



U.S. Department of Justice

Immigration and Naturalization Service

DB

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



File: LIN-99-168-51085 Office: Nebraska Service Center

Date:

MAR - 7 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

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.

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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 a non-profit arts organization. The beneficiary is an artist. The petitioner seeks classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), in order to utilize his services in the United States on a part-time volunteer basis for a period of four years.

The director denied the petition citing three grounds of ineligibility. The director found that the part-time volunteer position was not a qualifying offer of employment, that the duties of the position were not those requiring extraordinary ability in the arts, and that the beneficiary had not been shown to satisfy the standards as an alien of extraordinary ability in the arts.

On appeal, a representative of the petitioning organization submitted a written statement indicating, in pertinent part, that the organization relies on the beneficiary's services, that his expertise extends beyond art to art management, and that he had national recognition in Hong Kong. Additional newsclippings were submitted.

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 of the United Kingdom and a resident of Hong Kong currently residing in the United States as an F-2 dependent of a foreign student. The first issue raised by the director is whether the petitioner has tendered a qualifying offer of employment.

The term *employment* is not explicitly defined in this section of the regulations due to the varying nature of work in the arts and athletics. However, 8 C.F.R. 214.2(o)(2)(ii) requires, in part, copies of any written contracts and an advisory opinion from an appropriate U.S. consulting entity to include any possible objection to employing the alien in the United States. Clearly, the intent of the provision, as in other employment-based provisions, is for compensated employment on a basis that would be considered full-time for the field of endeavor. Therefore, it must be concluded that a petition based on part-time voluntary

activities is not a qualifying offer of employment for O-1 classification. It is noteworthy that there is no apparent bar to an alien in F-2 classification from performing part-time voluntary services with a non-profit arts organization.

The next issue raised by the director is that the proffered position does not rise to the level of work requiring extraordinary ability in the arts. The proposed position is editing the petitioning organization's monthly newsletter and assisting in organizing workshops and conferences sponsored by the organization.

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.

In this case, reporting, editing, and/or writing for an arts organization newsletter may be considered a creative activity, but there is no evidence that it is recognized as a field of endeavor in the arts. It must be concluded that the duties of the proposed position do not constitute work in the arts or work requiring an extraordinary ability in the arts.

Finally, the director found that the petitioner failed to establish that the beneficiary possessed the requisite extraordinary ability in the arts within the meaning of this provision.

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.

In this case, it was stated that the beneficiary has training in the arts, an MBA degree, has taught art at a university in Hong Kong, and has received an award from the Fellowship of the Chartered Society of Designers.

Here, there is no evidence that the beneficiary's award is 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

newsclippings submitted into evidence were not about the achievements of the beneficiary, but were articles written by him for the Chicago Artists' Newsletter. In addition, there is no evidence that the newsletter is recognized as a "major" publication in the field of arts or that the beneficiary has commanded a high salary in the field. While the beneficiary has received a level of recognition in his field of endeavor, there is no evidence to establish that his recognition is "substantially above that ordinarily encountered." Therefore, it cannot be concluded that the petitioner has established that the beneficiary is qualified as an alien with extraordinary ability in the arts.

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.