U.S. Department of Homeland Security
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Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 10 2007

LIN 05 072 50756

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Maura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed with a finding of fraud and material misrepresentation.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. Part 5 of the Form I-140 petition lists the petitioner's occupation as a ballet dancer and teacher. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On January 23, 2007, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that he submitted falsified material in support of his petition. The notice specifically observed that the petitioner signed the Form I-140, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct."

Regarding the fraudulent document and its materiality to these proceedings, the AAO's notice stated:

> 8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. In support of your petition, you submitted a Diploma dated "18 August 1995" declaring you as a "finalist" at the "Third International Ballet Competition 'Maya.'" You also submitted a resume detailing your education, experience, and accomplishments. **Under the heading "Awards," your resume states: "Third** International Ballet Competition 'Maya.' Finalist. Diploma. St. Petersburg, Russia 1995." In response to the director's request for evidence, however, you submitted a document printed from the "International Ballet Competition 'Maya'" internet website entitled "Judging" which reflects that this competition occurred in 1998, not in "1995" as indicated on your aforementioned Diploma and resume.[1] Based on this discrepancy regarding the date of your Diploma and using the internet address from the website material you submitted, the AAO accessed further material at the International Ballet Competition "Maya" internet website.[2]
>
> This material indicates that the First International Ballet Competition "Maya" took place in August 1994, the Second International Ballet Competition "Maya" took place in December 1996, and the Third International Ballet Competition "Maya" took place in August 1998, not in August 1995 as indicated on the Diploma and resume that you submitted to CIS. A document printed from the competition's internet website entitled "Schedule" reflects that the "Third (final) round" of the Third International Ballet Competition "Maya" took place on August 21, 1998 and that the "closing ceremony" in which prizes were awarded took place on "August 22."[3] As stated previously, the Diploma naming you as a finalist at the Third International Ballet Competition "Maya" is dated "18

[1] According to your Form I-485, Application for Permanent Residence, your "Date of Last Arrival" in the United States was November 25, 1997.

[2] *See* http://maya.wplus.net/ballet_konk_eng.htm, accessed on January 9, 2007 (attached to this notice).

[3] *See* http://maya.wplus.net/ballet_schedule_eng.htm, accessed on January 9, 2007 (attached to this notice).

August 1995," more than three years before this competition occurred and its awards were presented. You have not resolved this significant discrepancy regarding the date of your award certificate.

By submitting the Diploma dated "18 August 1995" from the "Third International Ballet Competition 'Maya,'" it appears that you have attempted to obtain a visa by fraud and willful misrepresentation of a material fact. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

If you choose to contest the AAO's finding, you must offer independent and objective evidence from credible sources addressing, explaining, and rebutting the discrepancy described above. If you do not submit such evidence within the allotted twelve-week period, the AAO will dismiss your appeal.

* * *

By filing the instant petition and submitting the evidence described above, you appear to have sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Unless you are able to provide independent and objective evidence to overcome, fully and persuasively, our above finding, the AAO will dismiss your appeal and enter a formal finding of fraud into the record.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner was requested to submit the original version of his August 18, 1995 diploma from the Third International Ballet Competition "Maya." The petitioner was also requested to submit the originals of his diplomas from the "Competition of Ballet Mastery 'Debut – 1991'" and the "First all Russian Competition of A. Ya. Vaganova Students of Advanced Classes of Choreographic Academies" (1988). In accordance with the regulations at 8 C.F.R. §§ 103.2(b)(5) and (16)(i), the petitioner was afforded 12 weeks in which to respond to the AAO's notice.

In response, the petitioner submitted an April 6, 2007 letter stating:

I am writing this letter to response [sic] to your letter of January 23, 2007. According to your letter I was granted 12 weeks to submit the originals of all the requested documents. When I came to US in 1997 I did not plan to stay for such a long time and I left all my professional papers at home. When I decided to file for I-485 I started gathering all my documents. I could not get the originals from Ukraine but I contacted A&I Agency in Brooklyn, NY to help me find my documents in former Soviet Union. I paid them $2500 and after a few months they faxed me copies of all my documents from Russia. After your letter I tried to contact this Agency to help me get my originals but learned that A&I do [sic] not exist anymore. I went to 603 Brighton Beach Ave. second floor Brooklyn NY and find out that them [sic] out of business for years.

> Unfortunately all the requested originals are in Russia and Ukraine. After living in US for almost 10 years (since 1997) most of my contacts in Russia been lost. I would have to go there personally to try and get the document requested by USCIS.
>
> * * *
>
> Accordingly, I hereby asking you to grant me additional 12 weeks to properly respond to your letter of intent to deny dated January 23, 2007.

Rather than submitting the requested originals within the time period specified in the AAO's January 23, 2007 notice, the petitioner instead requests additional time to obtain these documents. Regarding the petitioner's failure to submit the requested originals within the allotted 12 week period, the regulation at 8 C.F.R. § 103.2(b)(5) provides: "If the requested original, other than one issued by the Service, is not submitted within 12 weeks, the petition or application shall be denied or revoked." Accordingly, this petition cannot be approved.

Regarding the petitioner's request for additional time to respond, the regulation at 8 C.F.R. § 103.2(b)(8) provides that a "petitioner shall be given 12 weeks to respond to a request for evidence. *Additional time may not be granted.*" [Emphasis added]

The petitioner's April 6, 2007 letter further states:

> I have always been a law abiding and moral person and intent to be all my life. I have never been arrested, charged, indicted or convicted of any crime in the United States or anywhere else in the world. I have never given false information to the police or immigration authority to obtain a benefit in the United States or anywhere else in the world.

While the petitioner asserts that he has "never given false information" to an "immigration authority," his letter fails to specifically address the AAO's finding that the August 18, 1995 diploma from the Third International Ballet Competition "Maya" was fraudulent. As stated previously, documentation printed from the competition's internet website reflects that the "Third (final) round" of the Third International Ballet Competition "Maya" took place on August 21, 1998 and that the "closing ceremony" in which prizes were awarded took place on "August 22, 1998," not in 1995 as indicated on the diploma and resume submitted by the petitioner. The petitioner's response includes no independent and objective evidence to overcome the AAO's finding that the August 18, 1995 diploma submitted by him was a falsification.

Section 212(a)(6)(C) of the Act provides:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

By filing the instant petition and submitting the evidence described above, the petitioner has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted a falsified document in support of the petition, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

Regarding the instant petition, the petitioner's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the petitioner and the remaining documentation. As stated above, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. at 591. The remaining documentation and the director's bases of denial will be discussed below.

On appeal, counsel argues that the petitioner "has met his burden of proof to qualify under Section 203(b)(1)(A) of the Immigration and Nationality Act, as amended. . . . Petitioner has demonstrated that he is an artist of extraordinary training and ability whose achievements have been recognized both as a dancer and a teacher."

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph 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 to the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The

specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on December 30, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a ballet dancer and teacher. As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been sustained. The record reflects that the petitioner has been residing in the United States since November 1997. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than seven years), it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation in this country.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner submitted a "Diploma of Third Grade . . . For Mastery of Execution" at the 1st All-Russian Competition of Students of Advanced Classes of A. Ya. Yaganova Choreographic Academies (1988).

The petitioner also submitted a "Diploma . . . For Achievements in the Competition of Ballet Mastery 'Debut – 1991.' The record includes a letter of support from Viktor Lytvynov, Choreographer of the National Opera of Ukraine, stating:

> At the time of his work at the National Opera and Ballet Theatre of Ukraine [the petitioner] has competed against numerous talented and gifted dancers of the time and received the Diploma for Achievements in the Competition of Ballet Mastery "DEBUT 1991." This competition took part in Kiev in 1991; President of the Jury was well-known Yuri Grigorovich.

We find that "Debut – 1991" and the "Students of Advanced Classes of A. Ya. Yaganova Choreographic Academies" ballet "mastery" competitions offer no meaningful comparison between the petitioner and experienced ballet professionals. We note that the petitioner was less than twenty years old at the time of these competitions. There is no evidence that the petitioner faced competition from throughout his entire

field, rather than his approximate age group within that field. Receipt of an award in a competition that excludes established professionals from consideration is not an indication that the petitioner has reached the "very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). Further, the record includes no supporting evidence indicating the number of other diploma recipients, the level of recognition associated with these competitions, the geographic area from which the individuals who participated in the competitions were drawn from, the specific criteria for granting the diplomas, the level of expertise of those considered, and the number of individuals eligible to compete.

The petitioner also submitted a Diploma for "Laureate of First Level" from the "Fourth International Ballet Competition 'Vaganova Prix'" held in "St. Petersburg, Russia" from June 19 – 26, 1998.[4] According to the petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, however, his "Date of Last Arrival" in the United States was November 25, 1997. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. at 591. In this instance, there is no independent and objective evidence to establish that the petitioner was present for this competition in St. Petersburg, Russia in June 1998 rather than in the United States during that time.[5]

As stated previously, the petitioner submitted a Diploma issued on August 18, 1995 stating that he was a "Finalist of the Third International Ballet Competition 'Maya.'" On January 23, 2007, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner that this document was found to be fraudulent. The petitioner, however, failed to submit independent and objective evidence to overcome the AAO's finding.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO also requested the petitioner to submit the originals of the preceding diplomas. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

In light of the above, the petitioner has not established that he meets this criterion.

> *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.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding

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[4] The record does not include the original version of this document.

[5] The record reflects that the petitioner was working for Ballet Theatre of Annapolis in Maryland at that time. For example, a brochure for "The School of the Ballet Theatre of Annapolis" lists the petitioner among the "faculty" for the school's summer session running from June 22, 1998 to August 21, 1998.

achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In response to the director's request for evidence, the petitioner submitted a June 13, 2005 letter confirming his membership in the American Guild of Musical Artists (AGMA). The record, however, does not include the membership bylaws or the official admission requirements for this organization. There is no evidence showing that admission to membership in the AGMA required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that he meets this criterion.

> *Published materials about the alien 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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[6]

The petitioner submitted several articles about local productions in which he participated, but these articles only mention his name in passing. For example, as noted in the director's decision, the articles published in the *Prince William Extra*, a local section distributed with *The Washington Post*, and *The Washington Post* "Style" section "are mostly about dance companies or specific productions, in which the petitioner is mentioned minimally, if at all." An article in *Dance* Magazine, entitled "Akra Ballet Debut Off in Power Outage," appears in the April 1999 issue and consists of two paragraphs. This article, which misspells the petitioner's last name and merely refers to him as one of sixteen guest performers, is not primarily about the petitioner. The plain language of this criterion, however, requires the submission of "published materials about the alien." If the petitioner is not the primary subject of the material, then it fails to demonstrate his individual acclaim at the national or international level. A September 2004 article appearing in the *Peninsula Clarion* is primarily about the petitioner, but this newspaper is a local publication. The petitioner submitted additional articles appearing in local publications such as *The Capital* of Annapolis, Maryland, the *Chattanooga Times Free Press*, *The Indianapolis Star*, and the *Manassas Journal Messenger*. The record, however, includes no evidence that these publications have substantial national circulation to such an extent that they could be considered major media.

In light of the above, the petitioner has not established that he meets this criterion.

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[6] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Prince William County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. For example, serving as a judge for a national competition involving professional dancers is of far greater probative value than serving as a judge for a regional competition involving amateurs or children.

In response to the director's request for evidence, the petitioner submitted a June 8, 2005 letter from Larissa Saveliev, Artistic Director, Youth America Grand Prix, stating:

> Youth America Grand Prix (YAGP) is the only student ballet competition in America which awards scholarships to the leading dance schools in the U.S. and abroad. The competition is held annually in New York City and is open to dance students of all nationalities 9 – 19 years old.
>
> Launched in the year 2000 by Gennadi Saveliev and myself, . . . YAGP was created to provide . . . educational and professional opportunities for young student dancers, acting as a stepping stone to a professional dance career.
>
> * * *
>
> [The petitioner] has been involved with YAGP as a guest teacher and judge at several of the YAGP semi-finals across the United States. He presented the YAGP participants with a rare opportunity of master classes.

The letter from Larissa Saveliev fails to identify the specific dates when the petitioner participated as a semi-final judge. Nor is there any indication that the petitioner served as a judge at the YAGP competition finals in New York City. Further, the record includes no evidence showing the names of the dancers evaluated by the petitioner, their level of expertise, and the paperwork documenting his assessments. The plain language of this criterion, however, requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Primary evidence of the petitioner's participation would consist of contemporaneous paperwork documenting the evaluations performed by him rather than a letter of support issued long after the events occurred. In this instance, the petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not demonstrated that the paperwork relating to the evaluations he performed is unavailable or does not exist. The absence of contemporaneous evidence of the petitioner's participation as a judge is a significant omission from the record. The benefit sought in the present matter, however, is not the type for which documentation is typically unavailable and the statute specifically requires "extensive documentation" to establish eligibility. *See* section 203(b)(1)(A)(i) of the Act. The regulations governing the present immigrant visa determination have no requirement mandating that CIS specifically accept the credibility of personal testimony, even if not corroborated. The commentary for the

proposed regulations implementing this statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Finally, we do not find that evaluating amateur student ballet dancers at the regional semi-finals is indicative of sustained national or international acclaim. Without evidence indicative of national or international acclaim, such as documentation showing that the petitioner evaluated experienced professionals in his field at the national or international level, we cannot conclude that he meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The petitioner submitted several letters of support from his professional acquaintances, but their letters fail to specify an artistic contribution of major significance in the field of ballet attributable to the petitioner. In order to meet this criterion, the petitioner must show not only that his contribution was original in the field of ballet, but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. In this case, there is no evidence showing that the petitioner is among the most influential ballet dancers or teachers currently active in the field or that the field has somehow changed as a result of his work. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field at the national or international level, we cannot conclude that he meets this criterion.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

On appeal, the petitioner does not challenge the director's conclusions that no evidence was submitted for this criterion and that the petitioner's "field of endeavor is not in the visual arts." We concur with the director's findings. The plain language of this criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than the petitioner's occupation. In the performing arts, national or international acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial national or international audience. The record includes no evidence showing that the petitioner has attracted such a following. The regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's ballet performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x). Thus, the petitioner has not established that he meets this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

In addressing the evidence relating to this criterion, the director's decision stated:

> [T]he record contains numerous programs from various dance companies that the petitioner has performed with, including the Ballet Theatre of Annapolis, Sarasota Ballet of Florida and the Cincinnati Ballet. In addition, the petitioner's resume indicates that he has performed as a soloist and principal dancer in numerous productions, including Swan Lake, Giselle, Carmen and The Nutcracker.

> In order to establish that the petitioner performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.
>
> In the instant petition the record contains evidence that the petitioner has been a principal dancer for some dance companies, which may be considered a leading or critical role. However, what the record lacks is objective documentary evidence that any of the dance companies, with whom the petitioner was a principal dancer, enjoy a distinguished reputation.

We concur with the director's findings. Aside from the ballet companies' own self-serving promotional material or letters of support prepared by the petitioner's acquaintances, there is no evidence showing that the ballet companies for which the petitioner performed as a principal dancer had distinguished national or international reputations. Thus, the petitioner has not established that he meets this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner submitted his 2002 contract with Ballet Tennessee reflecting compensation of $21,600 for a "9 month term of employment." The plain language of this criterion, however, requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no national salary statistics as a basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no indication that the petitioner earns a level of compensation placing him among the highest paid ballet dancers or instructors at the national or international level. Therefore, the petitioner has not established that he meets this criterion.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

This criterion calls for commercial success in the form of "sales" or "receipts"; simply submitting event programs, letters of support, promotional material, and published articles indicating that the petitioner participated in various performances cannot meet the plain wording of the regulation. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner's performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

In light of the above, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. Further, the petitioner has not submitted evidence of specific achievements in the United States establishing that he has sustained national acclaim in this country since his arrival in 1997.

Beyond the regulatory criteria, the petitioner submitted several letters of support attesting to his skill as a dancer and teacher. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. While letters of support may place the evidence for the regulatory criteria in context, they cannot serve as primary evidence of the achievement required by each criterion. Pursuant to section 203(b)(1)(A)(i) of the Act, the classification sought requires "extensive documentation" of sustained national or international acclaim, and the petitioner cannot arbitrarily replace such evidence with attestations from the petitioner's acquaintances, who assert that they find his abilities to be extraordinary.

Documentation in the record indicates that the petitioner was the beneficiary of multiple approved O-1 nonimmigrant visa petitions filed in his behalf. However, extraordinary ability in the nonimmigrant context means distinction, which is not the same as sustained national or international acclaim. Section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes the nonimmigrant O-1 criteria less restrictive for an individual in the arts, and thus less restrictive than the criteria for immigrant classification pursuant to section 203(b)(1)(A) of the Act.

While CIS has approved several O-1 nonimmigrant visa petitions filed on behalf of the petitioner, these prior approvals do not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. In publishing the proposed rule, legacy INS specifically distinguished the O-1 nonimmigrant category from the high standard set for immigrant visa extraordinary ability category. *See* 56 Fed. Reg. 30703, 30704 (July 5, 1991). It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center.

Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. As discussed above, significant discrepancies regarding the petitioner's two most recent award diplomas, allegedly received at the "Fourth International Ballet Competition 'Vaganova Prix'" held in "St. Petersburg, Russia" from June 19 – 26, 1998 and the Third International Ballet Competition "Maya" in August 1995, have not been resolved by independent and objective evidence. We reiterate that doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Even if we were to accept as authentic the remaining documentation, the evidence indicates only that the petitioner shows talent as a ballet dancer and instructor, but it is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed with a finding of fraud and willful misrepresentation of a material fact.

FURTHER ORDER: The AAO finds that the petitioner knowingly misrepresented his past achievements and submitted fraudulent documentation in an effort to mislead CIS and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States.