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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



18

DATE: APR 01 2011

Office:

FILE:

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:

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, [REDACTED] 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 remand the petition for further action and entry of a new decision.

The petitioner, a dance studio, filed this nonimmigrant 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 ability in the arts. The petitioner seeks to employ the beneficiary as a Dance Competitor for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability in the arts. The director determined that the petitioner failed to establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), and submitted evidence to satisfy only two of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). The petitioner must submit qualifying evidence under at least three of the six regulatory categories of evidence to establish the basic eligibility requirements. The director further found that the beneficiary violated his nonimmigrant status and was therefore otherwise ineligible the requested change of status from B-2 to O-1.¹

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 asserts that the beneficiary meets four of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B) and therefore qualifies an alien of extraordinary ability in the arts. In support of the appeal, the petitioner submits additional evidence pertaining to the beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) and (6). Counsel further contests the director's determination that the beneficiary violated his previously accorded B-2 nonimmigrant status.

Upon review, and for the reasons discussed below, the AAO finds that the appropriate O-1 category for an alien coming to the United States primarily to participate in professional DanceSport competitions is that of an alien of extraordinary ability in athletics, rather than an alien of extraordinary ability in the arts. As O-1 athletes and O-1 artists are subject to different eligibility criteria and different regulatory definitions for "extraordinary ability," the AAO will withdraw the director's decision and remand the petition for further action and entry of a new decision.

I. The Beneficiary's Area of Extraordinary Ability

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.

¹ The director correctly advised the petitioner that there is no appeal from the denial of an application for a change of status filed on Form I-129. 8 C.F.R. § 248.3(g).

The regulation at 8 C.F.R. § 214.2(o)(3)(i) provides, in relevant part, that an O-1 petition must be accompanied by evidence that the work which the alien is coming to the United States to continue is in the area of extraordinary ability.

The petitioner has offered the beneficiary employment as a Dance Competitor and states that he will represent its studios in DanceSport competitions throughout the United States and internationally. The petitioner summarized the beneficiary's qualifications as follows:

[The beneficiary's] impressive resume is enclosed with a complete list of winning Awards in competitions; in sum he accomplished the following: he placed 1st in Latin and 1st place in 10-dance in the (IDSF) [REDACTED] National Championship. He was a semi-finalist in the World [REDACTED] Championship and he was also in the final of many International Championships in [REDACTED]. In 2006 he ranked 4th in the [REDACTED] Grand Prix Ranking List.

In addition to his achievements in competitive ballroom dancing, [the beneficiary] was a recurring performer in the popular dance television show, [REDACTED] in [REDACTED] for over nine months, from September 2008 to June 2009. Due to its popularity, the show was featured every day of the week except Saturday. He also performed in the movie [REDACTED] and the live concert show ("2009-XLVI [REDACTED] Festival [REDACTED]") in June 2009.

We intend to compensate [the beneficiary] for his participation in dance competitions scheduled through October 2013.

The petitioner claimed eligibility under the evidentiary criteria for aliens of extraordinary ability in the arts at 8 C.F.R. § 214.2(o)(3)(iv)(B), and asserted that the beneficiary meets the standard of "distinction" applicable to the arts, pursuant to the definition at 8 C.F.R. § 214.2(o)(3)(ii). The director reviewed the petition under these criteria and determined that the petitioner failed to establish the beneficiary's eligibility as an alien of extraordinary ability in the arts.

While we acknowledge the beneficiary's credentials as a dancer for stage, film and television productions, the petitioner clearly seeks to employ the beneficiary in the field of competitive ballroom dance, also known as "DanceSport." The petitioner has neither claimed nor submitted evidence that the beneficiary will be performing as a dancer in any other capacity than that of a professional competitive ballroom dancer.

The evidence of record indicates that the International Olympic Committee (IOC) has formally recognized DanceSport as a sport under consideration for inclusion in the Olympic Games, although it is not yet a medal sport in the Olympic Games. The International DanceSport Federation (IDSF) has been designated as the world governing body of the sport. The recognition of DanceSport by the IOC is a clear indication that DanceSport or competitive ballroom dance, has evolved into an acknowledged form of athletic competition.

We note that there may be instances in which a competitive ballroom dancer seeks to enter the United States to provide services as an entertainer or performing artist, rather than as a competitive dancer-athlete. The

nature of the intended events or activities in the United States is critical in determining whether the beneficiary is entering the United States to provide services as "athlete" or as an "artist."

Here, as the beneficiary is clearly coming to the United States to participate in athletic events, the petition must be adjudicated according to the definition of "extraordinary ability" applicable to athletes, and pursuant to the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii).

The regulations clearly prescribe different evidentiary criteria and standards of review for aliens of extraordinary ability in the arts as opposed to aliens of extraordinary ability in athletics. Consequently, the director's decision dated September 14, 2010 is withdrawn. The petition will be remanded to the director, who is instructed to adjudicate the petition pursuant to the definition of "extraordinary ability in the field of science, education, business or athletics" at 8 C.F.R. § 214.2(o)(3)(ii) and the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii). Prior to making a determination, director should issue a request for additional evidence to allow the petitioner a reasonable period of time to submit evidence relevant to the criteria applicable to aliens with extraordinary ability in athletics.

II. Conclusion

At this time, the AAO takes no position on whether the beneficiary qualifies for the classification sought. The director must make the initial determination on this issue. By remanding this matter, the AAO does not necessarily find that the beneficiary is ineligible. Rather, we remand the matter because the director failed to apply the appropriate regulations to the petition.

As always, in visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.