

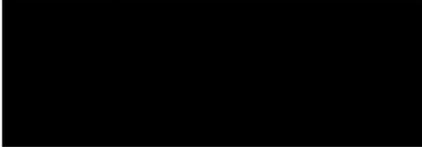


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC-99-143-52679 Office: California Service Center Date: **AUG 26 2002**

IN RE: Petitioner:
Beneficiary:

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:

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The approval of the nonimmigrant visa petition was revoked by the Director, California Service Center. The matter was forwarded to the Associate Commissioner for Examinations.

A review of the record of proceeding reflects that the petitioner is a native and citizen of Japan who was last admitted to the United States in B-2 visitor classification on an unknown date. The petitioner is a professional artist.

The instant record as constituted contains a Form I-129 filed by the petitioner on April 21, 1999, seeking classification under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in the arts. He sought O-1 classification for new employment for a period of two years in order to exhibit his work.

The Form I-129 was approved on May 8, 1999. Upon a review of the record, the director determined that the petitioner did not have a U.S. employer or agent and that he had filed the petition on his own behalf. The director determined that a self-petition was not permissible under section 101(a)(15)(O)(i) of the Act and that the petition had been approved in error. On June 19, 2001, the director issued a notice of intent to revoke approval of the petition.

The instant record also contains a decision dated September 30, 2001, denying a Form I-129 on the same basis.

The record contains two identical fee-receipted Form I-290Bs, Notice of Appeal, filed by counsel for the petitioner. The appeal forms reflect filing dates of October 29, 2001 and November 21, 2001. However, both Form I-290Bs were pre-printed by the service center as relating to the decision dated September 30, 2001. The reason the center director issued two Form I-290Bs and the reason counsel filed both appeals, but on separate dates, is not clear from the record. It is possible that separate notices of denial and revocation were both issued on the same date.

In a statement dated November 14, 2001, counsel asserted that a Form I-129 for O-1 classification had been approved for the period May 11, 1999 to May 1, 2001. Counsel stated that a Form I-129 was filed on March 26, 2001, seeking an extension of that visa. Counsel stated that on June 19, 2001, the center director issued a notice of intent to deny the extension request filed March 26, 2001, and a notice of intent to revoke the petition that was previously approved.

In a decision dated March 25, 2002, the center director rejected the appeal filed November 21, 2001, as untimely filed. There remains the Form I-290B filed October 29, 2001. The record does not contain a decision revoking the previously approved Form I-129.

Nor does the record contain a Form I-129 seeking extension of a previously approved O-1 classification. The record, therefore, is incomplete.

The appeal timely filed on October 29, 2001, relates to the notice of denial dated September 30, 2001. The notice denied the petition on the grounds that an alien may not file the petition on his or her own behalf as stated at 8 C.F.R. 214.2(o)(3)(i). The decision also found that the petition could not be amended to represent an agent or employer after the petition was filed.

The decision of the director may be affirmed. A petition cannot be amended on appeal. 8 C.F.R. 103.2(b)(12). See also Matter of Katigbak, 14 I&N Dec. 45 (Comm. 1971); Matter of Izumii, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998). Therefore, the appeal filed October 29, 2001, will be dismissed.

ORDER: The appeal is dismissed.