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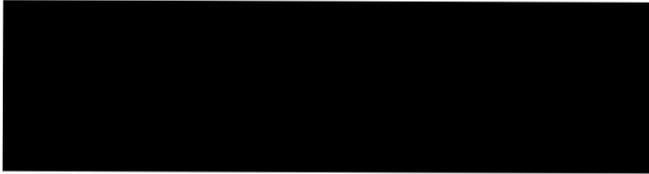
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U.S. Citizenship
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FILE: EAC 05 028 52811 Office: VERMONT SERVICE CENTER Date: JAN 09 2007

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:



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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an “ethnic restaurant and musical venue.” The beneficiary is a music director and musician. The petitioner seeks 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) to employ him as a musical arranger for a period of three years at a weekly salary of \$600.00.

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.

On appeal, counsel submits a brief in which he asserts that the director erred in determining that the beneficiary had not achieved individual success as a musician of sustained acclaim separate from his group.

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 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 as defined by the statute and the regulations.

The regulation at 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 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 in the 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, 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.

The beneficiary was born in Ireland and is a resident of Trinidad. The record reflects that he last entered the United States on May 8, 2004 pursuant to B-1 classification as a temporary visitor.

The record reflects that the beneficiary was a member and music arranger for the band "Potential Symphony" and the founder and leader of the band "Panazz" or "Panazz Players." The record also reflects that the band Potential Symphony won the Pan Ramajay competition in 1992, in part as a result of musical arrangements by the beneficiary. Further, the evidence reflects that the beneficiary received an award for his individual performance at the 1992 Pan Ramajay competition. The evidence also reflects that the beneficiary's band Panazz Players also won the competition from 1994 to 1997, and that the beneficiary won an award for "best guitar pan player" in 1994. The documentation submitted by the petitioner, including copies of newspaper articles, reflects that the Pan Ramajay competition is a nationally recognized event in Trinidad and Tobago, and that winning the national competition is a significant achievement in the beneficiary's field of endeavor.

The evidence also reflects that, in 1997, the beneficiary was nominated for the "Sunshine Award" as "Arranger of the Year" and that his band was nominated for "Best Recording by a Steel Orchestra." The petitioner submitted sufficient evidence to establish that the awards are internationally recognized as significant awards for excellence in the field of calypso and steel band music.

The regulations require that the petitioner demonstrate that the beneficiary has achieved sustained national or international acclaim. The petitioner submitted no evidence that the beneficiary was the recipient of a national or international award for excellence in his field subsequent to 1997. Therefore, the petitioner has failed to establish that the beneficiary is the recipient of a national or international award that demonstrates sustained acclaim.

The petitioner has submitted evidence that, it claims, meets the following criteria.¹

¹ The petitioner does not claim to meet, or submit evidence relating to, the criteria not discussed in this decision.

Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

As discussed above, the petitioner submitted evidence that the beneficiary has participated in the Pan Ramajay competition during the 1990's. The petitioner also submitted evidence that the beneficiary's band, Panazz Players, appeared at the Disney Epcot Center in Orlando, Florida in 1997. The evidence reflects that the Pan Ramajay competition is an event that has a distinguished reputation. The evidence also reflects that the band's performance at the Disney Epcot Center was critically acclaimed.

Nonetheless, the petitioner submitted no evidence to establish that the applicant's will perform in productions or events with a distinguished reputation. The position offered to the beneficiary is that of music arranger for the petitioner. The petitioner submitted no evidence that productions or events at its establishment have a distinguished reputation. The regulation requires that the petitioner establish that not only has the applicant performed at such events but that he will also do so in the future. The evidence does not establish that the beneficiary meets 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.

The record reflects that the beneficiary was the founder and leader of the band Panazz Players, and that the Panazz Players had a distinguished reputation in the area of steel band music. The petitioner submitted no evidence that the beneficiary is still associated with the Panazz Players or that the Panazz Players have maintained their reputation within the steel band music industry. Further, the petitioner submitted no evidence that the beneficiary will perform in a leading, starring or critical role for organizations or establishments with a distinguished reputation. The petitioner submitted evidence that it has been noticed for its cuisine and atmosphere, but it submitted no evidence that it has a distinguished reputation in the field of music. The evidence does not establish that the applicant meets this criterion.

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.

In her November 2, 2004 letter accompanying the petition, counsel asserted that the beneficiary met this criterion based, in part, on a review by [REDACTED] music critic with the *Trinidad and Tobago Express*, in which he reviewed an album by the Panazz Players. The record contains a copy of a newspaper article with a byline by [REDACTED]. However, the record does not indicate in which newspaper the article was published or Mr. [REDACTED] qualifications and expertise in the field. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel also refers to comments made by [REDACTED], managing editor of *Caribbean Beat Magazine*. However, counsel does not identify the source of this information and a supporting document is not a part of the record. *Id.*

To establish this criterion, the petitioner also submitted several letters of support, including letters from [REDACTED], described as "Ireland's most celebrated violist," [REDACTED] assistant professor of

contemporary writing and production in the Berklee College of Music, Dr. [REDACTED] who is described as “an acknowledged expert on the steelband,” and who is an associate professor in music business at Indiana State University, and [REDACTED] a teacher with the School District of Philadelphia. All attest to the beneficiary’s musical skills, however, none attest that the beneficiary has attained a high level of achievement substantially above that ordinarily encountered to the extent that he is described as prominent or that he is renowned, leading, or well known in the field. The evidence does not establish that the beneficiary meets this criterion.

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.

Counsel asserts that the fact that the beneficiary’s group won musical competitions and “generat[ed] rapt reviews” are evidence of this criterion. The petitioner submits copies of covers from compact discs (CDs) released by the Panazz Players. However, the petitioner submitted no evidence of the commercial success of the beneficiary’s music. The record contains a single review of one CD; however, as noted above, the record does not indicate when and in what publication the review appeared. The evidence does not establish that the beneficiary meets 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 music or as a music arranger.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.