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FILE: SRC 03 096 50918 Office: TEXAS SERVICE CENTER Date: APR 26 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Texas Service Center denied the nonimmigrant visa petition on September 19, 2003. The petitioner filed a timely appeal and the director certified her decision to the Administrative Appeals Office (AAO). The decision of the director will be withdrawn and the record remanded for the entry of a new decision based upon all the evidence on the record.

The petitioner is 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 as a photographer for three years.

The director denied the petition, finding that the petitioner had failed to respond to a request for 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.

On appeal, counsel for the petitioner provides evidence that the petitioner had timely responded to the director's request for additional evidence.

A case may be certified only after an initial decision is made. 8 C.F.R. § 103.4(a)(4). There is no appeal of a decision to deny a petition based upon abandonment. 8 C.F.R. § 103.2(b)(15). The record will be remanded to the director to enter a decision based upon the record of proceeding.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision dated September 19, 2003 shall be withdrawn and the record remanded for the entry of a decision.