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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: LIN 02 184 56304

Office: NEBRASKA SERVICE CENTER

Date: **JUN 21 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, 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 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, Nebraska Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO will be affirmed.

The petitioner is a porcelain studio. The beneficiary is a porcelain artist. 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. § 101(a)(15)(O)(i).

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, the AAO determined that the beneficiary satisfies the standards for classification as an O-1 caliber alien, but dismissed the appeal, finding that the petitioner failed to provide required evidence. The AAO dismissed the appeal because the petitioner failed to provide a consultation, and to establish that the beneficiary would be coming to the United States to complete an event or activity of finite duration.

On motion, counsel for the petitioner submits additional evidence.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. In order to prevail on a motion to reopen, the petitioner must establish that the new facts and or evidence presented were unavailable at the time the prior decision was issued.

In the instant case, the petitioner asserts that although she initially indicated that she intended to employ the beneficiary indefinitely, she now intends to employ the beneficiary until the end of 2003.

The petitioner's argument is not persuasive. According to the information contained on the nonimmigrant visa petition, at the time of filing the petition with the Bureau, the petitioner intended to employ the beneficiary indefinitely. This does not meet the regulatory requirement that the petitions for O aliens be accompanied by "an explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities." 8 C.F.R. § 214.2(o)(2)(ii)(C). In *Matter of Katigbak*, 14 I&N Dec. 45 (R.C. 1971), although an immigrant visa petition case, it was held that the beneficiary must be qualified at the time of filing the visa petition. In view of the language in 8 C.F.R. § 214.2(o)(2)(ii)(C), it must be concluded that the petitioner must submit an explanation and the dates for the events or activities at the time of filing the nonimmigrant petition. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (R.C. 1978).

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 AAO decision dated January 10, 2003 is affirmed.