U.S. Citizenship and Immigration Services

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

MATTER OF S-34D-, INC.

DATE: OCT. 12, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a dance studio, seeks to temporarily employ the Beneficiary as a ballroom and Latin dancer, and dance instructor. To do so, the Petitioner seeks O-1 nonimmigrant visa 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 Form I-129, Petition for a Nonimmigrant Worker, concluding that the Beneficiary did not satisfy the 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. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner provides a brief asserting that the Beneficiary meets the regulatory requirements for O-1 classification.

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 include the following definition: "Extraordinary ability in the field of science, education, business, or athletics means 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 the initial evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. 8 C.F.R. § 214.2(o)(3)(iii). First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of the individual's achievements in the field through evidence of a major, internationally recognized award, such as the Nobel Prize.

8 C.F.R. § 214.2(o)(3)(iii)(A). If the petitioner does not submit this evidence, then it must submit sufficient qualifying evidence that meets at least three of the eight categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). 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)(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 extraordinary ability in athletics under section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[1]

## II. ANALYSIS

### A. Regulatory Criteria

Absent evidence of a major, internationally recognized award, we address whether the Petitioner offered documentation to establish that the Beneficiary satisfies at least three of the six evidentiary categories listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*).[2] The Director determined that the Beneficiary did not satisfy any of those criteria. On appeal, the Petitioner maintains that the Beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*), (*3*), (*4*), and (*7*).[3] We assess these four criteria below and conclude the Beneficiary has satisfied only one of them.

> *Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*).

The Petitioner provided numerous certificates from age-specific, amateur, and professional dance sport competitions reflecting the Beneficiary placed first through fifth in various categories such as "Rising Stars Latin," "Freestyle," and "International." For example, the Petitioner submitted a March 2015 "Certificate of Award" from the [redacted] stating that the Beneficiary placed fifth in the "Europian [*sic*] Cup Adult Latin" category. Another certificate indicated that the

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[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."

[2] The Petitioner does not claim a major, internationally recognized award to establish the Beneficiary's eligibility under the single evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A).

[3] While the Petitioner previously claimed the Beneficiary's eligibility for the criteria pertaining to membership in associations requiring outstanding achievements under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*) and original contributions of major significance under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*5*), the Petitioner does not continue to do so on appeal, nor does the record support a finding that the Beneficiary meets them. Accordingly, we will not further address these criteria in our decision.

Beneficiary placed second at the 2005 in the age 14-16 freestyle category. The Petitioner also presented a diploma from stating that the Beneficiary and his partner placed fourth in the Latin dance category for "youth + adults."[4] Furthermore, the record includes photographs of the Beneficiary's dance trophies and medals, and pictures of him at various dancing competition award ceremonies wearing or holding his medals and trophies. The Director determined that the Petitioner had not presented sufficient evidence demonstrating "the significance and prestige of [the Beneficiary's] awards or finishes" and further indicated that many of his awards related to "junior level competition."

In the appeal brief, the Petitioner asserts that the "competitions where the Beneficiary participated and garnered top prizes and awards, were held in accordance with the strict standards set forth by two of the world's preeminent governing bodies in the field of ballroom and Latin dance, namely the and the "[5] While several of the Petitioner's award certificates list the and or display their logo, the issue here is not the reputation of the organizations that set the rules for the competitions in which the Beneficiary participated, but rather whether any of his specific dance awards rise to the level of nationally or internationally recognized awards in the field. The Petitioner's appeal brief does not identify which of the Beneficiary's awards from competitions governed by the or constitute nationally or internationally recognized awards in the field of dance.

In addition, the Petitioner argues that it "provided ample testimonial evidence from some of the most prominent figures and experts in the field of ballroom dance, each of whom praise and exalt the high level of achievement and international recognition of the Beneficiary's awards in the field."[6] For example, president of the asserts that the Beneficiary has won "some of the most prominent national competitions in Georgia." She further contends that he has achieved "top placing at some of the most prominent international competitions in Ukraine, Greece, Armenia and Kazakhstan." Similarly, Armando Martin, an area franchisor with [7] states that the Beneficiary has "earned top placement in most of the national and international competitions where he competed." Without further detailed information and supporting evidence, these assertions of references such as and are not sufficient to demonstrate that the Beneficiary's awards are nationally or internationally recognized in

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[4] In addition to the top of this diploma lists the

[5] The Petitioner provided documentation relating to the and including their competition rules, background information, and promotional material. The record, however, does not contain official comprehensive results from the competitions in which the Beneficiary received awards indicating the number of entrants in the specific categories in which he competed or other documentary evidence showing their excellence in the field. Moreover, a competition may include dancers from throughout a particular country or other countries, but this factor alone is not sufficient to establish that an award from that competition is "nationally or internationally recognized."

[6] We discuss only a sampling of these letters, but have reviewed and considered each one.

[7] We note that the Petitioner is a

the field.[8]

The record also includes media interviews of the Beneficiary discussing dance competitions that he and his students traveled to outside of Georgia (such as the 2015 where he and his partner placed fifth), but the Petitioner has not demonstrated that this coverage shows that the Beneficiary's specific awards from these competitions are nationally or internationally recognized.[9] Without sufficient evidence showing that the Beneficiary's competitive dancing awards are nationally or internationally recognized prizes or awards for excellence in the field, the Petitioner has not established that he meets this criterion.

> *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*).

The Petitioner offers a transcript of the Beneficiary's radio interview with Sputnik-Georgia news agency discussing his dance studio and his and his students' competitive results at the 2015 [10] The record also includes information about Sputnik news agency from its website stating that it "broadcasts from the studios of local radio stations" and "broadcasts for a local audience." The Petitioner, however, does not identify the radio station or stations that aired the Beneficiary's interview or the size of the program's listening audience relative to other radio news programming. Without further evidence, the record does not show that the program which aired the interview is a form of major media.

In addition, the Petitioner presents what he identifies as a 2015 article from the *PrimeTime.ge* website entitled The Petitioner did not provide a full copy of the original online article, but instead what appears to be excerpts of text and images from the article on a document containing the English language translation. Because the original article was not provided, this evidence holds limited probative value. Further, while the record includes a "rating of popular Georgian sites" from the website Top.ge ranking *PrimeTime.ge* at 32nd, and a traffic estimate from TrafficEstimate.com reflecting "100,800 visits over the last 30 days," this information is not sufficient to demonstrate that *PrimeTime.ge* qualifies as a form of major media.

The record also includes a "Georgian Broadcaster" video screen print and transcript from an 2014 interview of the Beneficiary and his partner after they placed first in the

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[8] and several other references each list the Beneficiary's top five placings from the same six dance competitions but they do not discuss the significance of any particular award he received.

[9] We will further address this documentation under the published material criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*).

[10] The Petitioner and his partner placed fifth at this competition.

category" at the [redacted] in March 2014. The Petitioner further provides information about "Georgian Public Broadcasting" (GPB) from its website and *Wikipedia*, but this information does not relate to "Georgian Broadcaster."[11] Here, the Petitioner has not demonstrated that "Georgian Broadcaster" and GPB are the same organization and that the program featuring the Beneficiary's interview was a form of major media.

Additionally, the Petitioner submits a newspaper article entitled "[redacted]" The date and author of this article was not provided, nor is there evidence demonstrating that it was published in major media.

Furthermore, the record includes two video screen prints and accompanying transcripts from Imedi TV dated [redacted] 2014 and [redacted] 2015. The [redacted] 2014 video is about the [redacted] and only identifies the Beneficiary in passing. This criterion, however, requires material "about the alien." The [redacted] 2015 video briefly mentions the Beneficiary's fifth place finish at the [redacted] in March 2015. The Petitioner also presents information about "Imedi Media Holding" company from *Wikipedia*[12] and data from TrafficEstimate.com indicating that the Imedi.ge website[13] "has received an estimated 127,500 visits over the last 30 days." The aforementioned information does not show that the television program which aired the video footage is a form of major media.

The Petitioner also provides two video screen prints and accompanying transcripts from GDS TV dated [redacted] 2014 and [redacted] 2015. These GDS TV videos appear to be about the Beneficiary and relating to his work. Finally, the record contains two video screen prints[14] and accompanying transcripts from Rustavi 2 TV dated [redacted] 2014 and [redacted] 2014. The [redacted] 2014 video shows the Beneficiary and his female partner, but he is not named in the accompanying transcript. Instead, the transcript discusses the 2014 [redacted]. With respect to the Rustavi 2 TV video dated [redacted] 2014, it appears to show the Beneficiary dancing with his partner, but the accompanying transcript only mentions him in passing. Nonetheless, the record does not include sufficient information and evidence regarding the GDS TV or Rustavi 2 TV programs which aired the video footage to demonstrate that they qualify as major media. Based on the foregoing, the Petitioner has not demonstrated that the Beneficiary meets this regulatory criterion.

> *Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*).

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[11] The logo for "Georgian Broadcaster" appearing on the YouTube screen print submitted by the Petitioner is different than GPB's logo.

[12] *Wikipedia* is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. *See General Disclaimer, Wikipedia* (September 20, 2018), https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008).

[13] The evidence, however, does not indicate that these two videos were posted to the Imedi.ge website, but rather were posted to YouTube by the Beneficiary's dance studio, [redacted]

[14] The screen prints depict videos posted to YouTube by [redacted]

The Petitioner offers a letter from president of the listing 12 dance sport competitions judged by the Beneficiary. The record also includes a January 2013 letter inviting the Beneficiary to adjudicate the - 2013" dance sport competition, photographs of him judging at various dance sport events, and his judging license. Finally, the Petitioner presents a September 2017 letter from , president of the , stating that the Beneficiary judged her organization's (April 2015) and 2014." We find that the aforementioned documentation is sufficient to demonstrate that the Beneficiary meets the plain language requirements of this regulatory criterion.

> *Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*).

The record includes two letters from discussing the capacity in which the Beneficiary has worked for the since 2013. The initial letter from states that the Beneficiary "was appointed to serve as a coach of and that during his tenure those "teams achieved significant success at the national and international championships." In addition, indicates in her second letter that that the Beneficiary was "hired as the in 2014." She further explains that this position involved "organizing monthly seminars for our young athletes, as well as organizing summer and winter workshops to further promote in Georgia on the national level." The aforementioned information, however, is not sufficient to demonstrate that the Beneficiary has been employed in a critical or essential capacity for the The evidence does not differentiate the Beneficiary from the officers (such as its president and vice president) or other coaches and chairpersons, and is insufficient to establish that his specific role has contributed to the organization in a way that was of substantial importance to its success or standing. Furthermore, the record does not include supporting evidence demonstrating the distinguished reputation in the field.

The Petitioner also contends that the Beneficiary was employed in a critical or essential capacity as the coach of a Georgian dance studio. The record, however, does not include a letter or other evidence from indicating the Beneficiary's terms of employment at this studio or explaining his critical or essential capacity. Furthermore, while the record includes media interviews of the Beneficiary discussing dance competitions in which he and his students received awards and reference letters mentioning the studio, this evidence is not sufficient to show that has earned a distinguished reputation. For example, the record does not establish that status is at a level of distinction when compared to the competitive achievements of other studios whose dancers compete professionally. As a result, the Petitioner has not provided sufficient documentation to meet this criterion.

B. Qualitative Analysis

In addition to finding that the Beneficiary has not satisfied at least three regulatory criteria, we note that the documentation in the aggregate is not indicative of his eligibility as an individual of extraordinary ability. *See* 59 Fed. Reg. 41820; *Chawathe*, 25 I&N Dec. at 376. For example, with respect to the awards won by the Beneficiary and his students in competitions that were limited by age group, amateur status, or participation in the "rising star" category, such awards do not demonstrate a level of expertise commensurate with being among the small percentage who have arisen to the very top of the field of endeavor. *See* 8 C.F.R. § 214.2(o)(3)(ii). There is no indication that the Beneficiary and his students' competitive categories included experienced professionals from throughout the field, rather than being mostly limited to amateur and youth dancers.

Furthermore, the record does not establish that the articles, video footage, and radio interview of the Beneficiary appeared in major media or otherwise demonstrate media coverage that is reflective of achievement at the very top of his field. Additionally, we note that the aforementioned print and media material was limited to 2014-2015 and therefore not consistent with "sustained national or international acclaim." *See* section 101(a)(15)(O)(i) of the Act; 8 C.F.R. § 214.2(o)(3)(iii). Regarding the Beneficiary's participation as a judge, the record does not include supporting evidence demonstrating the reputation of the listed competitions or the level of expertise of the dancers he evaluated. Without evidence that sets the Beneficiary apart from others in his field, such as evidence that he has served as a judge of acclaimed ballroom dancers or of a prestigious national or international competition rather than youth or amateur competitions, the record does not show that he "is one of the small percentage who have arisen to the very top of the field of endeavor." *See* 8 C.F.R. § 214.2(o)(3)(ii). Finally, the record does not indicate that the Beneficiary has been employed in a critical or essential capacity for organizations that have a distinguished reputation or that his employment was indicative of sustained national or international acclaim at the very top of the field.

## III. CONCLUSION

The record does not satisfy at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Even if these initial evidentiary requirements had been met, the cumulative record does not demonstrate the Beneficiary's sustained national or international acclaim and recognition for achievements. 8 C.F.R. § 214.2(o)(3)(iii). Nor does the evidence show a level of expertise indicating that he is one of the small percentage at the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as an individual with extraordinary ability in athletics.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-34D-, Inc.*, ID# 1389007 (AAO Oct. 12, 2018)