



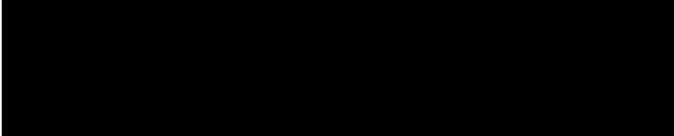
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U.S. Department of Justice

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: EAC 02 114 53552

Office: VERMONT SERVICE CENTER

Date:

OCT 15 2002

IN RE: Petitioner:
Beneficiary:



Petition: Petition for 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

Robert P. Wiemann, Director
Administrative Appeals Unit

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

The petitioner is a promoter that seeks to employ the beneficiary as a sound engineer for a period of five years. The director determined that the petitioner had not established that the beneficiary qualifies as an alien of extraordinary ability in the arts. The director also found that the petitioner had not established that the beneficiary would be coming to the United States to continue in the field of extraordinary ability. Finally, the director determined that the consultation letter provided by the beneficiary was inadequate.

On appeal, counsel states that the beneficiary is qualified for the classification sought. Counsel submits a brief and additional evidence in the form of testimonials.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(O)(i), 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 or, with regard to motion picture and television productions, has a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability.

In order to qualify as an alien of extraordinary ability in the field of arts, 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)(3)(iv).

Counsel asserts that the above criteria do not readily apply to the beneficiary's occupation, so he provided comparable evidence.

The director did not explicitly state whether the above criteria are applicable, but after reviewing the evidence, the director determined that the evidence shows that the beneficiary is "extremely competent, knowledgeable, and reliable," but "there is nothing to establish that the beneficiary is more competent or qualified than any other sound engineer."

In review, the criteria do not readily apply to the beneficiary's occupation of sound engineer.

The regulations define extraordinary ability in the field of arts to mean distinction. Distinction, in turn, is defined as "a high level of achievement in the field of 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)(ii). Pursuant to 8 C.F.R. 214.2(O)(3)(ii), arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

The beneficiary is well-known in his field. On appeal, counsel submits thirteen letters from recording companies, producers and agents. The letters speak to the beneficiary's talents, extraordinary abilities, and "amazing creativity." The beneficiary has worked alongside many well-known musicians, including Billy Joel, Bob Dylan and Willie Nelson. The beneficiary has worked with recording artists on tour and in recording studios. He has developed musical scores with film producers.

In review, the petitioner has met his burden of proof to establish that the beneficiary has extraordinary ability in the arts, which has been demonstrated by sustained acclaim.

The next issue in this proceeding is whether the petitioner established that the beneficiary would be coming to the United States to continue in the field of extraordinary ability.

The director found that the petitioner had failed to establish that the beneficiary would be coming to the United States to continue in the field of extraordinary ability because "the beneficiary would be the sound engineer for several, smaller Israeli musical groups that are not of the caliber of a major musical group or performer."

Counsel asserts "some of the world's largest record and recording studios and Fortune 500 companies have expressed their intent to work with [the beneficiary] again in the future."

Based upon review of the record, the petitioner has established that the beneficiary would be coming to the United States to continue in his field of extraordinary ability, i.e., sound engineering. There is no requirement that an O-1 alien of extraordinary ability intend to work with other O-1 caliber artists to qualify for this classification.

A third issue in this case relates to the consultation. The director determined that the consultation letter provided by the petitioner was inadequate. Counsel asserted that the only requirement for a consultation is to state that the group has no

objection to issuing the visa. Counsel submitted a no-objection letter from the International Alliance of Theatrical Stage Employees (IATSE).

In review, counsel's assertions are not persuasive.

8 C.F.R. 214.2(o)(5)(ii) provides, in pertinent part:

Consultation with a peer group in the area of the alien's ability . . . is required in an O-1 petition for an alien of extraordinary ability. . . . If the advisory opinion is favorable to the petitioner it should describe the alien's ability and achievements in the field of endeavor, describe the nature of the duties to be performed, and state whether the position requires the services of an alien of extraordinary ability.

The IATSE letter says nothing about the beneficiary's ability, achievements, prospective duties or whether the position requires the services of an alien of extraordinary ability. In review, the petitioner failed to provide an adequate consultation letter on behalf of the beneficiary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the director's decision will not be disturbed.

ORDER: The appeal is dismissed.