

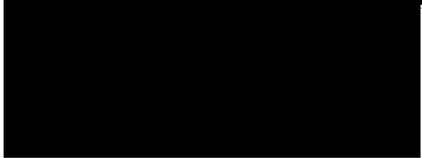
U.S. Department of Homeland Security

Citizenship and Immigration Services

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Administrative Appeals Office
CIS, AAO, 20 MASS, 3/F
425 I Street N.W.
Washington, D.C. 20536



DEC 01 2003

File: WAC 03 212 52017 Office: CALIFORNIA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

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 Citizenship and Immigration Services (CIS) 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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to the petition, the petitioner is a recording studio, seeking to employ the beneficiary as a singer and actor, for a period of one year. The director determined that the petitioner had not established that the petitioner is an employer or that the beneficiary is coming to perform services related to an event or events. The director further determined that the petitioner had failed to establish that the beneficiary would be performing in an event that requires the services of an individual of extraordinary ability.

On appeal, counsel states that CIS misunderstood the nature of the petitioner's business and that the petitioner is a recording artist marketing and promotions company that seeks to promote the beneficiary's United States album. Counsel further states that CIS appears to have accepted that the beneficiary qualifies as an alien of extraordinary ability.

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)(iii).

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 director's decision is deficient to the extent that he failed to evaluate whether the beneficiary satisfies the criteria for eligibility of an alien of O-1 caliber in the arts. However, the AAO affirms the director's decision to deny the petition.

Under section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer. 8 C.F.R. § 214.2(o)(1)(i). The term "event" is defined at 8 C.F.R. § 214.2(o)(3)(ii) as an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement.

In the instant case, the petitioner failed to provide CIS with any specific information as to when the beneficiary would perform services. The petitioner indicated that the beneficiary would record an album in the United States but failed to submit evidence establishing that the beneficiary had a contract with a recording studio. The petitioner indicated that it intended to promote the beneficiary's United States album, but failed to provide an itinerary or schedule showing when and how the beneficiary would perform promotional services. The petitioner failed to establish that the beneficiary would be coming to the United States to perform an event or events; therefore, the petition may not be approved.

The director further determined that the petitioner failed to establish that the beneficiary would be performing in an event that requires the services of an individual of extraordinary ability. This portion of the director's decision will be withdrawn. The statute and regulations do not require that the petitioner establish that the position requires a person of O-1 caliber. See *59 Fed. Reg. 41,818; 41,820* (Aug. 15, 1994). Rather, they require that the beneficiary continue work in the area of extraordinary ability.

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.

ORDER: The appeal is dismissed.