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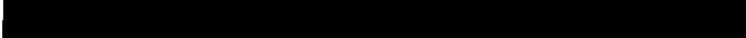
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



D8



DATE: **JUL 17 2012** Office: VERMONT SERVICE CENTER FILE: 

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:

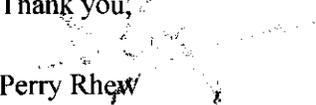


INSTRUCTIONS:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as untimely filed.

The petitioner states that it is an industry leader in music, fashion, art, TV and pop culture vinyl skins. It filed the instant petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien of extraordinary ability. The petitioner seeks to temporarily employ the beneficiary as an artist/entertainer for a period of five months.

The director denied the petition on August 26, 2011, concluding that the evidence submitted does not support a claim of extraordinary achievement in the music industry, as defined by the statute and regulations. The director noted that the petitioner indicated that the beneficiary was coming to the United States as a starring artist on a promotional tour and that the record does not indicate that he would be performing. The director determined that the petitioner failed to submit evidence to satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), or at least three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). Specifically, the director noted that the petitioner indicated that the beneficiary would be coming to the United States to participate in a promotional tour where he would meet and greet fans in the petitioner's promotion tent to build fan interest so that he can perform on tour next year. The director noted that the petitioner's description of the beneficiary's duties and itinerary did not include the beneficiary's performance this year, and therefore, the petitioner has not established the beneficiary's eligibility.

Counsel for the petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, August 2, 2011, but did not subsequently submit the required initial evidence in support of the petition. On August 18, 2011 the director issued a request for evidence, granting the petitioner 12 weeks to provide documentary evidence demonstrating that the beneficiary meets the statutory and regulatory criteria as an alien of extraordinary ability in the arts. The petitioner submitted evidence that the beneficiary meets two of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). On August 26, 2011, the director denied the petition based on insufficient evidence of eligibility for the O-1 classification.

On September 30, 2011, counsel for the petitioner filed a Form I-290B, Notice of Appeal or Motion, indicating that he would submit a brief and/or additional evidence within 30 days.¹ An affected party filing from within the United States has 30 days from the date of an adverse decision to file an appeal. An appeal received after the 30-day period has tolled will not be accepted. The 30-day period for submitting an appeal begins 3 days after the Notice of Decision is mailed. 8 C.F.R. § 245a.20(b)(1).

The record reflects that the director sent his decision of August 26, 2011 to the petitioner and counsel at their addresses of record. *United States Citizenship and Immigration Services (USCIS)* received the appeal 35 days later on September 30, 2011. Therefore, the appeal was untimely filed.

ORDER: The appeal is rejected as untimely filed.

¹ The petitioner's counsel failed to submit a brief and/or additional evidence.