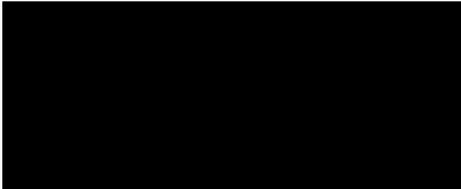


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D8

DATE: OCT 25 2011

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
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 AAO will withdraw the director's decision and remand the petition to the service center for further action and entry of a new decision.

The petitioner filed the nonimmigrant visa petition seeking classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in the sciences. The petitioner, a university and teaching hospital, current employs the beneficiary as a physician pursuant to an approved O-1 petition. It seeks to extend the beneficiary's employment for a period of one year.

The director denied the petition on December 11, 2010, based on the petitioner's failure to submit any initial evidence in support of its petition, which was filed using the U.S. Citizenship and Immigration Services (USCIS) Electronic Filing (e-Filing) system. As such, the director determined that the petitioner did not establish that the beneficiary is eligible for classification as an O-1 alien of extraordinary ability in the sciences, education, business or athletics.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner contends that the director erred in denying the petition without issuing a request for evidence, as the petition involved an extension of the beneficiary's O-1 status with no changes in the beneficiary's previously approved employment. Counsel submits a brief and several exhibits in support of the appeal, noting that such documentation inadvertently did not reach the service center.

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, or, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, and 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 issue in this matter is whether the director appropriately denied the petition based on the petitioner's failure to submit documentary evidence in support of its electronically filed petition.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, using the USCIS e-Filing system on October 31, 2010. The form instructions for Form I-129 advise that if a petition is filed without the required initial evidence, the petitioner will not establish a basis for eligibility and USCIS may deny the petition. The instructions for electronic filing further instruct the petitioner that the required initial evidence must be received by the Service Center within seven business days of filing the form electronically.

Pursuant to 8 C.F.R. § 103.2(a)(1), the instructions contained on a petition are to be given the force and effect of a regulation:

Every application, petition, appeal, motion, request or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission....

The regulation at 8 C.F.R. § 103.2(b)(1) states:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

Finally, the regulation at 8 C.F.R. § 103.2(b)(8)(ii) states, in pertinent part:

Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or ineligibility. . . .

Relying on these regulatory provisions, the director denied the petition based on the petitioner's failure to submit supporting evidence.

This matter, however, involves a continuation of previously approved employment without change, involving the same petitioner and beneficiary. The applicable regulations at 8 C.F.R. § 214.2(o)(11) provide that no supporting documents are required when a petitioner seeks to extend the validity of a beneficiary's original O-1 petition, provided that the beneficiary will continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the director.

Therefore, the AAO concludes that the director's decision to deny the petition based on lack of initial evidence was improper. Under the circumstances present in this case, the petitioner was not required to submit supporting documents unless instructed to do so by the director. Accordingly, the director's decision dated December 11, 2010 must be withdrawn.

As the director denied the petition in error, the petition will be remanded to the director for further action and entry of a new decision.

In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate

burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The director is instructed to review the evidence submitted on appeal to determine whether eligibility for the benefit sought has been established. If not, the director should request any additional evidence necessary to determine the beneficiary's eligibility as an alien of extraordinary ability in the sciences.

ORDER: The director's decision dated December 11, 2010 is withdrawn. The matter is remanded to the director for further action and entry of a new decision.