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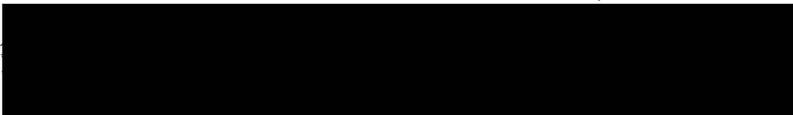
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FILE: WAC 03 044 52545 OFFICE: CALIFORNIA SERVICE CENTER Date: JUL 25 2006

IN RE: Petitioner:
Beneficiary:



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

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

The petitioner seeks O-2 classification of the beneficiary, under section 101(a)(15)(O)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(ii), as an essential support alien to Ashley Ingram, a musical recording artist and composer.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary's duties are consistent with being an integral part of the O-1 alien's performance and that the beneficiary has critical skills and experience that are not possessed by a U.S. worker.

The petitioner submits a timely appeal accompanied by a letter from [REDACTED]

Section 101(a)(15)(O)(ii) of the Act provides classification to a qualified alien who seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted as an O-1 alien for a specific event or events, is an integral part of such actual performance, has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals.

After a careful review of the record, it must be concluded that the petitioner has failed to meet its burden of proof. The petitioner claims that the beneficiary has been working with [REDACTED] over the years" as an "integral part" of [REDACTED] production team. The petitioner further claims that the beneficiary will be coming to the United States as a replacement for [REDACTED] former production assistant. As initially described by [REDACTED] the beneficiary's duties as production assistant include:

. . . administration of my recording studio; coordinating the catalog of my recorded material, including computer files and songs; and organizing the schedule of my recording sessions and business meetings.

On appeal, while [REDACTED] letter focuses on the beneficiary's duties in "coordinating" his recording material and stresses the importance of having someone he trusts assisting him in this role, he does not provide any further details regarding the beneficiary's actual duties. As initially indicated by [REDACTED] the beneficiary's duties in "coordinating" his recorded material are only part of the beneficiary's responsibilities. [REDACTED] states:

When I write songs now, all the sounds, be they vocals or instrumental, are stored in wave forms that are systematically compiled into songs. This is the work of an experienced skilled technician in this field.

When your work is structured in this way, one must be extremely careful as to who has access to ones unique sounds, otherwise they can be copied and used by others without permission and thus undermine the work that one does.

There is no indication that the storage or coordination of such material is an integral part of [REDACTED] performance or of such a nature that it could not performed by a U.S. worker. The remainder of the beneficiary's

duties, which include organizing [REDACTED]'s schedule and business meetings, also do not appear to be integral to [REDACTED]'s performances or duties that could not be performed by a U.S. worker. Moreover, although not specifically noted by the director, these duties do not meet the requirements of the regulation at 8 C.F.R. § 214.2(o)(4)(ii) which indicates that the beneficiary must possess critical skills "which are not of a general nature."

Based upon the above discussion, we concur with the director's findings that the petitioner failed to establish that the beneficiary is an integral part of [REDACTED]'s performances, that she has critical skills and experience with [REDACTED] which are not of a general nature and which cannot be performed by other individuals.

Beyond the director's decision, we find an additional issue that precludes approval. The status of an O-2 alien is contingent upon the status of the O-1 alien. The record contains a request for evidence issued by the director on April 8, 2003. In that notice, the director requested the petitioner to submit evidence of [REDACTED]'s O-1 approval. The record does not contain any evidence that the petitioner responded to this request. Although on appeal the petitioner claims that [REDACTED] was approved as an O-1 nonimmigrant, the record does not contain any such evidence.¹ Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

¹ Although the AAO attempted to verify the petitioner's claims regarding Ashley Ingram's approval, the AAO was unable to find any approval records for [REDACTED]