

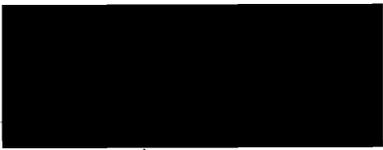


U.S. Department of Justice

Immigration and Naturalization Service

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



File: LIN-99-184-53216 Office: Nebraska Service Center Date: MAR - 7 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



PUBLIC COPY

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.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Unit

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

The petitioner is an art gallery. The beneficiary is in the fine arts as a painter working in oils. The petitioner seeks O-1 classification of the beneficiary in order to employ him in the United States for a period of three years to exhibit and sell his works on consignment.

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

On appeal, counsel for the petitioner argued that the director applied an incorrect standard under 8 C.F.R. 214.2(o)(3)(ii), which does not apply to the arts, 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 native and citizen of Yugoslavia currently residing in the United States in A-2 classification as an employee of his government.

At issue in this matter is whether the petitioner has established that the beneficiary is an alien of 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 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, 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; 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.

In this case, the petitioner submitted documentation that the beneficiary has achieved a degree of national acclaim in his native Yugoslavia, has exhibited his work at galleries in the United States, and has received recognition from some professionals in the field.

On appeal, counsel argued, in pertinent part, that the beneficiary has demonstrated extraordinary ability by satisfying three of the criteria as required. Counsel asserted that the beneficiary has been recognized by major media publications such as [REDACTED] [REDACTED] as well as newspapers in Yugoslavia and the Cleveland Plain Dealer in the United States satisfying criteria (2) above. Counsel further argued that the petitioning gallery is recognized as the best in Sarasota Florida and that it has offered him an exclusive contract thereby demonstrating recognition by distinguished institutions satisfying criteria (3) above. Counsel finally submitted expert testimony in the form of a letter from a professor of art at the University of the District of Columbia opining that the beneficiary has extraordinary skill and makes a valuable contribution to the artistic community satisfying criteria (5) above.

Counsel's argument that the director incorrectly applied the definition of extraordinary ability for science *et al*, requiring evidence of being "at the very top of the field of endeavor," rather than the definition for the field of arts, which requires "prominence," a lesser standard, is noted. However, the director also evaluated the petition under the correct standards for extraordinary ability in the arts.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial. 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).

For example, the fact that the beneficiary will exhibit in a small private gallery in Florida is not sufficient to satisfy the requirement of having a lead role in an institution with a distinguished reputation. However well recognized the petitioning gallery is locally, the record does not show that it has a "distinguished" reputation evidenced by articles in trade journals etc. contemplated by the regulation.

There is also no evidence that the beneficiary has had a leading role in exhibitions "which have a distinguished reputation as evidenced by critical reviews." The petitioner has received favorable reviews in local newspapers, but no reviews from distinguished art critics. The record does not show that publications such as *Illustrated Politika* is recognized as a leader in the field of fine arts.

Nor is there evidence that the alien has a record of "major commercial or critically acclaimed successes." He has received some recognition of his part-time devotion to the arts, but there is no evidence of critically acclaimed successes.

Furthermore, the record contains no indication of the beneficiary's earnings from his art. Rather than showing he has "commanded a high salary" from his art, the fact that he continued his governmental work indicates that his earnings from his art have not risen to the level contemplated by the regulations.

Finally, the letter from the art professor is certainly considered as an expert testimonial, but does not constitute "significant recognition" of the beneficiary's achievements in the arts. The petitioner did not establish that the art professor has "authority" as an art critic. One favorable evaluation from an arts professional cannot be considered to constitute the significant recognition required to establish "prominence" in the arts as contemplated under this provision.

The record shows that the beneficiary has received a level of achievement and recognition from local galleries and shows in the United States and national recognition in Yugoslavia. This satisfies one of the above criteria. Counsel's argument that the petitioner has satisfied three of the criteria is not persuasive.

The evidence of record must be examined as a whole. While the beneficiary is certainly gaining recognition in the arts community, the record is not persuasive in showing that he has received recognition for "extraordinary ability" as contemplated by the plain language of the Act. The record is not persuasive in establishing that the beneficiary has the necessary "high level of achievement" in the arts evidenced by a degree of skill and recognition "substantially above" that ordinarily encountered in the field that is required for O-1 classification.

For these reasons, it is concluded that the petitioner has failed to overcome the grounds for denial stated in the decision of the director. The denial of this petition is without prejudice to the filing of a petition on behalf of the beneficiary for any other benefit for which he may be eligible.

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.