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Date: MAY 25 2005

IN RE:

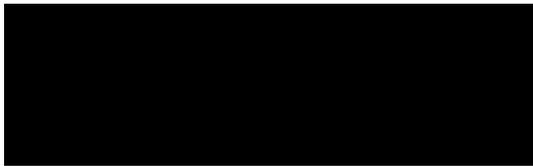
Petitioner:

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

DISCUSSION: On February 2, 2004, the Acting Director, Vermont Service Center denied the nonimmigrant visa petition, in part, due to the petitioner's failure to respond to the director's request for additional evidence (RFE). On February 13, 2004, the director reopened the decision denying the petition to consider evidence the petitioner submitted in response to the RFE. The director reaffirmed its prior decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to employ the beneficiary in a part-time position as a painter. The director denied the petition, finding that the petitioner failed to establish that the beneficiary satisfied the regulatory standard for an alien with extraordinary ability in the arts.

On appeal, the petitioner simply states as the reason for the appeal:

Nonimmigrant visa petition was denied because the consultation letter provided failed to establish that the beneficiary is recognized as having a record of extraordinary ability or achievement in his field of endeavor. Attached please find a consultation letter from the Western States Arts Federation that specifically states the beneficiary meet the standards for extraordinary ability and achievement. Accordingly, we ask that the petition be approved on a motion to reopen.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), 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.

In the instant appeal, the petitioner addressed only one issue, that of a consultation. The director discussed the Western States Arts Federation consultation in her decision dated February 13, 2004. The director denied the petition, finding that the record is insufficient to establish that the beneficiary has a demonstrated record of extraordinary achievement. The petitioner did not address all of the director's grounds for denial of the petition.

The AAO will discuss the sole issue raised by the petitioner on appeal, which is whether the consultation is sufficient. The petitioner initially submitted a consultation dated January 26, 2004 that states that the beneficiary meets the standards for cultural uniqueness. "Cultural uniqueness" is an issue in cases of P-3 nonimmigrant visa, but is not an issue in cases of O-1 nonimmigrant visas. On appeal, the petitioner submitted a consultation dated February 19, 2004, which correctly addresses the issue of whether the beneficiary is an alien of extraordinary ability. Both consultations are favorable. Nonetheless, consultations are advisory in nature and are not binding on Citizenship and Immigration Services. 8 C.F.R. § 214.2(o)(5)(i)(D).

In review, although the petitioner overcame one of the director's objections to approving the petition, i.e., the consultation, the petitioner failed to address the director's finding that the beneficiary failed to meet the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the director's decision will not be disturbed.

ORDER: The appeal is dismissed.