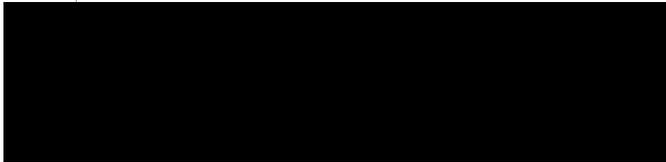


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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

PUBLIC COPY



DEC 17 2003

File: WAC 01 227 53618 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



Identifying information provided to prevent identity theft and to prevent invasion of personal privacy

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.

to 
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 Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the case remanded to the director for the entry of a new decision.

The petitioner is an "art show forum," established in 2000. 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), 8 U.S.C. § 1101(a)(15)(O)(i) in order to employ him for two years as a "multi-media artist" at a monthly salary of \$10,000.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts as a "multi-media artist."

On appeal, counsel for the petitioner submits a letter and additional documentation.

Section 101(a)(15)(O)(i) of the 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.

The beneficiary is a 45-year old native and citizen of Korea. He last entered the United States as a nonimmigrant visitor for pleasure (B-2) on June 30, 2000.

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 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.

8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability in the 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, and will perform, 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.

In the instant case, in a request for evidence dated August 30, 2001, the director requested that the petitioner submit evidence to show that the beneficiary satisfies at least three of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii) for aliens of extraordinary ability in the fields of science, education, business, or athletics. The director correctly cited 8 C.F.R. § 214.2(o)(1)(ii)(A)(1) in his decision, indicating that the beneficiary must establish extraordinary ability by sustained national or international acclaim, and that he is coming temporarily to the United States to work in the area of extraordinary ability. However, in his denial, the director determined that the petitioner had failed to establish that the beneficiary is one of the small percentage who have risen to the very top of the field. It appears that the director used the standard at 8 C.F.R. § 214.2(o)(3)(iii) for aliens of extraordinary ability in the fields of science, education, business or athletics. Extraordinary ability in the arts means "distinction," "a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered." 8 C.F.R. § 214.2(o)(3)(ii). This category requires the petitioner to establish only that the artist is "prominent in his or her field of endeavor." 59 Fed. Reg. 41,818, 41,820 (Aug. 15, 1994).

The director's decision will be withdrawn. The case will be remanded to the director to issue a request for evidence to the petitioner to submit evidence relating to the criteria pertinent to aliens engaged in the arts. The director will consider the evidence, and render a new decision using the standard set forth at 8 C.F.R. § 214.2(o)(3)(ii) and (iv).

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

ORDER: The director's decision dated May 6, 2003 shall be withdrawn. The case is remanded to the director to request additional evidence and to enter a new decision, which, if adverse to the petitioner, shall be certified to

the AAO for review.