

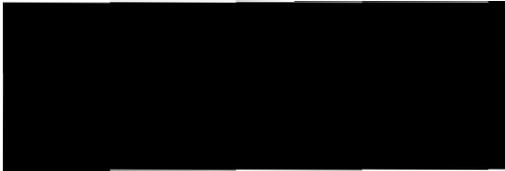
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D8



FILE: WAC 06 163 50719 Office: CALIFORNIA SERVICE CENTER Date: NOV 15

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

PETITION: Petition for a Nonimmigrant Worker under 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:



PUBLIC COPY

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, Chief
Administrative Appeals Office

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 The director's decision shall be withdrawn and the case will be remanded to the director for the entry of a new decision.

The petitioner is a mixed martial arts academy. The beneficiary is a "martial arts instructor (coach)." The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability 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 at an annual salary of \$350 per week (or \$18,200 annually).

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification within the meaning of section 101(a)(15)(O)(i) of the Act.

The petitioner, through counsel, submits a timely appeal.

On appeal, counsel asserts that the beneficiary should be considered under the criteria relating to an alien with extraordinary ability in the arts. *See* 8 C.F.R. § 214.2(o)(3)(iv). However, these criteria are not applicable to athletes.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides, 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. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arranges, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

The petitioner asserts that the beneficiary is an alien of extraordinary ability in the field of Brazilian Jiu Jitsu. The evidence submitted in support of this claim relates to the beneficiary's accomplishments and participation in athletic and sporting events. There is no evidence that he has a record of accomplishment in the fine arts, culinary arts, or the performing arts. The beneficiary is a Brazilian Jiu Jitsu instructor and coach and, therefore, should have been considered under the criteria related to an alien with extraordinary ability in athletics. *See* 8 C.F.R. § 214.2(o)(3)(iii). A review of the record on appeal reveals that the director applied the incorrect criteria to the instant case. Rather than applying the criteria for an alien with extraordinary ability in athletics, the director applied the criteria related to an alien with extraordinary achievement in the motion picture or television industry. *See* 8 C.F.R. § 214.2(o)(3)(v). Accordingly, the case is remanded for consideration of the petition under the criteria relating to aliens with extraordinary ability in athletics.

In addition, we must also address the director's findings related to the petitioner's location and its "ability to provide the beneficiary the facilities to work in an atmosphere of professionalism" which were based on the determination that the petitioning business was located in single family town home. On appeal, counsel explained that while the petitioner's mailing address may be at a town home, the petitioner is physically located at [REDACTED]

[REDACTED] While not required to, the AAO has independently

confirmed that the petitioner's address is at an address on [REDACTED] in Springfield.¹ Accordingly, we additionally withdraw the director's finding on this issue.

The decision of the director dated July 12, 2006 shall be withdrawn. The director will evaluate the evidence in the context of the evidentiary criteria for an alien of extraordinary ability in athletics at 8 C.F.R. § 214.2(o)(3)(iii) and enter a new decision to be certified to the AAO.

ORDER: The director's decision is withdrawn and the case is remanded for the entry of a new decision, which shall be certified to the AAO.

¹ See the petitioner's website at [REDACTED] showing that the petitioner is located at [REDACTED] accessed on November 9, 2006.