

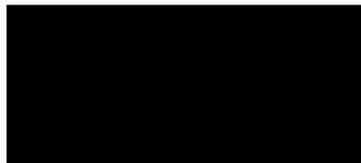
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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Ag

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: OCT 28 2010

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

PETITION: Petition for a 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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and sustain 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 of extraordinary ability in the arts. The petitioner is an artist management company and the beneficiary is a concert pianist. The petitioner requests that the beneficiary be granted O-1 classification for a period of 17 days in order to perform in the United States with the [REDACTED]

On September 28, 2009, the director denied the petition concluding: (1) that the petitioner failed to submit a written consultation from an appropriate labor organization; and (2) that the petition was filed by the beneficiary rather than by a United States employer, a United States agent, or by a foreign employer through a United States agent.

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 submits a consultation from the [REDACTED]

## **I. The Law**

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

to enter the United States to continue work in the area of extraordinary ability.

Section 101(a)(46) of the Act states that the term "extraordinary ability" means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction. Pursuant to the definition at 8 C.F.R. § 214.2(o)(3)(ii) pertaining to aliens of extraordinary ability in the arts, "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)(1)(i) provides that under section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer.

Pursuant to 8 C.F.R. § 214.2(o)(2)(i), an O-1 petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. An O alien may not petition for himself or herself.

The regulatory requirements for agents as petitioners are set forth at 8 C.F.R. § 214.2(o)(2)(iv)(E):

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent.

Finally, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) provides that petitions for O aliens shall be accompanied by the following:

- (A) The evidence specified in the particular section for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary, or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;
- (C) 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; and
- (D) A written advisory opinion(s) from the appropriate consulting entity or entities.

## II. Discussion

### A. Written Advisory Opinion from an Appropriate Consulting Entity

The first issue addressed by the director is whether the petitioner submitted the required written advisory opinion from an appropriate consulting entity. *See* 8 C.F.R. § 214.2(o)(2)(ii)(D). Pursuant to 8 C.F.R. § 214.2(o)(5)(ii)(A), consultation with a peer group in the area of the alien's ability (which may include a labor organization) or a person or person with expertise in the area of the alien's ability, is required in an O-1 petition for an alien of extraordinary ability.

The petitioner initially submitted the petition without the required written advisory opinion. The director issued a request for evidence ("RFE") on August 27, 2009, the director requested that the petitioner provide a written advisory opinion from an appropriate association or entity with expertise in the beneficiary's area of ability. The director advised that, in the event that the opinion is not from a United States labor organization, USCIS would contact the national office of an appropriate labor organization for an opinion, pursuant to 8 C.F.R. § 214.2(o)(5)(i)(F).

The petitioner's response to the RFE included recommendation letters from [REDACTED], and [REDACTED].

The director denied the petition on September 28, 2009, based on the petitioner's failure to provide a written consultation from a labor organization. The director noted that USCIS had requested a consultation from the [REDACTED], but had received no response.

On appeal, the petitioner submits a favorable consultation from the [REDACTED], which was issued on October 2, 2009.

Upon review, the AAO will withdraw the director's determination. The regulation at 8 C.F.R. § 214.2(o)(5)(i)(F) requires the petitioner to submit a written consultation from a peer group, labor organization, or from a person or persons with expertise in the beneficiary's field. The petitioner is not required to submit a consultation from a labor organization, as long as it submits one of the qualifying forms of documentation. In fact, the request that USCIS sent to the [REDACTED] on September 23, 2009 states: "Petitioner has submitted a letter. This has been determined to be sufficient evidence of consultation from a peer group."

The regulations require USCIS to request a labor consultation when the petitioner provides an advisory opinion from a peer group or from a person or persons with expertise in the beneficiary's field. In this case, the director determined that the petition, which was submitted without a labor consultation, merited expeditious handling. Pursuant to 8 C.F.R. § 214.2(o)(5)(i)(E), under such circumstances, the labor organization has 24 hours to respond to the director's request for an advisory opinion, and if no response is received within 24 hours, USCIS shall render a decision without the advisory opinion. Therefore, it was improper for the director to deny the petition based on the petitioner's failure to submit a consultation with a labor organization. Under the circumstances, the labor consultation should have been waived.

**B. Filing of Petition by a U.S. Employer, U.S. Agent or a Foreign Employer through a U.S. Agent.**

The regulation at 8 C.F.R. § 214.2(o)(2)(i) provides that an O alien may not petition for himself or herself, but rather, the petition must be filed by a United States employer, a United States agent, or a foreign employer through a United States agent.

The director denied the petition determining that "the name of the petitioner is the same name as the beneficiary." Upon review, the AAO will withdraw this determination.

A careful review of the petition and supporting evidence reveals that the instant matter was not a self-petition, but a petition properly filed by a United States agent.

The AAO notes that the Form I-129, Petition for a Nonimmigrant Worker, was completed improperly, with the beneficiary's name and address provided in Part 1, Information about the employer filing the petition.

However, the petition was signed at Part 6 by [REDACTED] for [REDACTED] an artist management company, not by the beneficiary. Information regarding this business was provided at Part 5 of the Form I-129, where the petitioner is asked to provide information about the employer. In addition on the O and P Classification Supplement to Form I-129, the petitioner identified the "Name of person or organization filing petition" as "[REDACTED]."

The regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E)(2) provides that a person or company in business as an agent may file the petition involving multiple employers if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues or locations where the services will be performed. The petition must also be accompanied by a contract between the employers and the beneficiary.

Here, the petition is accompanied by contracts between the beneficiary and the two symphony orchestras that have invited him to perform in the United States, and which otherwise meet the requirements of 8 C.F.R. § 214.2(o)(2)(iv)(E)(2). Therefore, upon review of the petition and the totality of the record, the AAO concludes that the instant petition was not in fact filed by the beneficiary, but by a United States agent. Accordingly, the AAO will withdraw the director's finding that the beneficiary self-petitioned.

The director cited no other grounds for denying the petition, and upon *de novo* review, the AAO sees no additional basis for denial. Accordingly, the AAO will withdraw the director's decision dated September 28, 2009 and approve the petition. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, the petitioner has met its burden of proof.

**ORDER:** The appeal is sustained.