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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



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File: WAC-99-156-53901 Office: California Service Center

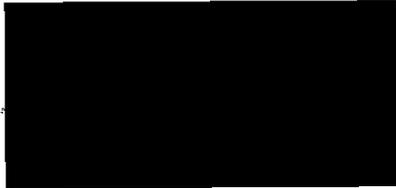
Date: **JAN 03 2002**

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)

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


for Robert P. Wiemann, Acting 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 matter will be remanded.

The petitioner is described as an agent. The beneficiary is described as a jewelry designer. 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 the arts, in order that he may seek employment in the United States for a period of three years.

The center director denied the petition finding that the petitioner failed to establish that the beneficiary satisfied the regulatory criteria for an alien with extraordinary ability in the sciences, education, business or athletics set forth at 8 C.F.R. 214.2(o)(3)(iii).

On appeal, counsel for the petitioner argued that the center director's request for additional evidence failed to solicit information pertaining to this issue and that a denial without notice violates due process.

On review of the record, it is noted that the director erroneously advised the petitioner of the incorrect regulatory standard. Pursuant to 8 C.F.R. 214.2(o)(3)(ii), a petitioner seeking classification of an alien with extraordinary ability in the arts must demonstrate distinction in the field of endeavor. Evidence of the requisite distinction may be demonstrated by submitting documentation satisfying at least three of the criteria listed at 8 C.F.R. 214.2(o)(3)(iv), rather than the similar criteria at 8 C.F.R. 214.2(o)(3)(iii). Accordingly, the record will be remanded to allow the petitioner an opportunity to submit evidence addressing the appropriate regulatory criteria.

In addition, a qualified alien may be authorized O-1 classification if petitioned for by an employer. 8 C.F.R. 214.2(o)(1). Pursuant to 8 C.F.R. 214.2(o)(2)(iv)(E), a United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment. The record in this case does not demonstrate that the field of jewelry design is traditionally self-employed or that jewelry designers commonly use agents to arrange short-term employment. The record indicates that the beneficiary is seeking long-term employment with established jewelry design companies. Accordingly, the director should determine if the petition was properly filed by a United States employer.

ORDER: The matter is remanded for issuance of a new decision.