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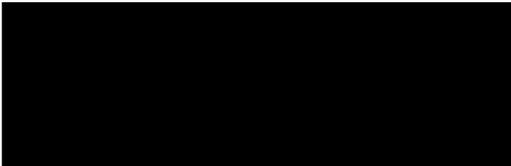
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U.S. Citizenship
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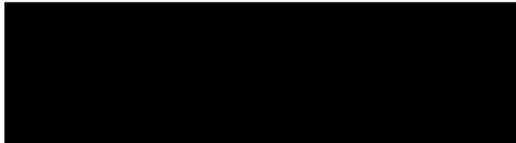
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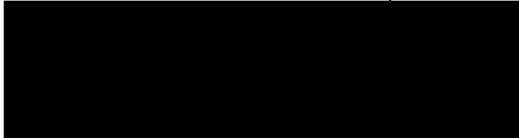
FILE: WAC 06 167 50726 Office: CALIFORNIA SERVICE CENTER Date: MAR 06 2007

IN RE: Petitioner:
Beneficiary:



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 animation production and development company. The beneficiary is a multi-media artist, illustrator and designer. The petitioner is an agent who 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 work in the United States as an independent contractor for three years.

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

On appeal, counsel submits a letter and additional evidence. We concur with the director's determination that the record does not establish that the beneficiary is an alien with extraordinary ability in the arts who is eligible for classification under section 101(a)(15)(O)(i) of the Act.

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 pictures 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 Japan who entered the United States on October 1, 2005, as a nonimmigrant student (F-1). At the time this petition was filed, the beneficiary was completing her optional practical training. Counsel claims that the beneficiary is eligible for O-1 classification as an alien with extraordinary ability in the arts, but counsel does not specify which evidentiary criteria the beneficiary meets. Accordingly, we will address the evidence submitted in relation to the relevant criteria in the regulation at 8 C.F.R. § 214.2(o)(3)(iv).

Significant national or international awards or prizes

The record shows that the beneficiary received the "\$1,000 Award in Memory of Verdon Flory" in the 2005 annual scholarship competition of the Society of Illustrators and that her animated short film, "Forget Me Not," won third prize at the 2006 Jay Sanders Film Festival's Movie Gallery Student Video Competition. The catalogue of the 2005 Society of Illustrators scholarship competition states that the event is "the world's largest competition for college-level illustration students and their respective schools." The submitted excerpt from the 2006 Jay Sanders Film Festival program explains that the event screens the work of students and that the beneficiary won third prize in the college division. As only students were eligible for the beneficiary's awards, those honors are not indicative of the requisite sustained national or international acclaim and are not comparable to an Academy Award or the other prizes cited in the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A).

On appeal, counsel also asserts that "the beneficiary's work was responsible for the EMMY IN CHILDREN'S TELEVISION (Emmys are given to shows, not to people)" (emphasis in original). The record does not support this claim. On appeal, the petitioner submits a letter from [REDACTED] creator of the "[REDACTED]" program shown on the Home Box Office (HBO) network, who states that the beneficiary "had a great influence on the show." [REDACTED], Producer at HBO, clarifies that the beneficiary "illustrated and animated various animals in the Classical Baby segment entitled 'Trucks.'" The record shows that "Classical Baby" won an Emmy Award for best children's program in 2005. However, a printout from the HBO website shows that the "Classical Baby" program consisted of five episodes. The beneficiary contributed to one of at least seven segments of one episode. The beneficiary's limited contribution to just one short segment of only one episode indicates that the Emmy Award received for the "Classical Baby" program as a whole was not largely or substantially attributable to the beneficiary's work.

The record also shows that the beneficiary's animated short film, "[REDACTED]" won second prize at the 2004 Dong-A LG International Festival of Comics and Animation. However, the record contains no evidence that honors granted at this festival are significant international awards or prizes in the beneficiary's field. To the contrary, the submitted excerpt from the festival's brochure states that the festival received only 60 international entries. The petitioner claims that "[REDACTED]" also won a "Sponsor's Award" at the 2004 Krok animation festival in Russia, but the submitted excerpt from the festival does not state that the petitioner's film won an award and the record is devoid of any other evidence of the alleged award or its international significance. Accordingly, the beneficiary does not meet this criterion.

- (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.*

Although the "Classical Baby" program has a distinguished reputation by virtue of its Emmy Award, the beneficiary's limited contribution to just one segment of one episode of the program (as discussed above) shows that she was not a lead or starring participant in the program. The petitioner

also submitted a printout from the website of Nick Jr. from the Nickelodeon network regarding the "Wonder Pets" program and a favorable review of the program published in the *New York Times* on March 28, 2006. Etsu Kahata, lead designer for the "Wonder Pets" program, states that the beneficiary "contributed her artistic talent and skills" to the program, but does not indicate that the beneficiary was a leading or starring participant in the program. The beneficiary has also made three animated films, "[REDACTED]" "[REDACTED]" and "[REDACTED]," that have been shown at numerous animation festivals and the first two films won awards at two events, but the submitted programs from these festivals and events do not indicate that the beneficiary was a lead or starring participant in any animation festival which has a distinguished reputation. 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 beneficiary won two prizes for two of her animated films, which were documented in the programs of the animation festivals. The beneficiary also won an award in the 2005 Society of Illustrators scholarship competition, as documented by the catalogue of the competition and corresponding exhibition. However, the record does not indicate that the beneficiary achieved national or international recognition for her work. As previously discussed, two of her awards were granted at student competitions and the third was presented at an animation festival with no demonstrated significant, international recognition in the beneficiary's field. The record is devoid of any critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines or other publications. Accordingly, 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.*

Letters from the beneficiary's employers indicate that she made valuable contributions to the work of their companies, but the testimonials do not demonstrate that the beneficiary has or will perform in a lead, starring or critical role for any distinguished organizations or establishments. Ms. [REDACTED], from HBO, confirms that the beneficiary worked on one segment in one episode of the "Classical Baby" program, but Ms. [REDACTED] does not indicate that the beneficiary performed a lead, starring or critical role for HBO as a whole. H. [REDACTED] president of FlickerLab, states that the beneficiary provided "key design elements for many of [the company's] most successful projects," but Mr. [REDACTED] does not indicate that the beneficiary performed a lead, starring or critical role for his company and the record is devoid of any independent evidence that FlickerLab has a distinguished reputation. [REDACTED], co-founder and partner of the petitioner, confirms that the beneficiary was the company's "primary animator" on the "Trucks" segment for one episode of "Classical Baby." However, Mr. [REDACTED] does not indicate that the beneficiary performed a lead, starring or critical role for the petitioner as a whole in the past and the submitted work agreements show that the beneficiary would only perform services for the petitioner as an independent contractor in the future. The record also contains no corroborative documentation of the petitioner's reputation in the beneficiary's field.

██████████ and ██████████ Creative Director and Animation Producer of ██████████ Productions, Inc., confirm that the beneficiary made valuable contributions to some of the company's productions. Specifically, Ms. ██████████ notes the "unique [and] creative touch" of the beneficiary's props for "The Wonder Pets" program shown on Nick Jr. Despite their praise, Ms. ██████████ and ██████████ do not indicate that the beneficiary performed a lead, starring or critical role for their company. The record also contains no corroborative evidence that Little Airplane Productions, Inc. has a distinguished reputation in the beneficiary's field.

Apart from testimonials of her employers, the petitioner submitted no other evidence that the beneficiary has or will perform in a lead, starring or critical role for distinguished organizations or establishments. Accordingly, the beneficiary does not meet this criterion.

- (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 pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;*

Although the record shows that the beneficiary contributed to one segment of one episode of an Emmy Award-winning program, there is no evidence that the award was directly or significantly attributable to the beneficiary herself. The beneficiary won two awards for her animated films, but the record is devoid of any evidence that the awards garnered major commercial success or critical acclaim for the beneficiary's work. The petitioner submitted no other evidence that the beneficiary has a record of major commercial or critically acclaimed successes. 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 petitioner submitted 16 support letters from 13 experts in the beneficiary's field who have worked with the beneficiary as either a student or employee. As discussed above under the third criterion, Ms. ██████████, Mr. ██████████, Mr. ██████████, Mr. ██████████, ██████████, Ms. ██████████, Mr. ██████████ and ██████████ all praise the beneficiary's work on various projects for their respective companies. Their testimonials alone, however, do not establish that the beneficiary has received significant recognition for her achievements in her field apart from those individuals with whom she has worked directly.

In response to the director's Request for Evidence (RFE), the petitioner submitted a letter from ██████████ ██████████ Chair of the Illustration Department at Parsons, The New School for Design, as an "expert opinion" on the beneficiary's "stature as an illustrator and as a contributor to the expanding corpus of contemporary multi-media illustration." Mr. ██████████ states that the beneficiary "is an emerging leader in the field of illustration-based new media art." Yet Mr. ██████████ does not discuss any of the

beneficiary's work in detail and indicates that he is primarily acquainted with the beneficiary as "one of Parson's most talented graduates."

Four of the beneficiary's former professors, [REDACTED] and [REDACTED], praise the beneficiary's talent, skills, and style as well as her achievements as a student, but they do not indicate that the beneficiary has received significant recognition in her field for her achievements as a professional illustrator or multi-media artist. The support letters fail to establish that the beneficiary has received significant recognition for her achievements from recognized experts in her field that demonstrates the requisite distinction and sustained national or international acclaim. Accordingly, the beneficiary does not meet this criterion.

Consultation with an Appropriate U.S. Peer Group.

The director also denied the petition because the petitioner did not submit a consultation with an appropriate U.S. peer group, as required by the regulation at 8 C.F.R. §§ 214.2(o)(2)(ii)(D), 214.2(o)(5). On appeal, counsel states, "We trust you will agree that the Society of Illustrators Award, together with the testimony from the Chair of the Illustration Department at Parson, The New School of Design [sic], constitutes an advisory opinion[.]" As previously discussed, the beneficiary's award from the 2005 annual scholarship competition of the Society of Illustrators only documents her achievement as a student and the record contains no evidence that the Society of Illustrators assessed the beneficiary's ability as a professional illustrator or multi-media artist. While Mr. [REDACTED] is an expert in the beneficiary's field as Chair of the Illustration Department at Parsons, The New School for Design, his letter does not comply with the regulation at 8 C.F.R. § 214.2(o)(5)(ii)(A), which specifies that a favorable advisory opinion should "describe the nature of the duties to be performed, and state whether the position requires the services of an alien of extraordinary ability." Accordingly, Mr. [REDACTED] letter is insufficient to meet the consultation requirement.

The petitioner has not established that an appropriate U.S. peer group does not exist pursuant to the regulation at 8 C.F.R. § 214.2(o)(5)(i)(G) or that the beneficiary is eligible for a waiver of the consultation requirement pursuant to the regulation at 8 C.F.R. § 214.2(o)(5)(ii)(B). Consequently, the petition must also be denied for lack of the required consultation.

Coming Temporarily to the United States to Work in the Area of Extraordinary Ability

The director denied the petition on the additional ground that the petitioner did not establish that the beneficiary was coming temporarily to the United States to work in her field.¹ Aliens are eligible for

¹ In reaching this conclusion, the director stated, "No evidence of an unrelinquished foreign residence was provided[.]" However, neither the statute nor the regulations require evidence of an unrelinquished foreign residence for O-1 nonimmigrant classification as an alien with extraordinary ability in the arts, as opposed to O-2 nonimmigrant classification as an accompanying alien providing essential support to an O-1 artist or athlete. Compare Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O), with Section 101(a)(15)(O)(ii)(IV) of the Act, 8 U.S.C. § 1101(a)(15)(O)(ii)(IV). See also 8 C.F.R. § 214.2(o).

nonimmigrant O-1 classification if they are coming temporarily to the United States to continue work in the area of extraordinary ability. 8 C.F.R. § 214.2(o)(1)(ii)(A)(I). The petitioner submitted no evidence that the beneficiary intends to stay in the United States temporarily. On the Form I-129, Part 5, Number 8, "Dates of intended employment," the petitioner left blank the boxes for the beginning and ending dates of the intended employment. The "Design/Illustration Agreement" and the "Independent Contractor Agreement," both dated May 25, 2006 and signed by the petitioner and the beneficiary, also fail to state a beginning or ending date for the intended employment. The "Design/Illustration Agreement" states, "The length of this contract will be mutually determined and can be terminated by the Company with 24 hours notice." The "Independent Contractor Agreement" states, "The Contractor's duties, term of engagement, compensation and provisions for payment thereof shall be as set forth in the estimate previously provided to the Company by the Contractor[.]" The record contains no copy of such an estimate.

In none of his three letters does Mr. [REDACTED], on behalf of the petitioner, state the duration of the beneficiary's intended stay in the United States. In his first, undated letter, Mr. [REDACTED] states: "In light of [the beneficiary's] already substantial contributions to U.S. commercial art, we hope that she will consider relocating here permanently. . . . [W]e hope that the O-1 status will allow her to continue exploring her opportunities as an independent artist, and make her decision about staying here." The petitioner submitted an "Itinerary" for the beneficiary, which spans from May 2006 to April 2009, but lists only one project that would continue through 2009 and indicates that the beneficiary would otherwise be engaged in unspecified "Freelance Commercial Works." The record fails to establish the dates of the beneficiary's intended stay in the United States and the evidence does not demonstrate that she would be actively working in her field for the duration of her stay. Accordingly, the petitioner has not established that the beneficiary is coming temporarily to the United States to continue work in the area of extraordinary ability, as required by the regulation at 8 C.F.R. § 214.2(o)(1)(ii)(A)(I).

The petitioner has not established that the beneficiary meets the evidentiary criteria for extraordinary ability in the arts, has not provided the requisite consultation from a U.S. peer group and has not shown that the beneficiary is coming temporarily to the United States to continue work in her field. Consequently, the beneficiary is ineligible for O-1 nonimmigrant classification under section 101(a)(15)(O)(i) of the Act.

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.