

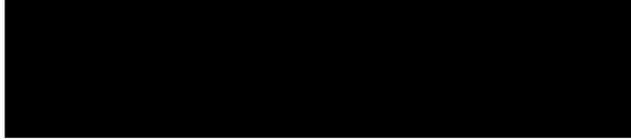


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U.S. Department of Justice  
Immigration and Naturalization Service

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

Public Copy



File: EAC-99-200-51575 Office: Vermont Service Center Date: MAY 22 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)

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

IN BEHALF OF PETITIONER: Self-represented

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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is the national association for embroidery in the United States which claims 20,000 members. The beneficiary is a teacher of a specialized technique of embroidery known as "Danish whitework." The petitioner seeks classification of the beneficiary under § 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act") as an alien with extraordinary ability in the arts in order to employ her for one week during a series of seminars it is sponsoring.

The director denied the petition finding that the petitioner failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts and that the petitioner failed to submit the requisite consultation letter from a labor organization.

On appeal, a representative of the petitioning organization states that the beneficiary is able to make a very unique presentation to participants and submitted additional documentation from experts in the field.

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.

At issue in this matter 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 and whether the petitioner submitted the appropriate peer group consultation documentation.

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, 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.

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.

The petitioner in this matter, as the national association of the field of endeavor, is the appropriate peer group required by 8 C.F.R. 214.2(o)(5)(i)(A) and that portion of the director's decision is therefore withdrawn.

In support of the claim that the beneficiary is eligible for O-1 classification, the petitioner submitted opinions by experts in the field including authors of books on the subject and stars of television programs on the subject. All of the documentation reflects that the beneficiary is recognized as an expert in a particular aspect of Danish needlework and that she even teaches the subject on a part-time basis at colleges in Denmark.

A determination of "extraordinary ability in the arts" is inevitably a subjective exercise. This is evidenced by documentation submitted by the petitioner showing that similar petitions for the beneficiary have been approved in the past.

It is noted that the pertinent regulations do not preclude folk arts or crafts from this classification and embroidery may arguably be considered a fine art. It remains then to determine whether the beneficiary qualifies as one who has extraordinary ability in the field.

The expert testimony submitted, as well as the statements of the petitioner, all testify that the beneficiary is the only English-speaking expert in a particular technique of embroidery. However, it cannot be concluded that the beneficiary's achievements have been recognized at the level contemplated by this provision.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for classification under this provision, it must be shown that the alien has "sustained national or international

acclaim" in the field evidenced by "extensive documentation." The rarity of a particular skill or being one of a few who specialize in some genre of an art form is not the determining factor in according this classification. While the various published authors who submitted opinions in this matter may be considered to have achieved the requisite level of recognition in the field of embroidery to establish eligibility for classification under the "extraordinary ability" provisions, the record is not persuasive in showing that the beneficiary has received the same level of recognition or that she is considered renowned in the field.

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 she 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.