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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-01-225-56044 Office: Vermont Service Center Date: SEP 17 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

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 is described as an "innovation consulting" firm. The beneficiary is a professional artist in the fine arts. 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 employ him for a period of three years as its creative director for a salary of \$50,000 per year.

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

On appeal, counsel for the petitioner argued that the director mischaracterized the evidence submitted. Counsel asserted, in pertinent part, that the director failed to consider the fact that the beneficiary won the Keipher Award in Israel establishes his national acclaim. Counsel also asserted that the director unfairly referred to twenty-one letters of reference as "self-serving." Counsel requested that the decision be reconsidered and reversed.

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 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 beneficiary is a native and citizen of Israel. He holds a Bachelor's and Master's degree in fine arts. The beneficiary's resume reflects that he won two foundation scholarships and three awards in Israel, including the Anslem Keipher Award for Young Israeli Artist in 2000, and has had numerous exhibits of his work.

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 a high level of achievement in the arts evidenced by a degree of skill 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.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the decision of the director.

Here, there is no evidence that the beneficiary has received an award equivalent to those listed at 8 C.F.R. 214.2(o)(3)(iv)(A) above. Nor does the record show that the beneficiary meets at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iv)(B). It must be noted that these provisions are broadly formulated and must be interpreted in light of the particular field of endeavor.

The beneficiary's resume reflects that he is a professional artist and has received a degree of national acclaim, as evidenced by the Keipher Young Artist Award. He has had professional exhibitions of his work. However, in order to establish eligibility for O-1 classification an alien artist must be shown to hold a degree of recognition substantially above that of other professional artists in the field. The applicable regulations for an alien in the fine arts require evidence such as significant recognition from major or distinguished publications in the field and a record of major commercial success. The evidence submitted by the petitioner in this matter does not rise to this level.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for O-1 classification as having "extraordinary ability" 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. While the beneficiary has received a level of national recognition as a rising young artist, the evidence does not establish that his recognition is "substantially above that ordinarily encountered" in the field of fine arts.

For these reasons, it is concluded that the petitioner has failed to overcome the grounds for denial stated in the decision of the director.

In addition, the statute requires that O-1 classification may be granted "in order to continue work in the area of extraordinary ability." Section 101(a)(15)(O)(i) of the Act. The petitioner in this matter appears to be a firm in the area of advertising and marketing. The proposed position is creative director. The record does not show that the position of creative director at such a firm constitutes continuing work at an extraordinary ability level of the fine arts. For this reason as well, the petition may not be approved.

The denial of this petition is without prejudice to the filing of a petition on behalf 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.