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U.S. Department of Justice

Immigration and Naturalization Service

Identification, data deleted to prevent clearly unwarranted invasion of personal privacy

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



File: LIN-01-161-50464

Office: Nebraska Service Center

Date: 12 MAR 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: Self-represented

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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a dance company. The beneficiary is a professional dancer. The petitioner seeks 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 continue to employ her in the United States for a period of three years as a dancer, teacher, and choreographer at a salary of \$472 per week.

The director denied the petition on the grounds that the petitioner failed to establish that the beneficiary satisfies the regulatory standard for O-1 classification as an alien with extraordinary ability in the arts.

On appeal, an official of the petitioner submitted additional documentation including statements from the beneficiary's teachers and from director's of two dance companies attesting to the beneficiary's skill as a dancer.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (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. Section 101(a)(46) of the Act further states that the term "extraordinary ability" means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.

The beneficiary is a native and citizen of Taiwan who was last admitted to the United States on December 29, 2000, in F-1 classification as a student. The beneficiary's resume reflects that she has pursued a Master of Fine Arts (MFA) degree in dance at the University of Utah since 1998. The resume further reflects that she holds a Bachelor of Fine Arts (BFA) in dance from the National Institute of Arts in Taipei, Taiwan in 1996. The resume reflects that she has performed with two dance companies in Taiwan from 1994 to 1997, for five months in 1996 with two U.S. dance companies in New York City, for two months in 1995 with the Chamber Ballet Taipei, and for four months in 1991 with the [REDACTED] in Taiwan.

At issue is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts within the meaning of this provision.

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.

8 C.F.R. 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability, 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.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

In order to establish eligibility for O-1 classification as an alien with extraordinary ability in the arts, a petitioner must establish that the alien beneficiary has distinction in the field of arts. 8 C.F.R. 214.2(o)(3)(ii). For the purposes of this proceeding, distinction is defined as a high level of achievement in the arts, a degree of skill and recognition substantially above that ordinarily encountered, and a demonstration that the alien is renowned, leading, or well known in the field of arts. Id. 8 C.F.R. 214.2(o)(3)(iv) sets forth a list of examples of documentation that may be submitted to establish the requisite distinction.

As noted by the director, the petitioner has not submitted documentation to satisfy any of the criteria listed at 8 C.F.R. 214.2(o)(3)(iv). The beneficiary is a dancer with approximately four years of professional dance experience in Taiwan and has been pursuing studies towards her MFA from 1998 to 2000 in Utah. She has worked with the petitioner as part of her authorized student practical training and performed as a member of the company. The petitioner submitted testimonials from the beneficiary's teachers

and from professionals in dance asserting that she is an excellent dancer. The petitioner also submitted a favorable consultation from the American Guild of Musical Artists (AGMA).

In this case, there is no evidence that the beneficiary has yet performed in a leading role in a production which has a distinguished reputation, gained national or international acclaim as evidenced by critical reviews, had a major commercial or critically acclaimed success, or commanded a high salary. These are the types of criteria that must be satisfied in order to be eligible for O-1 classification. While the beneficiary may well achieve that level of recognition in the arts, the petitioner has not established that she had met that standard as of the date the petition was filed. Therefore, it must be concluded that the petitioner has failed to overcome the director's objection.

The denial of this petition is without prejudice to the petitioner pursuing classification of the beneficiary under alternate provisions of the Act.

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.