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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: WAC-01-250-52367 Office: California Service Center Date: AUG 04 2002

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

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER: [Redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The record will be remanded.

The petitioner is a graphics company. The beneficiary is a professional graphic artist and illustrator. The petitioner seeks O-1 classification of the beneficiary, and extension of his stay in the United States, as an alien with extraordinary ability in the arts pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"). The petitioner seeks to employ the beneficiary for a period of three years under undisclosed terms of remuneration.

The director denied the petition in a decision dated February 20, 2002. The director cited the regulatory definition of "event" found at 8 C.F.R. 214.2(o)(3)(ii) and stated:

...this is the first petition by the petitioner in behalf of the beneficiary, and it therefore is not a continuation of previous projects rendered on behalf of the previous petitioner. Apparently, this is not a continuation of the same event with the previous employer.

Counsel for the petitioner filed an appeal arguing, in part, that the petition form was clearly marked that it represents a change in employment and that the denial appeared to be based on a question of semantics.

Section 101(a)(15)(O)(i) of 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 record in this matter reflects that the beneficiary is a professional graphic artist and illustrator. The record shows that the beneficiary has been admitted to the United States from February 1, 1995 through August 1, 2001, in O-1 classification. The beneficiary's past O-1 classifications were based on a series of seven successive petitions filed by four different design companies as his employer. The instant petition is for a period of three years with a fifth employer.

8 C.F.R. 214.2(o)(2)(iv)(C) provides for an alien in O-1 classification to change employers and extend the stay in the United States.

Change of employer. If an O-1 or O-2 alien in the United States seeks to change employers, the new employer must file a petition and a request to extend the alien's stay with the Service Center having jurisdiction over the new place of employment. An O-2 alien may change employers only in conjunction with a change of employers by the principal O-1 alien. If the O-1 or O-2 petition was filed by an agent, an amended petition must be filed with evidence relating to the new employer and a request for an extension of stay.

8 C.F.R. 214.2(o)(6)(iii)(A) provides for the validity period of a petition.

Validity. O-1 petition. An approved petition for an alien classified under section 101(a)(15)(O)(i) of the Act shall be valid for a period of time determined by the Director to be necessary to accomplish the event or activity, not to exceed 3 years.

On review, the petitioner is a new employer and appears to have properly filed the Form I-129 petition for O-1 classification with a new employer and extension of the beneficiary's stay in O-1 classification. The fact that the petition is not for a continuation of the same event underlying the previous petition is not adverse. Accordingly, the director's decision dated February 20, 2002, is hereby withdrawn.

However, the record does not establish that the beneficiary is eligible for O-1 classification and the petition may not be approved.

O-1 nonimmigrant visa classification is available to a qualified alien to come to the United States to perform services relating to an event or events if petitioned for by an employer. 8 C.F.R. 214.2(o)(1)(i). *Event* means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event. A group of related activities may also be considered to be an event. 8 C.F.R. 214.2(o)(3)(ii).

In this case, the petitioner seeks to employ the beneficiary as a graphic artist and illustrator for a period of three years. It was stated that the beneficiary will work on a series of 22 design projects contracted by the petitioning company. The projects include the design of a book cover, a business card, several textile wall hangings, and several web pages.

On review, the record does not establish that this is the type of specific event contemplated by the Act and its implementing regulations. The petitioner appears to seek to employ the

beneficiary as a designer to serve its clients in the normal course of business. This is not the type of specific event contemplated for the temporary employment of a alien with extraordinary ability in the arts and does not represent continuing work in the area of extraordinary ability.

In addition, the record reflects that the beneficiary has been employed as a designer for four similar businesses in the United States since February 1995 in O-1 classification. An O-1 classification may not be granted to an alien to enter the United States to free lance in the open market. 59 Fed.Reg. 41818-41842 (Aug. 15, 1994). An O-1 alien must be coming to the United States for specific events. The director should review the record and determine if the beneficiary seeks admission for a specific event or events within the meaning of 8 C.F.R. 214.2(o)(1)(i).

In addition, in order to establish eligibility for O-1 classification as an alien with extraordinary ability in the arts, the petitioner must demonstrate that the alien satisfies the standard of extraordinary ability.

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 distinction. Distinction 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.

Service regulations at 8 C.F.R. 214.2(o)(3)(iv) state that in order to qualify as an alien of extraordinary ability in the arts, 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.

It must first be noted that the Service's decision in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of evidence. The mere fact that a petitioner submits evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. The evidence must establish that the beneficiary qualifies as an alien of extraordinary ability.

In this case, the beneficiary has been a professional designer for a number of years and has, in part, designed a book cover for a companion book published in conjunction with a major television

network movie. The beneficiary is described as a professional graphic artist, but the petitioner did not provide a detailed account of his career. Absent a detailed account of the alien's career and employment history, the Service is unable to reach a favorable determination of distinction.

Similarly, the beneficiary has neither been nominated for nor received any significant national or international awards or prizes. No specified documentation attested him as the lead or starring participant in any productions or events which have a distinguished reputation. Likewise, he has not performed in a critical role for organizations and establishments which have a distinguished reputation. The petitioner failed to submit any critical reviews or published material about the beneficiary. The record also is silent on the beneficiary's income history and does not reflect any major commercial or critically acclaimed successes for the beneficiary. The record contains no other occupational achievements by the beneficiary reported in trade journals, major newspapers, or other publications. Expert opinions contained in professional letters highly rate the beneficiary's talent. Nonetheless, documented recognition of achievements, not talent, is the standard by which extraordinary ability is measured. Accordingly, the petitioner failed to satisfy at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iv)(B).

Further, no claims have been made that the provisions of 8 C.F.R. 214.2(o)(3)(iv)(B) do not readily apply to the beneficiary's occupation. No comparable evidence has been submitted in order to establish the beneficiary's eligibility pursuant to 8 C.F.R. 214.2(o)(3)(iv)(C). The petitioner has not demonstrated that the beneficiary possesses extraordinary ability in the field of arts.

Accordingly, the matter will be remanded for review and issuance of a new decision consistent with the above discussion.

ORDER: The decision dated February 20, 2002, is withdrawn. The matter is remanded to the director for entry of a new decision.