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U.S. Citizenship
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FILE: EAC 04 187 50327 Office: VERMONT SERVICE CENTER Date: **OCT 04 2006**

IN RE: Petitioner:
Beneficiary:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) rejected a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the petition will be denied.

The petitioner is a company that designs and distributes religious olive woodcarvings. The beneficiary is a designer and carver of religious olive wood items. 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 an olive wood carver and designer for three years at a monthly salary of \$2,000.

The director denied the petition because the petitioner failed to establish that the beneficiary satisfied the standards for classification as an alien with extraordinary ability in the arts.

The petitioner, through counsel, timely appealed. The Vermont Service Center notified counsel that the appeal was filed without a properly executed Form G-28, Notice of Entry of Appearance as Attorney, and directed counsel to submit a properly executed Form G-28 to the AAO. Counsel submitted a properly executed Form G-28 signed by [REDACTED] on behalf of the petitioner. Mistakenly believing that [REDACTED] was another name of the beneficiary, [REDACTED] the AAO rejected the appeal because the Form G-28 appeared to have been signed by [REDACTED]. [REDACTED] timely filed a motion to reopen and reconsider.

On motion, counsel clarifies that [REDACTED] represents the petitioner and that his son, [REDACTED] is the beneficiary. With the Form I-129, the petitioner submitted a copy of its catalogue, which lists [REDACTED] on the cover. In response to the director's Request for Evidence (RFE), the petitioner also submitted a letter from [REDACTED] which identifies him as the owner of Bethlehem Christian Families. Hence, evidence on record at the time the AAO rejected the appeal shows that [REDACTED] represented the petitioner and that the Form G-28 signed by [REDACTED] and submitted on appeal was correctly executed. Because the AAO improperly rejected the appeal, the motion to reconsider is granted.

However, for the reasons discussed below, the record does not establish that the beneficiary is an alien with extraordinary ability in the arts who is eligible for classification under section 101(a)(15)(O)(i) of the Act.

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 . . . and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability[.]

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i).

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides the following 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. . . .

* * *

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), further prescribes:

Evidentiary criteria for an O-1 alien of extraordinary ability in the arts. To qualify as an alien of extraordinary ability in the field of 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, 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;
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; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary in this case is a native of Kuwait and a citizen of Palestine. The record contains no evidence that the beneficiary has been nominated for or received any **significant national or international awards or prizes in his field**. Indeed, in his July 15, 2004 letter, [REDACTED], Director General of the Palestinian National Authority Ministry of Tourism and Antiquities, explains that because of the unstable political situation in the beneficiary's homeland, the beneficiary has had no opportunity to get "any distinguished awards." As the record shows that the beneficiary does not meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), we will discuss his eligibility under the relevant criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). On appeal, counsel claims that the beneficiary meets the first, second, third and fifth criteria. Counsel does not claim that the beneficiary meets any criteria that are not discussed below.

(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.

In his letter submitted with his RFE response, counsel claims the beneficiary meets this criterion because he has and will continue to display his work for the petitioner at numerous churches and religious organizations in **Pennsylvania, West Virginia, Ohio, New York and other, unspecified** states. In his September 22, 2004 letter, [REDACTED] Owner of the petitioner and the beneficiary's father, confirms that the beneficiary "has been sought by Bethlehem Christian Families to be their lead designer and creator of olive wood arts in the United States." While the record may show that the beneficiary has performed and will perform leading services for the petitioner, the evidence does not demonstrate that the display and sale of the petitioner's work, in as much as they may be considered productions or events, have a distinguished reputation.

The petitioner submitted bulletins from four churches in the United States announcing the sale of the petitioner's items; an excerpt from an unidentified publication noting the sale of the petitioner's products; an article from the *Pittsburgh Tribune-Review*, which states that the petitioner's carvings would be on sale at a local "Fair Trade Fair;" and letters from 11 religious officials from churches in the United States, Germany and Belgium who confirm that the beneficiary has represented the petitioner at sales of the petitioner's products or that they or their parishioners have purchased some of the beneficiary's work. While some of these documents might arguably be called advertisements, publicity releases, publications or endorsements, none of them establish that the display and sale of

the beneficiary's own work, or that of other craftsman represented by the petitioner, has a distinguished reputation in the beneficiary's field. The record does not indicate that any of the aforementioned 11 religious officials are experts or critics in the field of religious art. The church bulletin announcements, unidentified announcement and the newspaper article also do not discuss the display and sale of the beneficiary's work as an artist, but rather describe the plight of the Christian families in Bethlehem whom the petitioner represents. Accordingly, the beneficiary does not meet this criterion.

- (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.*

Counsel claims the beneficiary meets this criterion because individuals and organizations in Bethlehem and elsewhere have praised his work and because he was mentioned in the *Pittsburgh Tribune-Review* article. The record does not support counsel's claim. The support letters may praise the beneficiary's work, but the letters are not published materials, as required by this regulatory criterion. The sole published article that mentions the beneficiary is that from the *Pittsburgh Tribune-Review*. This article quotes the beneficiary and briefly discusses his work as a representative of the petitioner in selling the religious figurines made by Christian families in Bethlehem. The article does not critically review the beneficiary's own work and the record is devoid of any evidence that the *Pittsburgh Tribune-Review* is a major newspaper with national or international circulation. Accordingly, the beneficiary does not meet this criterion.

- (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.*

Although the beneficiary may have performed and will perform in a leading or critical role for the petitioner, the evidence does not demonstrate that the petitioner has a distinguished reputation. The *Pittsburgh Tribune-Review* article indicates that the petitioner is "Fair Trade certified," but does not substantively discuss the petitioner's reputation as an artistic organization or establishment. The church bulletins and support letters also fail to demonstrate that the petitioner has a distinguished reputation. Rather, the record indicates that the petitioner has received limited recognition for its work to support olive wood artisans from the Bethlehem Christian community whose past income from religious tourism has largely been depleted due to political unrest in their homeland. Accordingly, the beneficiary does not meet this criterion.

- (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 petitioner submitted support letters which indicate that he is well-respected in his homeland. In his aforementioned July 15, 2004 letter, Mr. [REDACTED] (of the Palestinian National Authority Ministry of Tourism and Antiquities) states that the beneficiary is a prominent artist in the field of wood carving and designing, but that due to the political situation, he has been unable to demonstrate a record of prominence. Mr. [REDACTED] confirms that the beneficiary is recognized in Palestine as a “well qualified” artist with “significant achievements in this art where only a few number in the Holy Land i.e. Jerusalem and Bethlehem areas are characterized as prominent artists in this field.” The petitioner also submitted a letter dated March 18, 2004 from [REDACTED] Mayor of Bethlehem, who recommends the beneficiary “due to his excellent career in designing olive woodcarvings figures of Christian models He is considered one of the best in Bethlehem city area in this work.” An April 6, 2004 letter from the Holy Land Handicraft Cooperative Society, similarly confirms that the beneficiary is “a well known wood carver in [the] Bethlehem area.” Additionally, the February 3, 2004 letter from [REDACTED] Chairman of the Board of the Fatima Olive Wood Works, identified as the “largest souvenir shop in Bethlehem,” states that the beneficiary is “a very well known designer.” Some of the letters from religious officials in the United States and Europe (discussed above under the first criterion) also praise the beneficiary’s work and refer to him as a well-known artist.

However, apart from their general affirmation that the beneficiary is a well-known artist, Mr. Ismail, Ms. [REDACTED] and Mr. [REDACTED] do not clearly indicate their expertise or knowledge of the beneficiary’s achievements. For example, Mr. [REDACTED] simply describes the beneficiary’s work and states that it “is highly recognized by most of pilgrims who purchase such items.” The letters from religious officials in the United States and Europe also fail to substantively discuss the beneficiary’s work and do not indicate their authority, expertise or knowledge of the beneficiary’s artistic achievements. Rather, they simply state that they or their parishioners were pleased with their purchases of the beneficiary’s work or other articles sold by the petitioner. For example, Pastor [REDACTED] of the [REDACTED] Coraopolis, Pennsylvania states that the beneficiary was “very well received by our parishioners who were impressed by the quality of the articles as well as the reasonable prices.”

In his September 22, 2004 letter, Mr. [REDACTED] the petitioner’s owner and the beneficiary’s father, cites the beneficiary’s design of a holy water dispenser for American Christians as an example of his innovative work and claims that the beneficiary “is one of the few olive wood professionals capable of designing new pieces.” However, the record contains no testimonials from recognized experts in the beneficiary’s field that discuss or even mention the beneficiary’s holy water dispenser or his allegedly innovative design work in general. Accordingly, the beneficiary does not meet this criterion.

Comparable Evidence

On appeal, counsel requests that we consider “the totalities of the evidence of [the beneficiary’s] mission, his innovative design work, the national recognition that he has earned in the “Holy Land,” the international acclaim that he as [sic] earned from clergy in the Holy Land, in the United States and in Europe, [and] the graphic example of the creativity of his design” as comparable evidence of the beneficiary’s eligibility. However, counsel has not established that at least three of the criteria at 8 C.F.R. § 214.2(3)(iv)(B) do not readily apply to the beneficiary’s occupation. On appeal, counsel intimates that the beneficiary is prominent in the “narrow field of art” of religious, olive wood carvings

made by Christian families in Bethlehem. Yet counsel cannot narrow the beneficiary's field to such an extent that it excludes any meaningful comparison to other artists engaged in similar work. Moreover, even if we recognized the beneficiary's field as described by counsel, counsel has not explained why the regulatory criteria do not readily apply to the beneficiary's occupation. We recognize that the petitioner may have been impeded from participating in international exhibitions and obtaining critical reviews of his work due to the political situation in Palestine. However, the record contains sufficient evidence of the beneficiary's work from which to assess his eligibility under the six regulatory criteria at 8 C.F.R. § 214.2(3)(iv)(B).

Consultation with an Appropriate U.S. Peer Group

Beyond the director's decision, the petitioner also failed to establish the beneficiary's eligibility because it did not submit a consultation with an appropriate U.S. peer group, as required by the regulation at 8 C.F.R. § 214.2(o)(5). On the Form I-129 Supplement, the petitioner listed the Holy Land Handicraft Cooperative Society ("the Society") as the beneficiary's recognized peer group. According to documents about the Society submitted by the petitioner, the Society is located in Palestine and promotes the handicrafts traditions of the Palestinian people in the Bethlehem area. The April 6, 2004 letter from Mr. [REDACTED] Chairman of the Board of the Society, thus does not qualify as a consultation with an appropriate U.S. peer group pursuant to the regulation at 8 C.F.R. § 214.2(o)(5). The petitioner has not established that an appropriate U.S. peer group does not exist pursuant to the regulation at 8 C.F.R. § 214.2(o)(5)(i)(G) or that the beneficiary is eligible for a waiver of the consultation requirement pursuant to the regulation at 8 C.F.R. § 214.2(o)(5)(ii)(B). Consequently, the petition must also be denied for lack of the required consultation.

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. Accordingly, the appeal will be dismissed.

ORDER: The motion is granted. The rejection of the appeal is withdrawn and the appeal is dismissed.