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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

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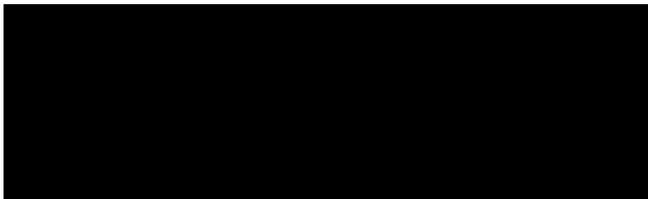
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 10 2011**

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

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

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.

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 \$630. 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 petition seeking to classify the beneficiary under section 101(a)(15)(O)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(ii), as an accompanying alien to [REDACTED], a gymnast, whose petition for O-1 classification was filed concurrently.

The director denied the petition on January 21, 2009, based on the denial of the O-1 petition filed on behalf of Ms. [REDACTED] on that date. The petitioner subsequently appealed both denials. The AAO dismissed the petitioner's appeal of the O-1 petition denial on or about May 19, 2010. USCIS records reflect that Ms. [REDACTED] is presently the beneficiary of an approved P-1 classification petition filed by the petitioner.

Section 101(a)(15)(O)(ii) of the Act provides classification to a qualified alien who:

- (I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events;
- (II) is an integral part of such actual performance,
- (III) (a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals . . . .
- (IV) has a foreign residence which the alien has no intention of abandoning.

The regulations at 8 C.F.R. § 214.2(o)(4) provide the following requirements for an O-2 accompanying alien:

- (i) General. An O-2 accompanying alien provides essential support to an O-1 artist or athlete. Such aliens may not accompany O-1 aliens in the fields of science, business or education. Although the O-2 alien must obtain his or her own classification, this classification does not entitle him or her to work separate and apart from the O-1 alien to whom he or she provides support. An O-2 alien must be petitioned for in conjunction with the services of the O-1 alien.
- (ii) Evidentiary criteria for qualifying as an O-2 accompanying alien –
  - (A) Alien accompanying an O-1 artist or athlete of extraordinary ability. To qualify as an O-2 accompanying alien, the alien must be coming to the United States to assist in the performance of the O-1 alien, be an integral part of the actual performance, and have critical skills and experience with the O-1 alien which are not of a general nature and which are not possessed by a U.S. worker.

\* \* \*

- (C) The evidence shall establish the current essentiality, critical skills, and experience of the O-2 alien with the O-1 alien and that the alien has substantial experience performing the critical skills and essential support services for the O-1 alien.

Upon review, the AAO will affirm the denial of the petition and dismiss the appeal. Pursuant to section 101(a)(15)(O)(ii)(1) of the Act, an O-2 alien may enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance of an O-1 alien. An O-2 alien must be petitioned for in conjunction with the services of an O-1 alien. 8 C.F.R. § 214.2(o)(4)(i).

Here, while the beneficiary's services as an O-2 accompanying alien were petitioned for in conjunction with the services of an O-1 alien, the O-1 petition was denied, and the petitioner's appeal of the denial was dismissed. The status of an O-2 alien is contingent upon the status of the O-1 alien. As there is no O-1 alien for the beneficiary to support, the statute and regulations prohibit the approval of this petition.

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.