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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D8

[redacted]

FILE: WAC 02 220 54439 Office: CALIFORNIA SERVICE CENTER Date: DEC 14 2004

IN RE: Petitioner: [redacted]
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:

[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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a company that is involved in film, television and Internet productions that seeks to employ the beneficiary as a director and writer for a period of one year. The director denied the petition, finding that the petitioner had not shown that the beneficiary has skill and recognition significantly above that ordinarily encountered to the extent that the beneficiary is recognized as outstanding, notable or leading in the motion picture or television field. The director denied the petition, in part, finding that the petitioner failed to provide a consultation from a labor organization in the motion picture and television industry, as required by the regulation at 8 C.F.R. § 214.2(o)(5)(iii).

On appeal, counsel for the petitioner asserts that the beneficiary satisfies the criteria for O-1 designation and submits additional evidence.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), 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 or, with regard to motion picture and television productions, has a demonstrated record of extraordinary achievement, 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.

When a petition is filed for an alien of extraordinary achievement in the motion picture and television industry, the petitioner must show that the beneficiary is a person highly accomplished with a degree of skill and recognition significantly above that ordinarily encountered. 8 C.F.R. § 214.2(o)(3)(ii) defines:

> Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

Under 8 C.F.R. § 214.2(o)(3)(v), in order to qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced 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.

The beneficiary has neither been nominated for, nor has he been the recipient of, any significant national or international awards or prizes in his field of endeavor. Nor has the petitioner established that the beneficiary satisfies at least three of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B).

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.

For criterion number one, the petitioner submitted evidence in the form of a letter from the former head of programming for [redacted] group profile for the [redacted] Group; Internet printouts highlighting two national television networks and cable channel eight; Internet printout indicating the beneficiary directed and wrote a documentary titled "Search Agent Zerox" and another short film titled "Boysgirls."

To demonstrate that the petitioner will perform services as a lead or starring participant in productions or events which have a distinguished reputation, the petitioner submitted letters from [redacted] a producer and director of [redacted] Entertainment and [redacted] president of UTV, stating that they have extended an offer of employment to the beneficiary. The petitioner failed to establish the reputation of these establishments with critical reviews, advertisements, publicity releases, publication contracts, or endorsements as required.

The criterion clearly requires evidence in the form of critical reviews, advertisements, publicity releases, publications contracts or endorsements. The only item submitted in the required form is an advertisement or an Internet display indicating that the beneficiary performed a starring role in the film, "Search Agent Zerox,"

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[1] According to the petitioner, the beneficiary directed musical videos and screen commercials for [redacted]

but the petitioner failed to establish that the film has a distinguished reputation. The petitioner primarily submitted letters to establish this criterion. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

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 has not submitted evidence in relation to criterion number two.

Evidence that the alien has performed, and will perform, services as a lead, starring, or critical participant in productions or events which have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials.

For criterion number three, the petitioner states that the beneficiary has performed leading roles fo [redacted] a leisure group; Krembo Records; and Israel's Channels One and Two. As evidence, the petitioner submitted a letter written by Ms. Nava Simantov, which praised the beneficiary's qualities.

The petitioner further stated that the beneficiary has written and directed "cutting edge videos and commercials for leading international corporations, including Deutsce Telecom, JUMP, Orange Telecommunications and Blackbird Records." The record is devoid of evidence demonstrating that the beneficiary has and will perform in a lead, starring or critical role for distinguished organizations. The beneficiary does not satisfy 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.

For criterion number four, the petitioner submitted favorable reviews of Zoom, a successful television series that was directed by the beneficiary and aired on Channel Two, Israel's only commercial television channel. The reviews were published in major newspapers, including [redacted] oldest daily newspaper and [redacted] The beneficiary satisfies this criterion.

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.

For criterion number five, the petitioner submitted a letter from the Director General of the [redacted] Cable Production Fund [redacted] stating that [redacted] awarded funds to the beneficiary in 1997 because of the beneficiary's "extraordinary scripting and directorial vision." The petitioner submitted numerous testimonials that praise the beneficiary's credentials and talents, but only one testimonial speaks of the beneficiary's achievements. The petitioner has failed to establish that the beneficiary satisfies this criterion.

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 record contains no evidence that the beneficiary has commanded a high salary. In the absence of wage surveys, AAO cannot evaluate whether the proffered rate of pay is high in relation to that received by others equally qualified.

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 achievement in the motion picture or television industry.

The petitioner failed to provide a consultation from an appropriate union representing the alien's occupational peers as required by the regulation at 8 C.F.R. § 214.2(o)(5)(iii). For this additional reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.