

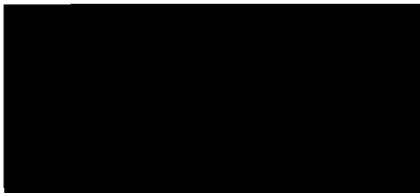
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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D8.

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

JUL 21 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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

The petitioner filed the nonimmigrant visa petition seeking classification of the beneficiary under 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 with extraordinary ability in the arts. The petitioner operates a dance studio. It seeks to employ the beneficiary as a dancer and choreographer for a period of three years.

The director denied the petition on July 14, 2009, concluding that the petitioner failed to submit any documentary evidence in support of the petition, and therefore failed to meet its burden to establish that the beneficiary meets the requirements for O-1 classification. In denying the petition, the director observed that the petitioner filed the petition using the U.S. Citizenship and Immigration Services (USCIS) Electronic Filing (e-Filing) system, and was therefore required to submit all required initial evidence to the service center within seven business days.

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, the petitioner states that it submitted the required documentary evidence to establish the beneficiary's eligibility on April 21, 2009, and that "it is beyond our understanding why the USCIS never received it." The petitioner submits documentation in support of the appeal, including a supporting letter, an employment contract, the beneficiary's dance resume, various reference letters, and other evidence pertaining to the beneficiary's professional dance career.

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, or, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, and 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). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii).

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

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The evidentiary criteria for aliens of extraordinary ability in the fields of science, education, business or athletics are set forth at 8 C.F.R. § 214.2(o)(3)(iii). In addition, all O nonimmigrant petitions must be accompanied by the evidence set forth at 8 C.F.R. § 214.2(o)(2)(ii). The issue in this matter is whether the director appropriately denied the petition based on the petitioner's failure to submit the required initial evidence for the visa classification in support of its electronically filed petition.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, using the USCIS e-Filing system on April 19, 2009. The form instructions for Form I-129 advise that if a petition is filed without the required initial

evidence, the petitioner will not establish a basis for eligibility and USCIS may deny the petition. The instructions for electronic filing further instruct the petitioner that the required initial evidence must be received by the Service Center within seven business days of filing the form electronically.

Pursuant to 8 C.F.R. § 103.2(a)(1), the instructions contained on a petition are to be given the force and effect of a regulation:

Every application, petition, appeal, motion, request or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission....

The regulation at 8 C.F.R. § 103.2(b)(1) states:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

Finally, the regulation at 8 C.F.R. § 103.2(b)(8)(ii) states, in pertinent part:

Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or ineligibility. . . .

The director denied the petition on July 14, 2009, after waiting nearly two months for submission of the required initial evidence, which, as noted above, was due within seven business days of the date of filing. While the regulations at 8 C.F.R. § 214.2(o)(11) provide that no supporting documents are required when a petitioner seeks to extend the validity of a beneficiary's original O-1 petition unless requested by the director, the instant petition was for new employment. Therefore, the AAO concludes that the director's decision to deny the petition based on lack of initial evidence was proper.

While the petitioner claims that it mailed the required supporting documentation to the service center within seven business days of filing the petition, it has provided no documentary evidence in support of this claim. 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)). Furthermore, the AAO notes that although the petitioner stated on the Form I-290B filed on August 13, 2009 that it is "in possession of copies of every piece of evidence," it did not submit such evidence at the time of filing the appeal, but instead requested additional time to prepare the appeal. The petitioner submitted evidence in support of the appeal on August 31, 2009, but rather than submitting a copy of its previous submission, the petitioner has submitted letters and translations bearing original signatures, a document dated July 30, 2009 and a number of

documents printed from the Internet on August 29, 2009. The petitioner's failure to produce a copy of its claimed initial evidence submission casts doubt on its claim that the evidence was timely submitted in April 2009.

Therefore, the AAO concludes that the director's decision to deny the petition based on lack of initial evidence was proper.

Even assuming, *arguendo*, that the petitioner had timely submitted the documentation provided on appeal, the AAO notes that the denial of the petition would have been within the scope of the director's discretionary authority, pursuant to 8 C.F.R. § 103.2(b)(8)(ii). The evidence submitted does not include: (1) an explanation of the nature of the events, or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; or (2) a written advisory opinion(s) from the appropriate consulting entity. *See* 8 C.F.R. § 214.2(o)(2)(ii).

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.

The denial of this petition is without prejudice to the filing of a new petition by the petitioner accompanied by the appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.