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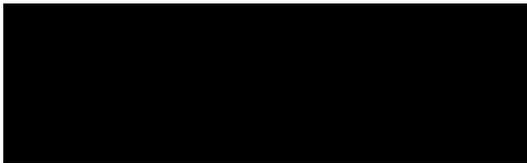


FILE: WAC 03 201 50250 Office: CALIFORNIA SERVICE CENTER Date: JUL 08 2005

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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The California Service Center Director denied the nonimmigrant visa petition in a decision dated March 25, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a retail outlet for musical instruments and professional audio equipment. 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), in order to employ him as a sound designer for live shows and recording studios for a period of three years.

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 for the petitioner submits a brief.

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 41-year old native and citizen of Argentina.

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 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.

For criterion number one, the petitioner submitted reviews and advertisements for numerous live concerts, which it alleges have a distinguished reputation in Argentina. Counsel for the petitioner asserts that “the fact that [the beneficiary] was hired for such event [sic], and that he remains to be working on distinguished events, constitute per se the evidence of his prominence and that he leads in his field.” (Emphasis in original.) We do not agree. The petitioner failed to establish that the beneficiary played a lead, starring, or critical role in any productions or events. The beneficiary was not named in any of the advertisements and in the majority of the reviews. The petitioner submitted an untranslated undated article, which mentions the beneficiary, but in the absence of the name and date of the publication and a certified translation, it cannot be considered. The beneficiary does not satisfy this criterion.

For criterion number two, the petitioner states that the beneficiary’s “extraordinary abilities and achievements in the arts are evidenced by the fact that he has been contracted to numerous stage productions for the most prestigious organizations and musicians.” This criterion requires evidence in the form of articles in newspapers, trade journals, magazines, or other publications. The petitioner submitted two articles, one of which was not translated. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner’s claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The other article is in the form of a news article extract, which provides that the beneficiary “accompanied on guitar and distorted voices.” However, the petitioner failed to provide the name and date of the publication in which this article was published so it cannot be considered. The petitioner failed to establish that the beneficiary satisfies this criterion.

For criterion number three, the petitioner submitted eight testimonials that praise the beneficiary's talent. All of the testimonials' authors indicated that they had worked with the beneficiary in the past. While these testimonials speak highly of the beneficiary, letters written by those with professional ties to the beneficiary do not establish that the beneficiary is well known beyond his immediate circle of colleagues, as one might expect of a person who was renowned, or leading in the field of arts. The beneficiary does not satisfy this criterion.

For criterion number four, counsel for the petitioner states:

The musicians that contracted [the beneficiary] . . . are all multiple-award winners, musicians that are praised and acclaimed internationally. Typically, they sold out every one of their concerts and their successes are evidenced by overwhelming acclaim and box office receipts. [REDACTED] tour in Argentina and Chile during 1997 was sold out months before the event. [The beneficiary] was the sound designer at the River Plate Stadium of Buenos Aires, where [the] [REDACTED] concert was performed before 30,000 spectators.

This criterion requires evidence that the alien or beneficiary has a record of major commercial or critically acclaimed successes. It is not enough to assert that the alien has worked with acclaimed performers. The beneficiary does not satisfy this criterion.

For criterion number five, the petitioner submitted letters discussed above. The letters fail to establish that the beneficiary has received significant recognition for his achievements from organizations, critics, governmental agencies, or other recognized experts in the field.

For criterion number six, the petitioner states that the beneficiary earned an average of \$50 per hour. The director determined, and the AAO agrees, that the evidence is insufficient to establish that this was the beneficiary's average wage.

The petitioner has offered to pay the beneficiary a weekly salary of \$600 for 25 hours of work, which translates to an hourly rate of \$24. The petitioner submitted an excerpt from an undated career guide published by the State of California, Employment Development Department, which states that sound producers' "annual salaries range from \$25,000 for beginners to \$80,000 for those with experience. Hourly wages range from \$40/hr to \$100/hr." The petitioner also submitted a prevailing wage for sound engineering technicians in California that provides that entry level technicians earn \$25,293 or \$12.16/hour and more experienced technicians earn \$66,810 or \$32.12/hour. We will not consider the undated career guide. Without a date, we cannot determine whether the information is current. According to the 2004 California prevailing wage information, the beneficiary would earn less than a sound engineering technician with a few years experience. The petitioner has failed to establish that the beneficiary satisfies 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 his field of endeavor.

Counsel for the petitioner asserts that the Service failed to review the petitioner's initial and supplemental evidence. There is no evidence that the director failed to consider the evidence in reaching his decision. In any event, we have carefully reviewed the entire record on appeal.

Counsel for the petitioner states that the director erroneously applied the “extraordinary ability standard to the position.” The director applied the lesser standard of *extraordinary ability in the arts* in evaluating the evidence. If the petitioner believed that criteria in paragraph (o)(3)(iv) of 8 C.F.R. § 214.2(o)(3)(iv) do not readily apply to the beneficiary's occupation, the petitioner should have submitted comparable evidence in order to establish the beneficiary's eligibility. See 8 C.F.R. § 214.2(o)(3)(iv).

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 not met that burden.

ORDER: The appeal is dismissed.