



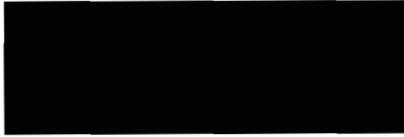
U.S. Department of Justice

Immigration and Naturalization Service

**PUBLIC COPY**

**DB**

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC-99-200-50429 Office: California Service Center Date:

**AUG 21 2001**

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

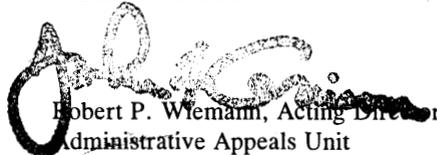
If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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prevent clearly unwarranted  
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemami, Acting Director  
Administrative Appeals Unit

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a film and television production company. The beneficiary is a professional screenwriter and novelist. The petitioner seeks O-1 classification of the beneficiary in order to employ her in the United States for a period of three years to produce a screenplay from an acquired literary property.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had met the "achievement and expertise level" to demonstrate the requisite extraordinary ability in the arts.

On appeal, counsel for the petitioner argued that the director applied an incorrect regulatory standard under 8 C.F.R. 214.2(o) and that the beneficiary qualifies under the appropriate standard.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, 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.

The beneficiary is described as a citizen of Italy and resident of Argentina currently residing in the United States in H-4 classification as the dependent of a temporary alien worker.

At issue in this matter is whether the petitioner has established that the beneficiary has satisfied the appropriate regulatory standard.

8 C.F.R. 214.2(o)(1)(ii)(A) states, in pertinent part, that O-1 classification applies to:

((1)) An individual alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and who is coming temporarily to the United States to continue work in the area of extraordinary ability; or

((2)) An alien who has a demonstrated record of extraordinary achievement in motion picture and/or television productions and who is coming temporarily to the United States to continue work in the area of extraordinary achievement.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

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.

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

8 C.F.R. 214.2(o)(3)(v) states that in order to qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

The regulatory criteria for O-1 classification as a temporary worker in the arts are extensive. They differ to a degree depending on the field of endeavor. In this matter, the petition is for a screenwriter in the motion picture or television industry. Therefore, the standard that must be satisfied is that the alien has extraordinary achievement, rather than extraordinary ability as stated in the decision. Extraordinary achievement means a "very high level of accomplishment" that is "evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field."

In evaluating a claim of extraordinary achievement, the Service must examine the evidence of record as a whole. In this case, the evidence submitted shows that the beneficiary has received professional awards for her work, has had her work accepted by a major U.S. television network, and has received several favorable recommendations by notable persons in the industry. The petitioner also furnished labor consultations from two entities registered with the Service to provide labor consultations, the Writers Guild of America and the Alliance of Motion Picture & Television Producers, both opining that the beneficiary satisfies the standard for O-1 classification and stating that they support the granting of the visa. After a review of the record, it must be concluded

that this level of skill and recognition is significantly above that ordinarily encountered in the field of screenwriting. Therefore, the petitioner has established that the beneficiary has the requisite extraordinary achievement necessary for O-1 classification. There are no other known grounds of ineligibility.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden.

**ORDER:** The appeal is sustained.