



U.S. Department of Justice
Immigration and Naturalization Service

108

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



File: WAC-99-209-52513 Office: California 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:



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.

PUBLIC COPY

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
for Robert P. Wiemann, Acting Director
Administrative Appeals Unit

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. An appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be dismissed.

The petitioner is described as a non-profit cultural and artistic organization. The beneficiary is a dancer and dance instructor. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in the arts, in order to employ her temporarily in the United States to teach modern dance and to prepare special events.

The center director denied the petition finding that the petitioner failed to establish that the beneficiary is an alien of extraordinary ability in the arts pursuant to the provisions of section 101(a)(15)(O)(i) of the Act. The decision was affirmed on appeal.

Counsel for the petitioner filed a motion to reconsider in which he argues that the beneficiary is at the top of her profession and submits additional written statements and printed material in support of the petition.

To prevail on a motion for reconsideration, the petitioner must establish that the prior appellate decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." 8 C.F.R. 103.5(a)(3). 8 C.F.R. 103.5(a)(4) further states that a motion that does not meet applicable requirements shall be dismissed.

Counsel's statement on motion does not allege that the preceding appellate decision rests on an incorrect application of law. Counsel did not identify specifically any erroneous conclusion of law or statement of fact. The petitioner essentially seeks a readjudication of the original petition. The Service cannot consider such a request made on motion. The motion does not meet the requirements of a motion to reconsider and must be dismissed.

The denial of this petition is without prejudice to the filing of a new petition for any benefit for which the beneficiary may be eligible.

ORDER: The motion is dismissed.