petitioner did not demonstrate that any of the websites constitute professional or major trade publications or major media. While it provided statistics, such as global rankings, country rankings, category rankings, total visits, and website estimated traffic from SimilarWeb and Alexa, the Petitioner did not explain or show the significance of the figures, indicating major status or standing.

Based on the foregoing, the Petitioner has not established that the Beneficiary fulfills this regulatory criterion.

B. Comparable Evidence

As discussed earlier, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) provides that comparable evidence "may" be submitted if the criteria in 8 C.F.R. § 214.2(o)(3)(iii) do not readily apply to a beneficiary's occupation. It is the Petitioner's burden to articulate why one or more criteria do not readily apply to the Beneficiary's occupation and how the evidence submitted is "comparable." On appeal the Petitioner maintains that the Director erred in not also considering its submitted exhibits under the "comparable evidence" regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C), as comparable evidence of criteria applicable to individuals with extraordinary ability in the arts, specifically at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*), (*3*), and (*5*), instead of the criteria related to extraordinary ability in athletics pursuant to 8 C.F.R. § 214.2(o)(3)(iii). On appeal the Petitioner explains that its evidence should be considered as comparable evidence under those criteria "borrowed from the O-1B classification criteria" because "Ballroom and Latin dance (DanceSport) involves artistic expression through interpretation of music and choreography."

However, the Petitioner expressly filed the petition under the O-1A classification, selecting subsection 3.a under Section 1 of the O classification supplement, the subsection for petitioners seeking classification for extraordinary ability in "sciences, education, business or athletics (not including the arts, motion picture or television industry)." The Petitioner also cited the regulations for that category in its brief accompanying the filing and asserted that it sought to classify the Beneficiary as "an O-1A Alien of Extraordinary Ability in Athletics." As the Petitioner requested that the Beneficiary be granted O-1 status as an alien of extraordinary ability in the field of athletics the Director properly limited her review of the evidence as it pertains to the definition of extraordinary ability and specific eligibility criteria applicable to that classification at 8 C.F.R. § 214.2(o)(3)(iii).[4]

## III. CONCLUSION

The Petitioner has not submitted evidence that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A). Further, although the Petitioner established that the Beneficiary met the awards criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*), it did not

[4] We also note, upon review, that the record does not demonstrate that the Beneficiary is eligible for classification as an individual with extraordinary ability in the arts under the requirements of 8 C.F.R. § 214.2(o)(3)(iv). We have previously found that, although there may be instances in which a competitive ballroom dancer seeks to enter the United States to provide services as an entertainer or performing artist, rather than as a competitive dancer-athlete, the nature of the intended events or activities in the United States is critical in determining whether the Beneficiary is entering the United States to provide services as an "athlete" or as an "artist." Here, as the Beneficiary is clearly coming to the United States to participate in or train others for athletic events, the Beneficiary is not engaged in the field of arts.

establish that he meets the criteria relating to memberships in associations and published materials. Although the Petitioner claims the Beneficiary's eligibility for an additional criterion on appeal, relating to having been employed in a critical or essential capacity for distinguished organizations and establishments at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B), we reserve this issue.[5] Consequently, the Petitioner has not established the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary ability in athletics. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.

[5] *See INS v. Bagamasbad,* 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).