



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

D8



FILE: WAC 06 177 52596 Office: CALIFORNIA SERVICE CENTER Date: JAN 24 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, California Service Center. 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 violinist and violist. 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 and teach music for 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 contends that the evidence submitted below established that the beneficiary met the standards for O-1 classification as an artist and that the director did not evaluate the record under the comparable evidence provision of 8 C.F.R. §214.1(o)(3)(iv)(C).

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 beneficiary in this case is a native and citizen of South Korea. The record contains no evidence that the beneficiary has been nominated for or received any significant national or international awards or prizes in his field pursuant to the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A). Accordingly, we will discuss his 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.

- (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.*

The petitioner submitted copies of 14 programs and fliers for concerts at which the beneficiary performed from 1988 to 2005. Five of these events were recitals that the petitioner performed as an undergraduate or graduate student. Three other concerts were faculty performances at schools where the petitioner taught music. Another three of the petitioner's performances took place at two local churches and a retirement home. Apart from the beneficiary's student recitals, all of the documents show that the beneficiary performed as part of an orchestra, ensemble or musical duo, but not as a solo performer, principal musician or featured soloist. The record is also devoid of any evidence that the musical events in which the petitioner performed have distinguished reputations. The programs and fliers do not demonstrate that the beneficiary has or will perform as a lead or starring participant in any productions or events that have a distinguished reputation.

The petitioner submitted copies of two agreements between the beneficiary and the [REDACTED] Symphony Orchestra, which show that the petitioner has worked as an independent contractor for the orchestra, but which do not indicate that the petitioner has performed or will perform a lead or starring role in any of the orchestra's productions or events. The petitioner also submitted no evidence that the [REDACTED] Symphony Orchestra or any of its musical productions or events have a distinguished reputation.

The petitioner submitted support letters from 11 individuals who have worked with the beneficiary and who praise his musical and teaching abilities, but do not discuss his work as a lead or starring participant in any distinguished musical productions or events. Accordingly, the beneficiary does not meet this criterion.

- (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.*

The petitioner submitted copies of two articles from [REDACTED], a Korean newspaper. Any document containing a foreign language that is submitted to Citizenship and Immigration Services (CIS) must be accompanied by a full English translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations of the articles, we cannot determine whether the evidence supports the petitioner's claim. *Id.* Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Consequently, the beneficiary does not meet this criterion.

- (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 record shows that while a graduate student, the beneficiary performed with seven orchestras and quartets in Korea and the United States and that he was a violin and viola instructor for four music schools or centers in Michigan and Pennsylvania. After obtaining his doctorate in 2003, the petitioner taught music at Lincoln University and two other schools and performed with the [REDACTED] Symphony Orchestra and the [REDACTED] in Pennsylvania. The support letters indicate that the beneficiary has made valuable contributions to the schools where he has taught and the ensembles with which he has performed, but the testimonials do not establish that the beneficiary has or will perform in a lead, starring or critical role. The record also contains no articles attesting to the petitioner's role at, or the distinguished reputation of, any of these organizations or establishments. The support letters praise the petitioner's work at various institutions, but fail to establish that any these institutions 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.*

The 11 support letters indicate that the beneficiary is well-respected by his colleagues and employers, but the testimonials fail to demonstrate that the beneficiary has received significant recognition for his achievements. The letters of [REDACTED], [REDACTED], [REDACTED] and [REDACTED] all contain at least one paragraph that is repeated verbatim. This repetition indicates that the language of the letters is not the authors' own and detracts from their probative value.

The remaining five letters fail to establish that the beneficiary has received significant recognition for his achievements. Dr. [REDACTED] Associate Professor of Music at Cheyney University of Pennsylvania, simply states that he believes the beneficiary is a violinist and violist of extraordinary merit and ability based on a single performance that the beneficiary gave with Dr. [REDACTED] at a Cheyney University recital. [REDACTED] Chair of the Fine Arts Department at Cheyney University, states that he became acquainted with the beneficiary when the beneficiary's wife was hired by the university. Mr. [REDACTED] does not identify any specific achievements of the beneficiary, but merely states that the beneficiary "has given of his time and talent on many occasions in support of many musical activities in the Fine Arts Dept." [REDACTED], President and Founder of Blue Lake Fine Arts Camp in Michigan, states that the beneficiary has been one of the camp's most effective and highly respected string teachers for elementary and high school students. Dr. [REDACTED] of the East Bay Center for the Performing Arts in California, states that he and the beneficiary were both graduate students at Michigan State University in 1995. Dr. [REDACTED] praises the beneficiary's musical abilities and states that he is aware of the beneficiary's 'reputation as a well-regarded teacher in the Philadelphia area.' Finally, [REDACTED] Director of Instrumental Music for the Westtown School in Pennsylvania, praises the beneficiary as an exceptional string teacher. While these letters attest to the beneficiary's musical abilities and valuable contributions to various institutions, the testimonials fail to demonstrate that the beneficiary has received significant recognition for his achievements. Accordingly, the beneficiary does not meet this criterion.

Comparable Evidence

On appeal, counsel contends that the director failed to consider the supporting documentation under the comparable evidence provision of the regulation at 8 C.F.R. §214.1(o)(3)(iv)(C), which allows the petitioner to submit comparable evidence of the beneficiary's eligibility if the criteria at 8 C.F.R. § 214.2(3)(iv)(B) do not readily apply to the beneficiary's occupation. Counsel claims that the testimonials should be considered as comparable evidence of the beneficiary's eligibility because he is "an artist who is also an academic." Counsel's claim is unsupported by the record. The evidence submitted shows that at least three of the criteria at 8 C.F.R. § 214.2(3)(iv)(B) apply to the beneficiary's occupation as both a musician and a music teacher and we have considered the 11 support letters in our above discussion of the beneficiary's eligibility under the first, third and fifth criteria.

The petitioner has failed to establish that the beneficiary meets any of the evidentiary criteria at 8 C.F.R. § 214.2(3)(iv). 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.