

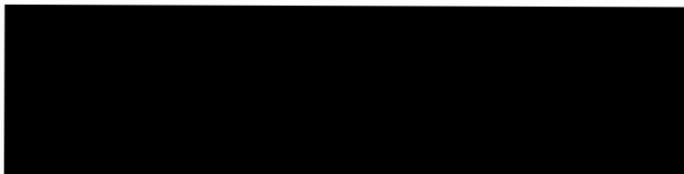
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U.S. Citizenship
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Services

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File: EAC 08 178 51729 Office: VERMONT SERVICE CENTER Date: JAN 30 2009

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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner 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), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary achievement in arts. The petitioner, a non-profit religious organization, seeks to employ the beneficiary as a "Temporary Radio Speaking & Programming Broadcaster" for a period of eight months.

The director denied the petition on October 14, 2008, concluding that the petitioner failed to meet any of the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv), and therefore did not demonstrate that the beneficiary is recognized as being prominent in the radio broadcasting field. The director also denied the petition based on the petitioner's failure to submit a written advisory opinion from an appropriate consulting entity, as required by 8 C.F.R. § 214.2(o)(2)(ii)(D), or adequate evidence of a contract between the petitioner and the beneficiary, pursuant to 8 C.F.R. 214.2(o)(2)(ii)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner requests 30 days to submit additional evidence. The petitioner filed the appeal on November 17, 2008. As of this date, more than 30 days have passed and no additional brief and or evidence have been submitted. Accordingly, the record will be considered complete.

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, 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 regulation at 8 C.F.R. § 214.2(o)(3)(ii) states, in pertinent part:

Extraordinary ability in the arts mean 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.

The evidentiary criteria for aliens seeking classification as O-1 aliens with extraordinary ability in the arts are set forth at 8 C.F.R. § 214.2(o)(3)(iv). Specifically, the petitioner must establish that the beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(A), three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). If the criteria do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. 8 C.F.R. § 214.2(o)(3)(iv)(C). The evidence submitted must demonstrate that the beneficiary is recognized as being prominent in his or her field of endeavor.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. As noted by the director, the petitioner has submitted evidence that the beneficiary possesses experience in the radio broadcasting field; however, there is no evidence in the record that he has achieved a level of distinction in

the field. The evidence submitted does not meet the evidentiary criteria set forth in the regulations. Similarly, the AAO concurs with the director's determination that the submitted contract does not satisfy the requirement set forth at 8 C.F.R. § 214.2(o)(2)(ii)(B). As noted by the director, the contract was not signed by the beneficiary, is not dated, and does not identify the beginning and end dates of employment.

Upon review of the record, the AAO notes that the petitioner did attempt to satisfy the written advisory opinion requirement at 8 C.F.R. § 214.2(o)(2)(ii)(B), by submitting a letter from [REDACTED] president of the Asociacion Nacional de Locutores de Puerto Rico (National Radio Speakers Association of Puerto Rico). The petitioner submitted evidence that this organization was co-created by the beneficiary in April 2008, not long before the instant petition was filed. Given the beneficiary's direct involvement in the creation of the organization providing the consultation, the AAO finds the advisory opinion on his behalf to be self-serving, and therefore inadequate to satisfy the requirement for a written advisory opinion from a peer group or labor organization.

On appeal, the petitioner does not identify an erroneous statement of fact or conclusion of law on the part of the director. The petitioner does not specifically object to the denial of the petitioner or even acknowledge the grounds for denial. Rather, the petitioner asserts that additional evidence is available and will be submitted. As noted above, however, no additional evidence has been submitted to the AAO.

The regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.