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U.S. Department of Justice

Immigration and Naturalization Service

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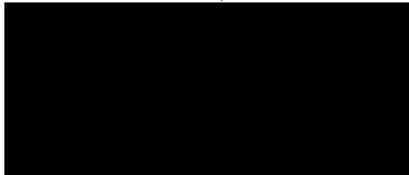


File: EAC-01-278-52481 Office: Vermont Service Center Date: 12 MAR 2002

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:



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

for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is a business management firm representing musical artists and sports figures. The beneficiary is a business agent representing musical artists. The petitioner seeks O-1 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 business, in order to employ him in the United States as an agent for a period of three years at an undisclosed rate of remuneration.

The director denied the petition finding that the petitioner failed to establish that the beneficiary met the regulatory standard for an alien with extraordinary ability in business which requires sustained national or international acclaim and recognition as being at the very top of the field of endeavor.

On appeal, counsel for the petitioner submitted five additional written statements from professionals in the popular music industry attesting to their knowledge of the beneficiary and opining that he is one of the best agents in the industry.

Section 101(a)(15)(O)(i) of the Immigration and Nationality 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 issue raised by the director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien of extraordinary ability in business.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

*Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.*

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

*Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:*

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) 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.

The beneficiary is described as a native and citizen of Sweden currently residing in that country. He is employed as an agent for a business management firm called DaDa AB which represents popular music artists. His salary is stated to be \$100,000 per year. The U.S. petitioner seeks to employ the beneficiary as an agent to represent one or more of his Swedish clients who have gained recording contracts with U.S. music labels. The principal artist the beneficiary will represent is [REDACTED] a popular hip-hop musician in Sweden.

In support of the petition, the petitioner submitted letters attesting to the beneficiary's standing in the industry including four letters from music producers in Sweden and two from musicians/clients, including [REDACTED]

The director concluded that the evidence submitted was insufficient to establish that the beneficiary had achieved the requisite sustained acclaim or standing in the field of business to establish eligibility for O-1 classification.

On appeal, counsel submitted additional favorable testimonials from a music video director, a music journalist, a radio station manager, a music label executive, and a music television production company executive. The testimonials opine that the beneficiary is one of the top agents in the industry and has represented major artists in Sweden. Counsel also stated that the beneficiary was selected by the Swedish consulate in New York to organize a Swedish music "expo" in New York City.

Upon a review of the record, it cannot be concluded that the grounds for denial of the petition have been overcome. There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). Nor has it been established that the beneficiary satisfied at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B).

The petitioner's statement that there is no specific award or ranking system for agents of performing artists is acknowledged. At the same time, the popular music is a large multi-billion dollar industry. While there may be no single body for agents of musical artists, there are numerous trade journals and related publications. At best, the evidence shows that the beneficiary has satisfied one of the above criteria, no. 3, not the minimum of three criteria necessary. The evidence submitted is sufficient to show that the beneficiary has achieved national "acclaim" in the industry in Sweden. The evidence does not reflect the period of

time that the acclaim has been held to demonstrate that it has been "sustained," as required by the regulations.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for this classification, the statute requires proof of "sustained" national or international acclaim and a demonstration that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

Furthermore, the controlling regulation states that O-1 classification is reserved for "one of the small percentage who have arisen to the very top" of the field of endeavor. 8 C.F.R. 214.2(o)(3)(ii). The field of endeavor in this matter is business. The petitioner has not shown any appropriate criteria in the music industry, such as salary, critical position in a firm with a distinguished reputation, representation of artists at the very top of the popular music field, or recognition by major trade publications, to demonstrate that the beneficiary is recognized as one of the few at the very top of the industry.

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.