

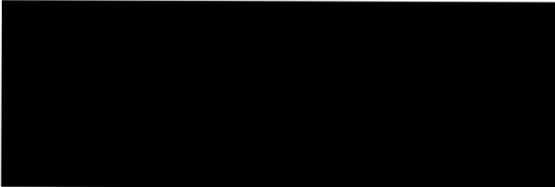
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FILE: WAC 07 006 52866 Office: CALIFORNIA SERVICE CENTER Date: MAR 05 2008

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under 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 Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a video production company. The petitioner seeks O-1 nonimmigrant classification of the beneficiary, as an alien with extraordinary ability 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 temporarily in the United States as graphic design editor¹ for a period of three years at an unspecified salary,² as a “freelance editor” on a “project to project basis” and only “possibly as a full-time employee.”

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has a demonstrated record of extraordinary achievement in motion picture and/or television productions.

On appeal, the petitioner submits arguments from counsel.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the arts, or who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, 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.

8 C.F.R. § 214.2(o)(1)(ii)(A) states that the O-1 classification applies to:

(1) An individual alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and who is coming temporarily to the United States to continue work in the area of extraordinary ability; or

(2) An alien who has a demonstrated record of extraordinary achievement in motion picture and/or television productions and who is coming temporarily to the United States to continue work in the area of extraordinary achievement.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) offers these 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. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers,

¹ We note that, according to documents submitted by the petitioner, the beneficiary has been in the United States since 2003 as an H-1B nonimmigrant in a specialty occupation, employed by [REDACTED]. There is no evidence that her work for [REDACTED] involves video editing; lists of her projects in the record do not mention the company. Citizenship and Immigration Services records do not show that the beneficiary has ever been authorized to work for any employer other than [REDACTED]. Any work the beneficiary has performed on behalf of any other employer constitutes unauthorized employment and a violation of her nonimmigrant status.

² In later correspondence, counsel stated that the beneficiary’s salary will be “at least at the union level.”

choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the field of 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.

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.

Before we discuss the specific merits of the petition, we must address the question of which category, within the overall classification, applies to the beneficiary. Counsel protests the director's categorization of the beneficiary's work under motion picture and television productions rather than the arts:

As an initial matter, the Service erroneously analyzed the beneficiary's qualifications and the supporting documents for classification as an alien with extraordinary ability in motion picture and television. The Service is in error because the beneficiary, a graphic artist and design editor, is not a member in the field of motion picture and television. While the beneficiary has worked on films and television productions, her graphic design work is not limited to film and television. The Service should have evaluated the beneficiary as an alien with extraordinary ability in the arts. This erroneous classification led to an unfair assessment of the beneficiary's qualifications.

It is true that the petitioner, upon filing the petition, indicated that it sought to classify the beneficiary as an alien of extraordinary ability in the arts. The director, in the RFE, requested evidence to establish that the beneficiary is an alien of extraordinary ability in the arts. In the denial decision, the director referred instead to extraordinary achievement in motion picture and television productions. The director's action, however, resulted in no prejudicial error in this case.

For O-1 classification in the arts, section 101(a)(46) of the Act defines "extraordinary ability" as "distinction." The statute does not define "extraordinary achievement" in "motion picture and television productions," as used in section 101(a)(15)(O)(i) of the Act. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) also defines "extraordinary ability in the field of arts" differently than "extraordinary achievement with respect to motion picture and television productions," but the enumerated evidentiary criteria to establish eligibility under either of these standards are exactly the same. Compare 8 C.F.R. § 214.2(o)(3)(iv) with 8 C.F.R. § 214.2(o)(3)(v). To meet either standard, the alien must have received or been nominated for a significant national or international award, or meet at least three of six alternate criteria. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B), (v)(A)-(B). The regulatory criteria for aliens in the arts and motion picture or television industry differ in one other regard. For artists, the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) allows for the submission of

“comparable evidence” when the other criteria “do not readily apply to the beneficiary’s occupation.” Yet counsel has never claimed (or shown) that the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(A) – (B) do not readily apply to the beneficiary’s occupation. To the contrary, counsel claims that the beneficiary meets the criteria for artists at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), (3) and (5). These criteria are identical to those for aliens in the motion picture or television industry at 8 C.F.R. § 214.2(o)(3)(v)(B)(1), (3) and (5). As will be discussed below, the petitioner in this case has met neither the award criterion nor any of the alternate criteria.

For the purposes of this decision, the statutory and regulatory distinction between the arts and motion picture and television productions would be significant only if the petitioner can show that the beneficiary does not have a “demonstrated record of extraordinary achievement” in “motion picture and television productions,” but that she does have “extraordinary ability in the . . . arts . . . which has been demonstrated by sustained national or international acclaim” pursuant to section 101(a)(15)(O)(i) of the Act. Without such a showing, there is no basis for a finding that the director substantively erred by mentioning motion picture and television productions, rather than the arts, in the notice of decision. As we will explain, the petitioner has made no such showing.

Moreover, the beneficiary’s intended employment is clearly in the motion picture and television industry. All O-1 nonimmigrants, regardless of the exact field of endeavor, must seek entry into the United States to “continue work in the area of extraordinary ability” or “extraordinary achievement” pursuant to section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii)(A). The beneficiary can only *continue* work in a given area if she has *already* been working in that area. Whatever the beneficiary may have done in the past, the petitioner is a video production company. The record shows that the petitioner hired the beneficiary to work as an editor on a documentary entitled *Gom Tang*. To the extent that the petitioner may employ the beneficiary as an O-1 nonimmigrant, her work clearly will be in motion picture and television productions, corporate videos and commercials. Because the petitioner seeks to employ the beneficiary in motion picture and television productions, it was reasonable for the director to consider the petition in the context of “motion picture and television productions” rather than under the category of “arts.”

Pursuant to 8 C.F.R. § 214.2(o)(3)(v), an alien of extraordinary achievement in the motion picture or television industry must be recognized as having a demonstrated record of extraordinary achievement as evidenced by either: (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 six specified forms of documentation. The petitioner does not claim that the beneficiary has won significant national or international awards or prizes to satisfy 8 C.F.R. § 214.2(o)(3)(v)(A).

The petitioner did not initially specify which of the regulatory criteria the beneficiary was supposed to have met, but later communications from counsel indicate that documents and witness letters accompanying the initial filing purport to satisfy two related regulatory criteria:

8 C.F.R. § 214.2(o)(3)(v)(B)(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.

8 C.F.R. § 214.2(o)(3)(v)(B)(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.

Most of the letters are from individuals who have engaged the beneficiary's services as an editor on their video projects. [REDACTED], President of the petitioning company, described the company and the beneficiary's intended role therein:

[The petitioner is] a full service video production company, specializing in travel documentaries, broadcast commercials, and full length info-mercials. . . .

[The petitioner] is a sole proprietorship owned and managed by me, [REDACTED] the only full time employee. It employs its production staff on a freelance basis contingent upon each project's needs. . . .

In December of 2005 . . . I hired [the beneficiary] as the Chief Editor for [REDACTED], a documentary about immigrant neighborhoods in New York City. We worked directly together for three months. The premise and presentation of 'Gom Tang' needed a technically savvy but creatively open minded editor who could masterfully mix various mediums (3D animation, graphics, and After Effects) into one seamless visual motif. A conventional film editor would not suffice, and due to budgetary reasons we could not hire specialists for each medium.

It was a unique and daunting problem that I could resolve *only* by finding an individual, who had a mastery of all these various visual mediums. Luckily we found that person in [the beneficiary]. . . . [The beneficiary] proved to be an integral contributor to the project. She did this not by mechanically following my directions, but by editing two or three different versions of a certain scene through her own vision. . . . [H]er expertise in various multimedia, particularly After Effects and Photoshop, helped to smoothly combine all the visual assets of the project into one fully integrated common theme.

It is our intention to hire [the beneficiary] again as an editor, and possibly as a full-time employee, if the [REDACTED] series gets distribution. But regardless of the future [of] [REDACTED] we intend to hire [the beneficiary] as a freelance editor, on a project by project basis, for [our] corporate videos and commercials.

Other witnesses describe projects for which they have engaged the beneficiary's services as a video editor. [REDACTED], Artist/Core Faculty in the Department of Media Studies and Film at the New School, New York, New York, stated:

[The beneficiary] was my student in both my Cybernetics course and my Semiotics for Digital Producers course in the Graduate Media Studies Program at New School. . . .

[The beneficiary] distinguished herself by demonstrating that she could combine abstract intelligence and graphic intelligence at a very high level. . . . Based on this work and recommendations from my fellow teachers, I subsequently asked her to work ten hours a week with me as an editor on my own video art work. Knowing that my work could again be shown at the prestigious Whitney Museum of American Art and the Museum of Modern Art (both in New York), I needed the talents and skills of a unique and highly skilled AVID editor with a strong aesthetic. [The beneficiary] exceeded my expectations. To date, the tapes she collaborated on making have been shown in such varied places as the Center for Contemporary Maine Art, Rockport, Maine (A show on water); Haystack, Deer Island, Maine, 2004 (a conference on creativity and the hand); and V bienal, Quito, Ecuador [sic], 2004 (an international festival for the arts). . . .

Based on my experience working in the field, I would say [the beneficiary] is technically very sophisticated in a way that sets her above others in her profession. . . . [The beneficiary's] achievements with respect to my work involving complicated images of water using varying speeds and directions as well as multiple video tracks with a range of special effects demonstrated a complex skill. Because of her extraordinary contribution, I gave her credit as an associate editor, an honor which is seldom bestowed on someone with her limited professional experience; this credit also reflects the high level of her achievements.

[REDACTED] at Medgar Evers College of the City University of New York engaged the beneficiary's editing services for a "documentary project . . . based on a person named one of the first 100 dance treasures of the United States. This is a major project about dance in America with levels of complexity much greater than on the average documentary." [REDACTED] did not specify whether or not, at the time of writing, the project had been completed or released, nor did he provide a title or even identify by name the subject of the documentary. (Other materials in the record identify the subject as Chuck Davis, Artistic Director of Dance Africa and leader of the African American Dance Ensemble.)

[REDACTED] of Parallel Voice Productions produced "*Songs of the Spirit*, a multi-artist concert series that combines contemporary popular music and spoken word performances with traditional sacred music of diverse faiths and cultures," and engaged the beneficiary when "almost three hours of . . . raw footage that was below broadcast quality (from a single, stationary camera)" "needed to be edited down to less than 10 minutes for a promotional DVD."

[REDACTED] utilized the beneficiary to edit episodes of *The Lydia Show!*, described in a press release from KickApps Corporation as a weekly "episodic video series developed for internet and mobile phone distribution. . . . Episodes range from one minute and thirty seconds to four minutes. [REDACTED] President of [REDACTED] worked with the beneficiary in 1997 "on 'Travelers,' an international travel show airing globally on The Discovery Travel [sic]" and "[r]ecently . . . contracted [the beneficiary's] editing services to create a reel."

[REDACTED], Video Production Editor at MTV Networks, stated:

I became aware of [the beneficiary's] ability as a graphic artist on my film THE CALLER. . . .

Based on this experience, I recommended her to my colleagues at MTV Networks where she worked as a Broadcast Designer and Editor. Her unique style was showcased with much success when we re-created scenes [from] THE MATRIX RE-LOADED, re-cutting and composing the end scene of the movie to incorporate MTVN properties.

She excelled on the project: Affiliate Sales and Marketing Puerto Rico Retreat, which were shown at the ASM Puerto Rico Retreat.

New York-based artist Hector Cardenas affirms that the beneficiary's project for MTV Networks "was a kick off tape for a Sales Retreat Meeting." There is no indication that the beneficiary edited any product intended for commercial broadcast, as opposed to in-house screening at corporate functions.

Artistic Director of the Mahaiwe Performing Arts Center states that the beneficiary "has worked for me for the past two years developing and producing promotional DVD's for the Mahaiwe Performing Arts Center. Each year she has taken our whole season and turned it into an extraordinary thirteen minute promotional video which we have used to present our season to press, funders and at events with twenty to seven hundred participants."

A section of the petitioner's initial submission bears the label "Publicity About Work And Organizations." The term is misleading because there is no evidence that the beneficiary's work, as such, has earned any publicity at all. Rather, all of the documented publicity can be divided into two subjects: Chuck Davis (and his various dance groups) and the Mahaiwe Performing Arts Center.

The record establishes the national reputation of [REDACTED] African American Dance Ensemble and Dance Africa, but the beneficiary has never worked for those organizations. Rather, she worked for a filmmaker who, in turn, wished to create a documentary about [REDACTED]. It does not follow that the beneficiary, by working on the documentary, earned a reputation comparable to that of [REDACTED] and his groups. We note that, while the evidence shows national recognition of the ensemble itself, there is no evidence to establish a comparable reputation of the documentary or of the entity that produced it (if, in fact, the documentary was complete as of the filing date).

Articles from such newspapers as *The Berkshire Eagle* and *Berkshire Week* discuss live musical and dance performances at the Mahaiwe Performing Arts Center. Because these are live performances, rather than video recordings, the talents of a video editor did not come into play except when collecting highlights of performances taped for promotional purposes. There is no evidence that the Mahaiwe Performing Arts Center, which first opened in 2005, enjoys more than a regional reputation.

In a section marked “Work Of The Beneficiary,” the petitioner submitted materials relating to the New York Sinfonietta. The petitioner did not explain, at the time, how the beneficiary is connected to the New York Sinfonietta. A musical ensemble that performs before live audiences has no readily apparent need for the services of a video editor. We have not found the beneficiary’s name in any of the promotional materials and programs from the New York Sinfonietta that the petitioner has submitted, and none of the petitioner’s witnesses appear to have mentioned the ensemble.

The petitioner submitted various promotional materials and articles relating to other documentaries. None of this evidence sets the documentaries apart from the countless other documentaries produced and released each year, each of which presumably has been shaped by one or more editors. Involvement in making a film does not equate to recognition or acclaim in motion picture and television productions or, for that matter, to distinction or prominence in the arts.

On October 18, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit additional evidence to satisfy the regulatory criteria listed at 8 C.F.R. § 214.2(o)(3)(iv) and its subsections (which, as noted above, are essentially identical to those listed at 8 C.F.R. § 214.2(o)(3)(v) and its subsections). The director acknowledged the petitioner’s submission of witness letters, but stated: “the opinions of individuals in the field cannot form the cornerstone of a successful claim for this classification. . . . An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.”

In response, the petitioner submitted materials about various film festivals. Counsel stated that the beneficiary edited films shown at those festivals, and thereby performed services as a lead or starring participant in productions or events which have a distinguished reputation. The petitioner has not persuasively shown that the beneficiary was “a lead or starring participant” in the films she edited.

Counsel stated that witness ██████████ “taught and collaborated with the beneficiary on video art work that appeared at the Whitney Museum of American Art in New York, the Museum of Modern Art in New York, Center for Contemporary Maine Art, and the V bieneal [*sic*] in Quito, Equador [*sic*].” The Whitney Museum and the Museum of Modern Art (MOMA) have distinguished reputations, but once again, the petitioner has not shown that a film editor plays a lead, starring or critical role for those establishments. Furthermore, while ██████████ stated that some of his work has appeared at the venues named, he did not state that he collaborated with the beneficiary on works that appeared at the Whitney or MOMA. He stated only that he sought a “highly skilled editor” because his “work *could again be shown* at the prestigious Whitney Museum of American Art and the Museum of Modern Art” (emphasis added).

Counsel also stated that the beneficiary worked “as multimedia coordinator of the New York Sinfonietta. Evidence includes information about the prestige of the New York Sinfonietta.” The materials submitted regarding the New York Sinfonietta do not mention any “multimedia coordinator.” This lack of published credit or other evidence from the New York Sinfonietta regarding the beneficiary’s role suggests that, even if the beneficiary is in fact the organization’s multimedia coordinator, the organization itself does not consider the beneficiary’s role to be leading, starring, or critical. Furthermore, the petitioner documented the existence

of the New York Sinfonietta, but the record does not establish that it enjoys “prestige” or an otherwise distinguished reputation when compared to other comparable musical ensembles.

The director denied the petition on November 24, 2006. In denying the petition, the director found that the petitioner had attempted, without success, to meet the two criteria relating to lead, starring or critical roles.

In the denial notice, the director stated:

the letter from [REDACTED] states that “Because of her extraordinary contribution, I gave her credit as an associate editor, an honor which is seldom bestowed on someone with her limited professional experience. . . .” It should be noted, aliens seeking O-1 classification have usually reached a level of expertise that has garnered national or international recognition. [REDACTED] indicates the beneficiary has “limited professional experience.”

On appeal, counsel states that the petitioner had already identified film festivals in which in which the beneficiary participated, and that “[d]ocumentation showing the prestige of these film festivals was submitted with the response to the RFE.” Mere involvement with these festivals does not amount to a lead, starring or critical role therein, and the petitioner has not shown that the beneficiary stood out in any way from the hundreds of other individuals who contributed to the many films shown at those festivals.

Counsel contends that the director improperly referred to “national or international recognition” because the regulation does not mention or require recognition at that level. As we have already noted, counsel has insisted that the petition should be considered under the category of extraordinary ability in the arts, which requires “sustained national or international acclaim” pursuant to section 101(a)(15)(O)(i) of the Act and the regulation at 8 C.F.R. § 214.2(o)(1)(ii)(A)(1). While an alien in the motion picture or television industry is not required to demonstrate national or international acclaim, the statute and regulation require such aliens to show “extraordinary achievement” in their field. Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(ii). National or international recognition is consistent with the regulatory definition of extraordinary achievement at 8 C.F.R. § 214.2(o)(3)(ii). The director did not impose an additional burden of proof and we do not read his passing reference to “national or international recognition” as going beyond the statute or the regulation.

Counsel further contends that the director took [REDACTED]’s comments out of context. The director simply placed the quotation in context before re-quoting the reference to the beneficiary’s “limited professional experience.” It is, rather, counsel who has taken [REDACTED]’s comments out of context, repeating on appeal the incorrect assertion that [REDACTED]’s work *with the beneficiary* has appeared at the Whitney Museum and the MOMA.

Counsel asserts that “the beneficiary’s contribution was both crucial and indispensable” to “the world-renowned Mahaiwe Performance Center.” Even if that center were shown to be “world-renowned,” which is not the case here, the beneficiary’s contribution to the center was limited to editing a promotional video created for fund-raising purposes. We concur with the director’s determination that the beneficiary does not meet the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(1), (3).

8 C.F.R. § 214.2(o)(3)(v)(B)(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 record mentions only one instance of what could be called recognition of the beneficiary. [REDACTED] Mayor of Muncie, Indiana, stated in a letter:

[The beneficiary] is an alumnus [*sic*] of Ball State University in Muncie, Indiana. During her tenure at Ball State University, she demonstrated the finest qualities of scholarship and a strong motivation to succeed at whatever goals she set. . . .

In addition to her studies, [the beneficiary] served as an officer for the Korean Student Association at Ball State University. In this position she demonstrated strong leadership, creativity, and organizational skills and helped to develop a dynamic international student organization and promoted various cultural activities. She also assisted many international students who needed help adjusting to a new and different culture and environment.

As Mayor of Muncie, I presented [the beneficiary] the *City of Muncie Honorary Citizenship Award* upon her graduation from Ball State University, due to her contribution to the development of better international understanding.

The “City of Muncie Honorary Citizenship Award” constitutes recognition from a city governmental entity, but the petitioner has not shown that it is *significant* recognition, or that [REDACTED] is a recognized expert in the field in which the alien is engaged. Indeed, there is no indication that the beneficiary’s receipt of the award was based in any way on her work as a video editor. [REDACTED] himself never mentions video editing in his letter, stating instead that the beneficiary earned the award “due to her contribution to the development of better international understanding” through her work with international students. The petitioner has not explained why this letter is relevant to the petition.

In denying the petition, the director found that the witness letters “do not mention what significant recognition for achievements the beneficiary has received.” On appeal, counsel does not contest, rebut or even mention this finding.

Counsel’s appeal is focused on only two of the six regulatory criteria at 8 C.F.R. § 214.2(o)(3)(v)(B), and because the petitioner must satisfy at least three of those criteria, we could not approve the petition even if we found all of counsel’s arguments on appeal to be credible and well-founded in the facts. We have not made such a finding regarding counsel’s arguments.

The record does not establish that the beneficiary has a demonstrated record of extraordinary achievement in motion picture or television production. The petitioner failed to establish that the beneficiary has received a

major, internationally recognized award or that she satisfies at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O)(i) of the Act and the petition cannot be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Under this recognized power of *de novo* review, the AAO finds another ground, beyond the director’s decision, that precludes approval of the petition. 8 C.F.R. § 214.2(o)(2)(ii)(C) requires that the petition be accompanied by an explanation of the nature of the event or activities, the beginning and ending dates for the events and activities and a copy of any itinerary. 8 C.F.R. § 214.2(o)(3)(ii) defines an “event” 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 petitioner failed to submit the required initial evidence relating to a specified event. Judging from [REDACTED] [REDACTED] undated letter, it does not appear that the beneficiary is coming to work on any particular event or activity at all. [REDACTED] explained that he intends to hire the beneficiary “as a freelance editor, on a project by project basis,” and only “possibly as a full-time employee” if the [REDACTED] project is picked up for distribution. The petitioner failed to specify any future projects for which firm plans exist. Even if the petitioner had demonstrated the beneficiary’s eligibility for the classification requested, which it has not done, the petition could not be approved an assigned a validity period in accordance with 8 C.F.R. § 214.2(o)(6)(iii) because the alien is not coming to accomplish a specified event or activity.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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.

ORDER: The appeal is dismissed.