

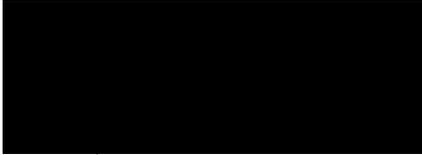
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U.S. Department of Homeland Security

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 16 2003

File: WAC 02 092 52652

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)

PUBLIC COPY

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Maiperson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen. The motion will be rejected. The decisions of the director and the AAO will be affirmed.

The petitioner is an independent film company that seeks to employ the beneficiary as a film director for a period of two years. The beneficiary is an author, screenplay artist, soundtrack composer, actor, graphic designer, and a film director. In a request for additional documentation, the director requested consultations from an appropriate U.S. peer group such as a labor union and a management organization, and a written contract (or summary of the terms of a written contract) under which the alien would be employed. In response to the request for additional documentation, counsel for the petitioner requested an extension of time in which to submit a reply. The director denied the petition, finding that the petitioner failed to provide the requested documentation within the twelve weeks allowed by regulation, and that the evidence of record failed to establish the beneficiary's eligibility. On motion to reopen, counsel for the beneficiary submits a consultation from the Directors Guild of America and additional evidence.

According to 8 C.F.R. § 292.4, appearance as attorney or representative in a visa petition proceeding must be filed on the appropriate form (G-28) and must be signed by the petitioner. In the instant motion, the G-28 was signed by the beneficiary, rather than by the petitioner.

8 C.F.R. § 103.3(a)(2)(v) states:

Improperly filed appeal - (A) Appeal filed by person or entity not entitled to file it ---(1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service (CIS) has accepted will not be refunded.

The motion has not been filed by the petitioner, nor by any entity with legal standing in the proceeding; but rather, by an attorney who has not submitted a properly executed notice authorizing his appearance on behalf of the petitioner in this matter. Therefore, the motion has not been properly filed and must be rejected.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other

documentary evidence."

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

On motion, the beneficiary has submitted a letter from the Directors Guild, a letter from "Cesar Awards," a printout from an internet movie database, an article about the influence of Jorge Luis Borges on other artists, an internet listing of Cesar Awards, biographical information about the beneficiary found on an internet website, a ForeignFilms.com movie rating on Vana Espuma, an interview of the beneficiary in a Japanese publication, and Yahoo and Google data searches on the beneficiary and his movie, Vana Espuma.

A review of the evidence that the beneficiary submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). The evidence submitted on motion was previously available and could have been discovered or presented in the previous proceeding.

It is noted that the evidence submitted on motion is not considered "new" and would not be considered a proper basis for a motion to reopen.

ORDER: The motion is rejected.

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984) (emphasis in original).