

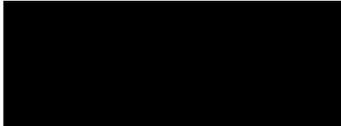
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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



File: SRC 03 035 51656

Office: TEXAS SERVICE CENTER- Date **JUL 18 2003**

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:



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 bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an agent. The beneficiary is an artist. The petitioner seeks to extend 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 two years at a weekly salary of \$800.

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.

On appeal, counsel for the petitioner submits a brief 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 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 48-year old native of Mexico. He is described as a teacher/artist and promoter of Mexican culture. According to the petitioner, the beneficiary has been classified as an O-1 alien in the arts on two prior occasions.

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 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 that 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 the alien is engaged. Such testimonials must be in a form 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.

The director determined that the beneficiary satisfied criterion number three. On appeal, counsel for the petitioner argues that by finding that the beneficiary satisfied criterion number three, the director must have deemed the venues where the beneficiary has performed to be organizations and establishments that have a distinguished reputation; therefore, the beneficiary satisfies criterion number one.

Counsel's argument is not persuasive.

The beneficiary has neither been nominated for, nor has he been the recipient of, any significant national or international awards or prizes in his field of endeavor.

The petitioner submits that the beneficiary has performed in a lead, starring or critical role for organizations and establishments that have a distinguished reputation. According to the evidence on the record, the beneficiary has participated (performed) in numerous events over the past twenty years. The petitioner failed to establish that the beneficiary played a lead or starring role in these events. Further, the petitioner failed to establish that these events have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

As evidence that the beneficiary satisfies criterion number two, the petitioner submitted several articles that were published in two publications, *Horizontes* and *El Bravo*. The petitioner failed to establish that either of these publications can be considered as major media or publications.

The director determined that the beneficiary satisfies criterion number three. This portion of the director's decision shall be withdrawn. As 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, the petitioner submitted four published articles. The first article describes the beneficiary as the guest speaker of the week at the Matamoros 84 Rotary Club. The date and name of the publication was not provided. The second article features the beneficiary and his work. The third article features the beneficiary's creation, a float that won first place in a carnival in Jarocho in 1991. The fourth article is an announcement of the beneficiary's exhibition in the Casamata Museum. The evidence fails to demonstrate that the

beneficiary performed for organizations and establishments that have a distinguished reputation.

No evidence was submitted in relation to criterion number four.

On appeal, the petitioner submits two letters written by government officials noting the beneficiary's contribution to the local community. These letters are not evidence of significant recognition for achievements as required by the regulation.

The evidence contains no evidence that the beneficiary has commanded or will command a high salary in relation to others in the field. In the absence of salary surveys, the Bureau cannot evaluate the offered wage of \$800 per week.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in the arts.

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.