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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: EAC-00-002-53351 Office: Vermont 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: Self-represented

Identifying information 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

Myra L. Rosen
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner is a non-profit organization involved in promoting the arts. The beneficiary is a pianist and composer. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking O-1 classification of the beneficiary, as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), in order to employ her as a pianist and lecturer for an unstated period of time.

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 and because the petitioner failed to submit the required consultation with a United States labor organization.

On appeal, the petitioner stated that the beneficiary won the EGREM, the most important award in the Cuban recording industry, submitted additional testimonials as to the beneficiary's reputation, and submitted a letter from an official of the Delaware Center for the Performing Arts as a labor consultation.

Section 101(a)(15)(O)(i) of the Immigration and Nationality 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 Cuba. It was stated that she graduated from a Cuban music school, the Superior Institute, in 1987 and has twelve years of experience as a professional pianist and composer. It was further stated that she won an EGREM for best instrumental recording of 1996, has a commercial CD issued in 1999, and has toured Cuba with her performances and has presented various lectures and workshops on music.

The first issue to be examined is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts within the meaning of this provision.

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 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.

On review of the record, the director carefully reviewed the evidence submitted in support of the petition. The director found that the attestations and other documentation submitted in support of the petition did not rise to the level contemplated at 8 C.F.R. 214.2(o)(3)(iv)(B) and did not satisfy at least three of the criteria of that provision.

On appeal, the petitioner submitted additional attestations including one from [REDACTED], described as a four-time Grammy Award nominee. After careful consideration, it must be concluded that the petitioner failed to overcome the director's objection.

Here, there is no evidence that the beneficiary has received an award equivalent to those listed at 8 C.F.R. 214.2(o)(3)(iv)(A) above. Nor does the record show that the beneficiary meets at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iv)(B). It must be noted that these provisions are only documentary requirements and merely addressing them does not establish eligibility for the benefit sought.

As noted by the director, there is no corroborative documentation to establish the standing of an EGREM award within the field of music. Nor does the additional documentation establish that the beneficiary has achieved the level of distinction contemplated by the regulation. For example, the letter from Mr. [REDACTED] opined that the beneficiary is one of the "most talented Cuban Musicians, at this moment." However, the letter fails to demonstrate sufficiently that the beneficiary has reached a "high level of achievement in the arts" that is "substantially above that ordinarily encountered." The record reflects that she has produced two commercial recordings, has won an award from the recording

industry in Cuba, has founded her own performing group, and has toured in a professional capacity. It is noteworthy that the record is minimally documented and even fails to identify the genre of her work, such as modern, classical, or popular.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for O-1 classification as having "extraordinary ability" the statute requires proof of "sustained" national or international acclaim and a demonstration that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

While the beneficiary's work has received a level of recognition within the Cuban artistic community, there is no evidence to establish that her recognition is "substantially above that ordinarily encountered" in the field of arts. The fact that she has made commercial recordings and has received media reviews is the norm in the professions and is not sufficient to establish extraordinary ability.

The next issue raised by the director was the lack of the required labor consultation.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

To address this requirement, the petitioner submitted a letter from an official of the Delaware Center for the Performing Arts. The author of the letter opined that the beneficiary is a "legitimate artist and teacher of very high significance."

It must be concluded that the letter is insufficient to satisfy the above noted requirement. First, it cannot be concluded that the letter is from an appropriate peer group. In the field of the performing arts, including music, there are United States labor organizations with significant interest in the admission of foreign artists. In fields where such labor organizations exist, their consultation is required and the substitution of a person with "expertise in the field" is insufficient. Second, the letter does not attest to the beneficiary's qualifications relative to the work to be done. In fact, the petitioner failed to provide a detailed description of the work to be done, the duration of the work, or the location/itinerary of events. For all these reasons, it must

be concluded that the petitioner failed to overcome the director's objections.

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 not met that burden.

ORDER: The appeal is dismissed.