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U.S. Department of Homeland Security

Citizenship and Immigration Services

Identifying information is redacted 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: EAC 02 243 52028

Office: VERMONT SERVICE CENTER Date:

OCT 16 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:



PUBLIC COPY

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a retail children's clothing store, 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), in order to employ her for three years at an annual salary of \$63,000.

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 business.

On appeal, counsel for the petitioner asserts that the director used the incorrect higher standard for O-1 aliens in business, rather than the lower standard for O-1 aliens in the arts. Counsel submits a brief and additional evidence.

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 29-year old citizen of the United Kingdom. She completed her Bachelor of Arts degree in textile and fashion at the Winchester School of Art in Hampshire, England in 1995. After attending the Fashion Institute of Technology in New York from the fall of 2000 until the spring of 2001, the beneficiary worked as a senior textile designer at the Style Council in New York. Since September 2001, the beneficiary has been employed as a textiles designer and art manager for The Children's Place in Secaucus, New Jersey.

The director determined that the appropriate standard in the instant case was the standard for aliens of extraordinary ability in the field of business. This portion of the director's decision shall be withdrawn.

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.

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 8 C.F.R. § 214.2(o)(3)(ii).

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 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.

The petitioner did not assert that the above listed criteria do not readily apply to the beneficiary's occupation of textile designer.

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

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.

The petitioner submitted no evidence relating to criterion number one. The petitioner failed to provide evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts or endorsements to demonstrate that the beneficiary has and will perform as a lead or starring participant in productions that have a distinguished reputation.

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.

No evidence was submitted in relation to criterion number two.

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.

For criterion number three, the petitioner submitted testimonials as evidence. [REDACTED] of the American Association of Textile Colorists and Chemists wrote an advisory opinion that the beneficiary is "a textile designer of a superior level and [whose] accomplishments are noteworthy." [REDACTED] a former classmate of the beneficiary and current colleague, stated that the beneficiary possesses an unusual skill in selecting fabrics and colors and has proven to be "an invaluable print forecasting source." [REDACTED] a design director at American Eagle Outfitters, commended the beneficiary "as a textile designer with a wealth of experience and knowledge whose design ability displays an uncommon expertise." [REDACTED] President of the Style

Council, wrote that the beneficiary was an employee of the Style Counsel for five years, displaying "a unique flair for design with superior creativity." Federated Merchandising Group Design Director [REDACTED] wrote that the beneficiary's work "has proven to be a valuable source of inspiration." All of the testimonials' authors speak highly of the beneficiary's talent and skill. In review, the evidence is insufficient to establish that the beneficiary has performed and will perform in a lead, starring or critical role for organizations that have a distinguished reputation.

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.

No evidence was submitted in relation to criterion number four in the form of ratings, standing, or occupational achievements reported in trade journals, major newspapers or other publications. The petitioner submitted a letter from one of the petitioner's merchandising managers that states that the beneficiary's first design for the petitioner generated total sales of \$505,000 and that her clothing lines for 2002 generated \$10 million in sales. The manager wrote that the beneficiary's "designs were the collection's top sellers." Without more information to enable the AAO to put this information in context, it is insufficient to establish that the beneficiary has a record of major commercial successes. The petitioner has failed to establish that the beneficiary has satisfied criterion number four.

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.

For criterion number five, the petitioner submitted testimonials that speak highly of the beneficiary's talent, skill and experience. The evidence fails to establish that the beneficiary has received significant recognition for

achievements in her field of endeavor.

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.

No evidence was submitted in relation to criterion number six.

The beneficiary fails to satisfy at least three of the criteria set forth at 8 C.F.R.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part, that:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The petitioner submitted a favorable consultation from the American Association of Textile Colorists and Chemists. It is unclear whether this association is an appropriate U.S. peer group given that the beneficiary is a textile designer, rather than a textile colorist or chemist. Nonetheless, consultations are advisory only and not binding on CIS. 8 C.F.R. § 214.2(o)(5)(i)(D).

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.

Beyond the decision of the director, there is a final issue in this proceeding. Under section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer. 8 C.F.R. § 214.2(o)(1)(i). The term "event" is defined at 8 C.F.R. 214.2(o)(3)(ii) as an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. In the instant case, the petitioner failed to

provide an itinerary or schedule. For this additional reason, the petition may not be approved.

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.