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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 03 010 51131 Office: CALIFORNIA SERVICE CENTER Date: APR 16 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The petitioner submitted a timely appeal. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is in the business of artist development and business management. The beneficiary is a professional singer. The petitioner seeks to extend the beneficiary's 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) in order to employ her for three years. The petitioner also seeks to extend the beneficiary's nonimmigrant status.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary would be extending to continue or complete the same event for which she was initially approved. The director simultaneously issued a separate decision denying the request for extension of the beneficiary's O-1 nonimmigrant status and period of stay. Although counsel indicated that she wished to appeal both decisions, the latter decision is not appealable. 8 C.F.R. § 214.2(o)(12)(iii).

On appeal, counsel for the petitioner asserts that the beneficiary would be extending to continue the same event for which she was initially approved.

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 beneficiary is a native and citizen of Costa Rica. She last entered the United States on March 30, 2001 in O-1 nonimmigrant status. A different petitioner initially petitioned on behalf of the beneficiary. The same petitioner sought and obtained a one-year extension. Now, a different petitioner is seeking to extend the beneficiary's O-1 classification for a three-year period.

The sole issue to be addressed in this proceeding is whether the beneficiary is eligible for O-1 classification under the sponsorship of a new petitioner.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines the term *event,* in pertinent part, as "an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement."

The regulation at 8 C.F.R. § 214.2(o)(2)(iv)(C) states, in pertinent part:

> *Change of employer.* If an O-1 or O-2 alien in the United States seeks to change employers, the new employer must file a petition and a request to extend the alien's stay with the Service Center having jurisdiction over the new place of employment. . . . If the O-1 or O-2 petition was filed by an agent, an amended petition must be filed with evidence relating to the new employer and a request for an extension of stay.

In the instant case, the petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that "new employment" was the basis for the classification. The petition was filed on October 15, 2002. The petitioner submitted a copy of a business management agreement that had been signed by the petitioner and the beneficiary, commencing February 27, 2002.

The petitioner also submitted a copy of an entertainers engagement contract signed by the petitioner and the

beneficiary providing that the beneficiary would perform a thirty-month engagement at Caesar's Palace Hotel and Casino, beginning March 24, 2003.

In review of the evidence, it is clear that the petitioner filed the instant petition seeking permission for the beneficiary to change employers. The petitioner has met the regulatory requirements for seeking a change in employers and has satisfied the regulatory criterion for extending the validity of the original petition under 8 C.F.R. § 214.2(o)(11).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained.