

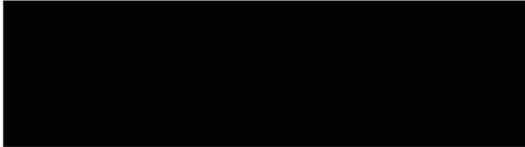


D8

U.S. Department of Justice
Immigration and Naturalization Service

**identifying 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



17 SEP 2002

File: WAC-02-033-58535 Office: California Service Center Date:

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: 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, California 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 philharmonic orchestra. The beneficiary is a musician, a violinist. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking in 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"). The petitioner seeks to employ the alien temporarily in the United States for the 2001/2002 season of performances.

The director denied the petition finding that the petitioner failed to establish that the beneficiary satisfies the regulatory standards for classification as an alien with extraordinary ability in the arts.

On appeal, an official of the petitioner argued, in pertinent part, that:

All of the members of the orchestra in Las Vegas are performing at 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 to the group of people that knows the difference in the particular field of endeavor.

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

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.

The beneficiary is a native and citizen of Brazil who was last admitted to the United States on June 29, 2000, in F-1 classification, authorized to attend the University of Nevada. The beneficiary is currently employed by the Las Vegas Philharmonic orchestra as a violinist authorized as optional practical training related to his studies as an F-1 student.

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.

The petitioner's statement made on appeal is acknowledged. 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 classification in the arts, the petitioner must demonstrate that the alien has distinction in the field. Distinction is further defined as one substantially above that ordinarily encountered in the field.

Here, the beneficiary may be well known to the patrons of the Las Vegas Philharmonic. An invitation to perform with any professional philharmonic orchestra is clearly evidence of a high degree of skill in the field. However, for O-1 classification, merely performing with a distinguished company is not sufficient to establish the requisite extraordinary ability. To satisfy this requirement, it must be established that the artist is renowned, leading, or well known in the particular field of arts as a whole. Here, there is no evidence of any significant national or international recognition of the beneficiary's achievements in the field of orchestral music. After careful consideration of the record, it must be concluded that the grounds for denial of the petition have not been overcome.

The denial of this petition is without prejudice to the filing of a new petition under alternate sections 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.