

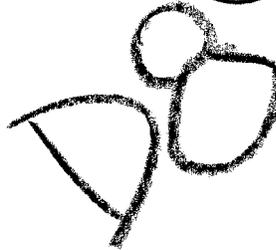
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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 092 50085 Office: NEBRASKA SERVICE CENTER Date: **MAY 25 2005**

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

PETITION: Petition for 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:

SELF-REPRESENTED

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: The Acting Nebraska Service Center Director denied the nonimmigrant visa petition in a decision dated August 17, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an agent of the petitioner. The beneficiary is a musician. The petitioner seeks an extension of 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 represent her for one more year.

The director denied the petition, finding that the petitioner had failed to submit a complete itinerary of the event or events, and a contract between the beneficiary and the employer(s), as required by the regulations.

On appeal, the petitioner asserts that there is no requirement that the petitioner submit a contract between the beneficiary and her employer.

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 native and citizen of the United Kingdom. According to the evidence on the record, she last entered the United States on March 6, 2000 as an O-1 nonimmigrant alien of extraordinary ability. The petitioner indicated that he is the beneficiary's agent and not her employer.

The first issue to be addressed in this proceeding is whether the petitioner is required to submit an itinerary and a contract between the employer and the beneficiary.

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

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 submit to the following conditions:

- (1) An agent performing the function of an employer must provide the contractual agreement between the agent and 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 petitioner states that he is not acting as the beneficiary's employer; therefore, the petitioner must provide an itinerary of the event(s) and a contract between the beneficiary and her employer.

In a request for additional evidence (RFE), the director requested the petitioner to submit an itinerary of the event and contracts between the actual employers and the beneficiary. In response to the RFE, the petitioner wrote that the beneficiary has been writing for and recording a new album.

In review, the petitioner failed to submit the requested documentation. The "itinerary" submitted does not include specify the dates of each engagement, the names and addresses of the actual employers or the names and addresses of the locations where the services will be performed. The petitioner failed to submit a contract between the beneficiary and her employer.

Beyond the director's decision, the petitioner has failed to establish that the beneficiary satisfies at least three of the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv). The petitioner submitted two testimonials. The first was written by the president of a recording studio, Liberte Music, that states that the beneficiary is "talented," "serious and dedicated." The second was written by the editor-in-chief of *Trace* magazine, which states that the beneficiary has a reputation that "places her at the top of her field." Neither testimonial establishes that the beneficiary has received significant recognition for achievements in her field of endeavor.

The petitioner submitted numerous reviews of the beneficiary's album but failed to indicate where and when the reviews were published. Citizenship and Immigration Services (CIS) and AAO do not ascribe evidentiary weight to reviews that fail to list the name and date of publication.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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.