

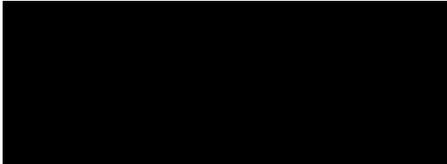
PUBLIC COPY

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

D8

Identifying information used to
prevent clearly unwarranted
invasion of personal privacy

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



File: WAC 02 110 50179

Office: CALIFORNIA SERVICE CENTER Date:

NOV 20 2003

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.


for 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 The decision of the director will be withdrawn and the case remanded for the entry of a new decision.

The petitioner is an investment company, seeking 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 in the United States as a composer for three years.

In a request for additional evidence, the director indicated that the petitioner had only established that the beneficiary had met two of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B) and requested additional evidence to demonstrate that the beneficiary satisfies at least three of the six criteria. The director also requested that the petitioner submit a consultation from a management organization. The petitioner responded to the request for additional evidence. The director denied the petition on the sole basis that the petitioner had failed to provide a consultation from a management organization.

On appeal, counsel for the petitioner submits the required consultation from a management organization. The petitioner has overcome this objection of the director to approving the petition.

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 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.

When a petition is filed for an alien of extraordinary achievement in the motion picture and television industry, the petitioner must show that the beneficiary is a person highly accomplished with a degree of skill and recognition significantly above that ordinarily encountered. 8 C.F.R. § 214.2(o)(3)(ii) defines:

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

Under 8 C.F.R. § 214.2(o)(3)(v), in order to qualify as an alien of extraordinary achievement in the motion picture or television

industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced 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, government 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.

The director's decision is deficient in that it fails to state whether the petitioner has established that the beneficiary satisfies at least three of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B). The case will be remanded to the director for further consideration of the evidence and the entry of a new decision.

Accordingly, the case will be remanded to the director so that he may review the record as it is presently constituted, and request any additional evidence deemed necessary to assist him in determining whether the beneficiary satisfies at least three of the criteria outlined in 8 C.F.R. § 214.2(o)(3)(v)(B). 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 petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.