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FILE: WAC 09 120 51102 Office: CALIFORNIA SERVICE CENTER

Date: NOV 19 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:



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).

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner filed this 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 with extraordinary achievement in the motion picture or television industry. The petitioner, a California-based motion picture production and distribution company, seeks to employ the beneficiary as an actress for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has a demonstrated record of extraordinary achievement in the motion picture and television industry. In denying the petition, the director determined that the petitioner failed to establish that the beneficiary has been nominated for or has been the recipient of a significant national or international award, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A), or that she has met three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B).

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 asserts that the director's decision is "blatantly preposterous" in light of the fact that the beneficiary has "two firm commitments to roles in motion pictures" for which she is uniquely qualified. Counsel submits a brief statement and copies of previously-submitted evidence in support of the appeal.

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, 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 extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991).

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

*Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

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

*Evidentiary criteria for an O-1 alien of extraordinary achievement in the motion picture or television industry.* To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced 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.

In addition, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) requires the petitioner to submit copies of any written contracts between the petitioner and the beneficiary; an explanation of the nature of the events or activities, along with an itinerary; and two consultations, one from an appropriate union and one from an appropriate management organization.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

It is noted that the decision of U.S. Citizenship and Immigration Services (USCIS) in a given case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien satisfies the criteria and is eligible for O-1 classification. The evidence submitted must establish that the beneficiary qualifies as an alien of extraordinary ability. *See* 59 Fed. Reg. 41818-01, 41820.

The record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, and an appeal. The beneficiary in this case is a native and citizen of the United Kingdom. The limited evidence in the record indicates that the beneficiary has worked in the entertainment industry since approximately 1998 in various types of positions, including television presenter, model, dancer, and choreographer. In addition, she has worked as an owner/manager of an events and promotion agency. The petitioner seeks to classify the beneficiary as an alien with extraordinary achievement in the motion picture and television industry as an actress.

In denying the petition, the director found that the petitioner had failed to satisfy any of the eligibility requirements set forth at 8 C.F.R. §§ 214.2(o)(3)(v)(A) or (B). The director noted that the evidence submitted did not relate to at least three of the six criteria set forth at the 8 C.F.R. § 214.2(o)(3)(v)(B), and that the quality of the evidence submitted was insufficient to establish that the beneficiary's achievement in the motion picture or television industry has risen to the level where she is recognized as outstanding, notable, or leading in her field.

On appeal, counsel for the petitioner asserts that the director's decision is "preposterous" as the director "subjectively" determined that the beneficiary "is not special enough to merit the visa." Counsel suggests that the director failed to consider that the beneficiary "has two firm commitments to roles in motion pictures whereby the Petitioner has decided she has the only collection of talent necessary for the roles." Counsel further asserts that it is his understanding that O-1 visas are "routinely approved" in cases where there is no confirmed commitment to hire the beneficiary for a job. Counsel emphasizes that the beneficiary is guaranteed employment and will be paid a total of \$96,000 for her work in two films and states that "the need for her services was obvious."

Upon review, and for the reasons discussed herein, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary achievement in the motion picture and television industry pursuant to the regulatory definition and evidentiary criteria applicable to the O-1 visa classification.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has received a significant national or international award or prize in his or her field pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. Here, the petitioner has not submitted evidence that the beneficiary has been nominated for or received a significant national or international award or prize comparable to an Academy, Emmy or Grammy Award.

As there is no evidence that the beneficiary has been nominated for or received a significant national or international award or prize, the petitioner must establish the beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B).

In order to meet criterion number one, the petitioner must submit evidence that the beneficiary 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. 8 C.F.R. § 214.2(o)(3)(v)(B)(1).

Upon review, the petitioner has not submitted evidence to establish that the beneficiary meets this criterion. The evidence of record contains a letter dated April 8, 2009 from [REDACTED] managing director of International Model Management Ltd., who states:

The above agency has represented [the beneficiary] as her sole agent since 1998. During which we have gained her Photographic and TV presenting work including a 2 year contract as a presenter for Playboy TV (1998 to 2000), 6 TV series presenting on the channel Men and Motors for Granada TV and several appearances for Bravo TV, Live TV, Television X as well as regular shoots in the National Newspaper the Daily Star.

We also had a joint venture partnership firm with [the beneficiary] from 2002 until 2006 called Push which was an Events and Promotion agency.

In addition, the petitioner submitted a letter dated February 2009 from [REDACTED] of Universal Talent Ltd., located in Essex, United Kingdom. [REDACTED] states that the beneficiary worked for him as a supplier for six years, from 2002 until 2008, "producing, choreographing and performing in a dance stage show for the Ibiza Reunion in Butlins Skegness." He further states that, in 2003, the beneficiary "co-presented a television program I produced, 'Ibiza Exposed' which was a magazine style review of Ibiza showcasing all the clubs, DJ's, beaches and English holiday makers."

██████████ indicated that the beneficiary has also run a sponsorship campaign for one of his "club nights," worked at other club nights, performed as a go-go dancer, organized costumes, makeup and hair for events and also ran "club nights" on occasion.

The petitioner submitted a copy of a publication, the April 28, 2002 edition of *Sunday People* which mentioned ██████████ as "the hottest new babe on Men & Motors." The petitioner did not provide evidence that the beneficiary and "██████████" are the same person. None of the other supporting documentation submitted contains any reference to the beneficiary's work in television or film.

Based on this evidence, the AAO cannot conclude that the beneficiary has ever been employed as an actress in a leading or starring role for a television or motion picture production event that has a distinguished reputation. In fact, the evidence submitted does not establish that the beneficiary has ever worked as an actress in any capacity. Furthermore, the record contains no critical reviews, advertisements, publicity releases, publications, contracts or endorsements evidencing the beneficiary's prior leading or starring acting roles.

The evidence of record is also lacking in documentation establishing that the beneficiary will perform services as a lead or starring participant in productions or events which have a distinguished reputation in the United States. The petitioner indicates that the beneficiary will perform in two motion pictures, ██████████ ██████████ and ██████████. There is no evidence to establish that these films could be considered to have a distinguished reputation or to establish that the beneficiary will perform in a leading or starring role in these films. The employment agreement submitted is vague and contains no reference to the names of the films or the beneficiary's respective roles in those films, and there is no documentation, such as a press or publicity release, regarding either film. 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)). Accordingly, the beneficiary does not meet this criterion.

In order to establish that the beneficiary meets the second criterion, the petitioner must submit 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. 8 C.F.R. § 214.2(o)(3)(v)(B)(2).

The only published materials submitted include: (1) an excerpt from the March 2005 issue of *New Woman* magazine in which the beneficiary is pictured as a "tester" in a fashion article; (2) an article that appeared in the August 2003 issue of *The Party Magazine*, which includes an interview with the beneficiary and discusses her role as a "themed party specialist" and manager of Push Models; and (3) the above-referenced newspaper item mentioning ██████████. While two of these articles appear to have been published in magazines, the articles do not establish that the beneficiary has achieved national or international recognition as an actress in motion pictures or television. Therefore, the beneficiary does not meet this criterion.

In order to establish that the beneficiary meets the third criterion, the petitioner must submit 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.

8 C.F.R. § 214.2(o)(3)(v)(B)(3). Again, the record is devoid of any evidence that the beneficiary has worked as an actress in any capacity, much less evidence that she has performed in a lead, starring or critical role for an organization or establishment with a distinguished reputation in the television or motion picture industry. Even if the AAO were to consider the beneficiary's experience as a "television presenter," there was no documentary evidence submitted with respect to, for example, the beneficiary's two-year role as a presenter for Playboy TV. While the petitioner has submitted a testimonial letter from the beneficiary's agent, the agency does not provide any details regarding the beneficiary's television work or state that she worked for organizations or establishments with a distinguished reputation. Accordingly, the beneficiary does not meet this criterion.

To establish that the beneficiary meets the fourth criterion, the petitioner must establish that the beneficiary 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. 8 C.F.R. § 214.2(o)(3)(v)(B)(4). The petitioner did not submit any evidence to establish that the beneficiary meets this criterion.

In order to meet the fifth regulatory criterion, the petitioner may submit evidence that the beneficiary 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 has submitted letters from the beneficiary's agent and a letter from [REDACTED] of Universal Ltd. The petitioner has not established that either individual can be considered a "recognized expert" in the television and motion picture industry or in the acting profession. Furthermore, as discussed above, neither individual mentions that the beneficiary has any acting experience, and thus these letters do not recognize her achievement or recognition in the field. While it appears that the beneficiary has found fairly steady work as a television presenter, dancer, and event coordinator, these letters fail to demonstrate that the beneficiary has received significant recognition for any achievements in the motion picture or television industry.

The sixth and final criterion requires the petitioner to submit evidence that the beneficiary 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 evidence by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(v)(B)(6). The petitioner indicated on Form I-129 that the beneficiary will work 20 to 25 hours per week and receive payment in the amount of \$48,000 for each of the two films in which she will appear. While the petitioner has submitted a copy of the beneficiary's employment agreement, the agreement was not signed by her and it contains no salary information. For example, the agreement indicates at provision four that the beneficiary will receive "a salary commensurate with Exhibit A." The petitioner did not provide a copy of exhibit A. Therefore, the petitioner's claims regarding the beneficiary's proffered salary are not supported by "contracts or other reliable evidence." Furthermore, even if the petitioner had submitted a complete and properly executed contract, it has not been established through the submission of objective evidence that a salary of \$48,000 per film would be considered a "high salary" in comparison to others in the field. Such evidence could include statistical comparisons of salaries in the field of endeavor. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

Counsel's arguments on appeal suggest that counsel believes the petition should be approved because the beneficiary has firm offers for roles in motion pictures in the United States. Counsel does not acknowledge the director's substantive findings or the evidentiary requirements for this visa classification, which require the beneficiary to possess a very high level of accomplishment in the motion picture or television industry to the extent that she is recognized as outstanding, notable, or leading in the motion picture or television field. As discussed above, there is no evidence that the beneficiary has ever worked as an actress in the motion picture or television industry. While it is notable that the petitioner has offered her roles in two upcoming films, overall, the record does not establish that the beneficiary has a demonstrated record of extraordinary achievement in the industry. The petitioner failed to establish that the beneficiary has received a major, internationally recognized award or that she satisfies at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O)(i) of the Act and the petition cannot be approved.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is recognized as outstanding or leading in her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's critical and commercial achievements in the television and motion picture industry have not yet risen to this level.

Beyond the decision of the director, the evidence of record does not contain the consultations required pursuant to 8 C.F.R. § 214.2(o)(2)(ii). The regulation at 8 C.F.R. § 214.2(o)(5)(iii) requires the petitioner to provide a consultation from an appropriate union representing the alien's occupational peers and a management organization in the area of the beneficiary's ability. The director specifically requested this evidence in the RFE issued on March 23, 2009. In response, the petitioner submitted a letter dated March 28, 2009, confirming that the beneficiary is a member of Equity, a United Kingdom-based independent trade union. This letter does not satisfy the consultation requirements at 8 C.F.R. § 214.2(o)(5)(iii). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.