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U.S. Department of Homeland Security  
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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

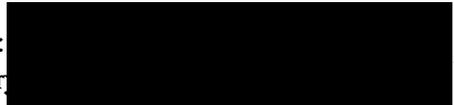


APR 12 2004

FILE: WAC 01 225 51350 Office: CALIFORNIA SERVICE CENTER

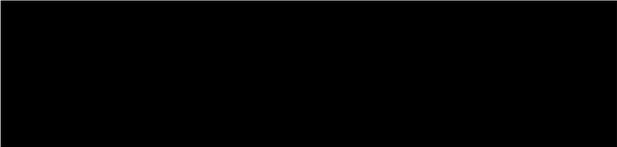
Date:

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent clearly unwarranted  
invasion of personal privacy**

**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 appeal will be dismissed.

The petitioner is an art studio and gallery, 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 continue to employ her for one more year.

The director denied the petition, finding that the petitioner had failed to submit copies of contracts to CIS as required by the regulations.

On appeal, counsel for the petitioner asserts that it is sufficient to submit the terms of the oral agreements between the beneficiary and her agent, the petitioner, and between the beneficiary and the galleries that show her work.

Section 101(a)(15)(O)(i) of the Act provides visa 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 petitioner stated that the beneficiary is “an independent artist, and is not employed by [the petitioner] or by any of the galleries or museums at which her work is displayed or sold.” The petitioner further stated, “there is no written contract between [the petitioner and the beneficiary]. There is an oral agreement, the terms of which are set forth in my letter.” In a separate letter, the petitioner stated:

[The petitioner] represents [the beneficiary] for the purpose of arranging exhibitions of her work at art galleries and other appropriate venues. We also employ her to print special editions of the work of other artists who have specifically arranged with [the petitioner] to have such printing done.

The petitioner asserts that it is not required to submit written contracts because the beneficiary is not employed by the petitioner or by any of the venues listed on the itinerary. Yet the petitioner indicated that it does “employ” the beneficiary to print special editions. Regardless of whether the petitioner characterizes its relationship with the beneficiary as one of employment or an independent contractor, the petitioner is required to submit the contractual agreements to CIS.

The regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E) states, in pertinent part:

*Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers . . . . A petition filed by an agent is subject to the following conditions:

(1) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.

(2) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual

employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

The petitioner failed to satisfy the regulatory requirements set forth above.

Counsel for the petitioner asserts that because CIS previously approved visa petitions of the petitioner for the same beneficiary, it must approve the instant petition. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). The Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800,803 (E.D. La. 2000), *aff'd* 248 F.3d 1139 (5<sup>th</sup> Cir. 2001), *cert. denied* 122 S.Ct. 51 (2001).

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.