

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

18

FILE: EAC 05 800 13985 Office: VERMONT SERVICE CENTER

Date: APR 19 2007

IN RE: Petitioner:
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:

[REDACTED]

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.

for *Maura Deadrick*
Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is an agent and the beneficiary is a vocalist. The petitioner seeks nonimmigrant 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), to perform opera as a vocalist for 20 hours per week at a weekly wage of \$50 for a period of three years.

The director denied the petition because the petitioner failed to establish that the beneficiary satisfied the standards for nonimmigrant classification as an alien with extraordinary ability in the arts.

On appeal, counsel submits 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 . . . 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[.]

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

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides the following pertinent definitions:

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 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), further prescribes:

Evidentiary criteria for an O-1 alien of extraordinary ability in the arts. To qualify as an alien of extraordinary ability in the field of arts, 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, government 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)(2)(ii), also mandates that all petitions for O classification must be accompanied by, in pertinent part:

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities [.]

The beneficiary in this case is a native and citizen of the Ukraine who has a degree in the pedagogy and methodology of secondary school music education. The director denied the petition, in part, because the petitioner failed to submit copies of any contracts or summaries of any oral employment agreements and an itinerary of the beneficiary's engagements in the United States. The director specifically requested this evidence in the April 1, 2005 Request for Evidence (RFE). The petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence in response to the RFE and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Even if the contracts had been submitted in response to the RFE, they would not have been considered. The contracts are dated June 9 and September 12, 2005, over four and seven months after the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Accordingly, we concur with the director's determination that the petitioner failed to comply with the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(B) and (C).

The director also denied the petition because the evidence did not satisfy the regulatory criteria to establish extraordinary ability in the arts at 8 C.F.R. § 214.2(o)(3)(iv). Again, we concur with the director's determination. The record contains no evidence that the beneficiary has been nominated for or received any significant national or international awards or prizes in her field pursuant to the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A). Accordingly, we will discuss her eligibility under the relevant criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). Counsel does not claim that the beneficiary meets any criteria that are not discussed below.

(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.

The petitioner submitted a letter from [REDACTED], President of the [REDACTED] in which he thanks the beneficiary for performing at the League's fundraiser on December 17, 2004. While Mr. [REDACTED] praises the beneficiary's contribution, he does not indicate that the beneficiary performed a lead, starring or critical role for the League. The record is also devoid of any evidence that the League has a distinguished reputation.

[REDACTED] President of the [REDACTED] similarly praises the beneficiary's work as a volunteer associate music director of the [REDACTED] that is sponsored by the [REDACTED] Philadelphia Chapter, but Mr. [REDACTED] does not indicate that the beneficiary performs a lead, starring or critical role for the organization. The record also contains no evidence that the [REDACTED] Philadelphia Chapter has a distinguished reputation.

██████████, Chief Choirmaster of the ██████████, states that he has known the beneficiary since 2000 when she was a soloist with the ██████████ Choir. Mr. ██████████ does not further describe the nature or significance of the beneficiary's role with the Choir or indicate that she was the lead or principal soloist or otherwise performed a lead, starring or critical role for the Choir. The record is also devoid of any evidence that the ██████████ Choir has a distinguished reputation. Accordingly, the beneficiary does not meet this criterion.

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government 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.

Mr. ██████████ states that he has known the beneficiary since 1999 as her vocal coach. He opines that the beneficiary is "a vocalist of outstanding ability" because she "learned huge amount of material from operas repertoire [sic] and showed big professionalism in performing it on the stage" and "has always demonstrated exceptional level [sic] in theatrical art and highest vocal talent along with auctorial [sic] mastering on the stage."

██████████, Director of the ██████████ of the ██████████ in the Ukraine, states that he has known the beneficiary since 1999 as her vocal coach. Mr. ██████████ praises the beneficiary's "unique voice and talent," "breathtaking" performances and states that the petitioner "was awarded many times" for her unspecified achievements.

While Mr. ██████████ and Mr. ██████████ attest to the beneficiary's musical abilities, their testimonials fail to demonstrate that the beneficiary has received significant recognition for her achievements. Rather, the letters indicate that the beneficiary is well-respected by two individuals with whom she worked closely in the past. Despite Mr. ██████████ statement that the petitioner has received many, unspecified awards, the record is devoid of any evidence that the petitioner has received awards or other significant recognition for her achievements from organizations, critics, government agencies or other recognized experts in her field beyond individuals with whom she has worked directly.

Moreover, one entire paragraph is repeated verbatim in the letters of Mr. ██████████ and Mr. ██████████. This repetition indicates that the language of the letters is not the authors' own and further detracts from their probative value. Accordingly, the beneficiary does not meet this criterion.

The petitioner has failed to establish that the beneficiary meets any of the evidentiary criteria at 8 C.F.R. § 214.2(3)(iv). The petitioner also failed to properly submit copies of contracts (or a summary of any oral employment agreements) and an itinerary and explanation of the nature of the events or activities in which the beneficiary would be engaged in the United States, as required by the regulation at 8 C.F.R. § 214.2(o)(2)(ii). Consequently, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(O)(i) of the Act and the petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.