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U.S. Department of Justice

Immigration and Naturalization Service

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Office of Administrative Appeals
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Washington, D.C. 20536



File: WAC 02 089 51693

Office: CALIFORNIA SERVICE CENTER

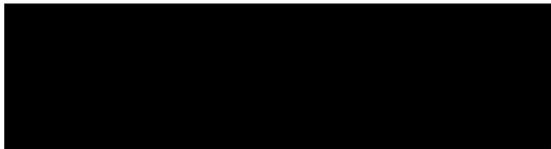
Date: **DEC 24 2002**

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker under 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 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, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a talent management agency. The beneficiary is a model and an actress. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking O-1 classification of the beneficiary, as an alien with extraordinary ability in the arts, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to employ her in the United States for no less than seven weeks over a two-year period at a weekly salary of \$3,000.

The director denied the petition on the grounds that the petitioner failed to provide the Service with a consultation from an appropriate labor union.

On appeal, counsel for the petitioner argues that she sought to obtain the appropriate consultation from the Screen Actors Guild but her numerous requests "were deliberately ignored."¹

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 beneficiary is a native and citizen of Bulgaria. She is a model and an actress. She was last admitted to the United States on July 20, 2001 as a nonimmigrant visitor for pleasure with an authorized period of stay until January 19, 2002. The petitioner submitted a favorable consultation from the Alliance of Motion Picture and Television Producers, a management organization.

8 C.F.R. 214.2(o)(5)(iii) provides that: "In the case of an alien of extraordinary achievement who will be working on a motion picture or television production, consultation *shall* be made with the appropriate union representing the alien's occupational peers. . . ." (Emphasis added.)

In review, the petitioner failed to provide the Service with the requisite consultation. The petitioner failed to overcome the director's objection.

¹ The Screen Actors Guild in fact issued an objection letter after determining that the beneficiary was not an alien of O-1 caliber.

Beyond the decision of the director is the issue of whether the petitioner has established that the events or activities for which O-1 classification is sought corresponds to the period of validity requested on the petition form.

8 C.F.R. 214.2(o)(2)(ii) states, in part, that petitions for O aliens shall be accompanied by the following:

* * *

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

* * *

In this case, the petitioner requested O-1 classification of the beneficiary for a two-year period. The petitioner provided the Service with a copy of a written contract between the petitioner and the beneficiary that guarantees no less than seven weeks of employment. The petitioner indicated that it hoped to cast the beneficiary in a role in a movie called "Unlikely" that would require the beneficiary to remain in the United States for twelve months. The petitioner failed to establish that the beneficiary would be employed throughout the two years requested.

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). An approved O-1 petition 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. 8 C.F.R. 214.2(o)(6)(iii)(A). *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's request for two years clearly exceeds any reasonable connection to the proposed events of the beneficiary's contract. The Service cannot consider granting a petition for O-1 classification for a two-year period unless the petitioner can show that two years is necessary to accomplish the artistic event or tour.

It is further noted that petitioner must establish that the beneficiary qualifies as an alien of extraordinary achievement in the motion picture and television industry under section 101(a)(15)(O)(i) of the Act. Since the appeal will be dismissed for the reason stated above, these issues need not be examined further.

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.