



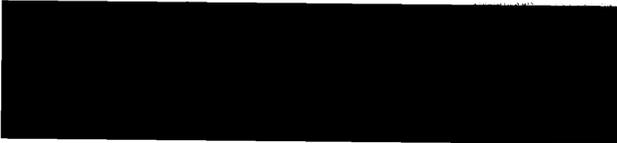
U.S. Department of Justice

Immigration and Naturalization Service

D8

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20516

Public Copy



MAY 22 2001

File: EAC-00-163-53435 Office: Vermont Service Center Date:

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)

Identifying cases to
prevent clearly unwarranted
invasion of personal privacy

IN BEHALF OF PETITIONER:



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 matter will be remanded.

The petitioner is described as a dance studio. The beneficiary is described as a dance instructor. The petitioner seeks classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act") as an alien with extraordinary ability in athletics in order to employ him as a dance instructor and a competitive ballroom dancer in the United States for a period of three years. The petitioner indicated on the petition form that it seeks a change of status from a previously approved petition for O-1 classification with another employer.

The center director denied the petition finding that the beneficiary's previous petition had been revoked.

On appeal, counsel for the petitioner asserts that the director failed to state why the beneficiary could not apply for status with a new employer and argues that the denial was arbitrary and capricious. Counsel requested reconsideration of the petition and states that he relies on the documentation originally submitted in support of that petition.

The record contains a Form I-797A dated September 12, 1998, reflecting approval of a petition for O-1 classification of the beneficiary. The notice is annotated that the petition was revoked on March 8, 2000. The record of the revocation proceeding was not made part of the instant record. The petitioning employer in that matter was identified as Silhouette of Red Bank.

On review, the fact that an approved petition by a separate employer was revoked is not adverse to a new petition filed by another employer. Accordingly, the matter will be remanded for a new decision based on the merits of this petition. If the decision is adverse, the petitioner may file an appeal without fee.

ORDER: The decision of the director dated September 11, 2000, is withdrawn. The matter is remanded for issuance of a new decision.