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U.S. Citizenship  
and Immigration  
Services

MAR 17 2004

File: SRC 03 219 53409

Office: TEXAS 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, 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.

*Mari Johnson*

for Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is an entertainment 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 for three years as a performer.

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. The director further noted that the petitioner failed to submit a consultation as required by 8 C.F.R. § 214.2(o)(5)(i)(A).

On appeal, counsel for the petitioner submits a statement in support of the appeal.

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 45-year old native of the former Soviet Union and citizen of Russia. The beneficiary has worked as a member of an acrobatic troupe called The Akishins. According to the evidence on the record, the beneficiary last entered the United States as a P-1 internationally recognized entertainer on July 14, 2001.

The first issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts within the meaning of section 101(a)(15)(O)(i) of the Act.

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 of 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.

The regulation at 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 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, 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 regulation at 8 C.F.R. § 214.2(o)(5)(i)(A) requires, in pertinent part:

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 beneficiary has neither been nominated for, nor has he been the recipient of any significant national or international awards or prizes in his field of endeavor. The record indicates that the acrobatic troupe to which the beneficiary belongs has been awarded certain prizes; however, the evidence does not show that these awards are significant national or international awards. Further, the evidence shows that these awards were granted to the acrobatic troupe rather than to the beneficiary as an individual. The beneficiary does not satisfy this criterion.

*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.*

For criterion number one, the petitioner submitted two verified contracts. The first verified contract indicates that the beneficiary was a performer at Universal Studios Japan for sixteen weeks. The second verified contract shows that the beneficiary, as a member of an acrobatic troupe, performed at the Universal Orlando's City Walk. The petitioner also submitted several flyers for the Akishin acrobatic troupe. One flyer listed the beneficiary as one of a dozen performers in the troupe. Another flyer included a photograph of the beneficiary, but he was unnamed. The petitioner also included a copy of one Universal Studio Japan employee newsletter that includes a photograph of the beneficiary, in which he was not identified.

In review, the above evidence does not show that the beneficiary has performed as *a lead or starring participant* in productions or events that have a distinguished reputation. (Emphasis added.) Instead, the evidence indicates that the beneficiary was a performing member of an acrobatic troupe. The beneficiary does not satisfy this criterion.

*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.*

For criterion number two, the petitioner submitted a translated excerpt from the *Great Russian Encyclopedia* that lists the Akishins as an acrobatic troupe. The beneficiary is not mentioned in the excerpt. The petitioner also submitted a review of the Akishin troupe that was published in the *News Chief* on January 30, 1994. The petitioner failed to establish that the *News Chief* is a major newspaper. The review is not about the beneficiary as required by the regulation, but rather, about the Akishins. The beneficiary does not satisfy this criterion.

*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 letters. One letter's author stated that the beneficiary is a "leading contributor" to the Akishin Show that performed at Busch Gardens, Tampa Bay, Florida. Another wrote that the beneficiary has been a "featured performer" at the Universal City Walk in Orlando, Florida. The evidence does not show that the beneficiary has performed or will perform in a lead, starring or critical role.

The entertainment director of an Orlando, Florida nightclub, Church Street Station, wrote that the beneficiary has an "absolutely unique act." The petitioner failed to establish that the Church Street Station nightclub has a distinguished reputation. The beneficiary does not satisfy this criterion.

The petitioner failed to submit evidence regarding criteria numbers four and six.

For criterion number five, the petitioner submitted several certificates of participation, an undated diploma and an undated award of appreciation from the Egypt Temple Shrine Circus. The petitioner also submitted a copy of an award titled "first round winner" from the First All-Union Festival of Folk Arts. The petitioner failed to establish the significance of these awards. The beneficiary does not satisfy this criterion.

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 his field of endeavor.

In a request for additional evidence, the director asked the petitioner to submit a consultation as required by 8 C.F.R. § 214.2(o)(5)(i)(A). The petitioner submitted an unsigned consultation. The petitioner failed to satisfy this requirement.

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.