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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: SRC-00-140-53140

Office: Texas Service Center

Date:

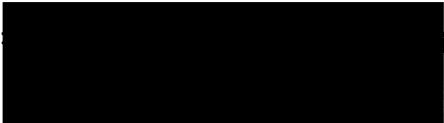
JUL 16 2001

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



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

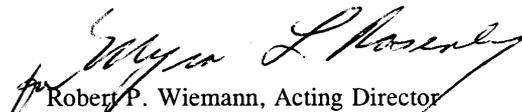
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Acting Director  
Administrative Appeals Office

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

The petitioner is a radio station. The beneficiary's occupation is not described. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), in order to employ her as its music librarian for a period of three years.

The director denied the petition finding that the petitioner failed to establish that the beneficiary satisfies the regulatory standards for classification as an alien with extraordinary ability in the arts.

On appeal, counsel for the petitioner argued that the beneficiary has specialized knowledge of Latin popular music of the fifties and sixties and should be classified as an alien of extraordinary ability in her field of endeavor.

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 native and citizen of Nicaragua who was last admitted to the United States on October 27, 1999, as a B-1 visitor, with authorized stay extended to May 31, 2000.

At issue is whether the petitioner has established that the beneficiary qualifies as an alien who has extraordinary ability in the sciences, arts, education, business, or athletics under section 101(a)(15)(O)(i) of the Act.

The petitioner stated that the beneficiary has experience working with Latin music in radio in Nicaragua and has participated in events related to that genre of popular music. A description of her actual occupation and employment history was not provided. The petitioner did not specifically state that it seeks classification of the beneficiary as an alien who has extraordinary ability in the arts, but the director addressed the petition under the provisions relating to the arts.

8 C.F.R. 214.2(o)(1)(ii)(A) describes the O-1 classification as applying 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.

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.

8 C.F.R. 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated 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 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, governmental 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; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The director denied the petition finding that the petitioner had failed to establish that the beneficiary satisfied at least three of the initial criteria for extraordinary ability in the arts set forth at 8 C.F.R. 214.2(o)(3)(iv). The director did not address the specific criteria on appeal, but relied on the claim that the beneficiary had specialized knowledge of Latin popular music.

On review of the instant record, it must first be determined whether a music librarian can be considered a field of the arts pursuant to 8 C.F.R. 214.2(o)(3)(ii) and then whether specialized knowledge of music constitutes extraordinary ability in the arts.

The O-1 provision was enacted to facilitate the temporary entry of aliens with "extraordinary ability" in certain limited fields of endeavor. In the arts, this classification commonly applies to performing artists, such as musicians. It is not persuasive, however, that an individual who claims specialized knowledge about the arts, such as the beneficiary in this matter, is engaging in the arts as a field of creative activity or endeavor. Knowledge of the arts, as a field of endeavor, may be distinguished from engaging in the arts as a field of endeavor. In this case, it must

be concluded that a technical support position at a radio station, such as a music librarian, is not engaging in the arts.

It must also be concluded that specialized knowledge of a genre of music is not a demonstration of extraordinary ability in the arts as contemplated by section 101(a)(15)(O) of the Act. It has not been shown that the beneficiary satisfies any of the criteria at 8 C.F.R. 214.2(o)(3)(iv). Specialization in a particular field of the sciences, arts, education, business, or athletics is not sufficient to constitute "extraordinary ability" in one of those fields of endeavor.

It is further noted that the record does not establish that the proposed position of music librarian would be properly classified under the sciences, education, business, or athletics.

For these reasons, it is concluded that the proposed position is not one involving work in the arts and that the beneficiary is not an alien who has extraordinary ability in the field of arts as defined in these visa proceedings.

The burden of proof in these proceedings rests solely with the petitioner. Section [REDACTED] of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.