

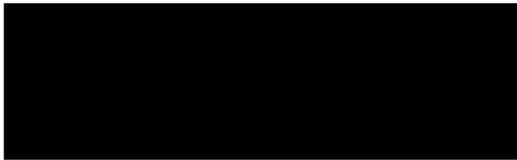
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **NOV 08 2011** Office: CALIFORNIA SERVICE CENTER 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: 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 \$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 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 is [REDACTED]-based talent agency and the beneficiary is an actor. The petitioner requests that the beneficiary be granted O-1 status for a period of five years.

The director denied the petition, concluding that the petitioner failed to provide written consultations from an appropriate labor union representing the beneficiary's occupational peers and a management organization in the area of the beneficiary's extraordinary achievement, as required by section 214(c)(3)(A) of the Act and the regulations at 8 C.F.R. §§ 214.2(o)(2)(ii)(D) and 214.2(o)(5)(iii).

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 the Form I-290B, Notice of Appeal, the petitioner states:

Per your request in your denial letter, I am attaching herewith affidavits of:

- Labor Union of the Motion Pictures: [REDACTED]
- Letter from Peer [REDACTED]
- Letter from Management Company [REDACTED]
- Letter from Management/production company: [REDACTED]

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 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 regulations at 8 C.F.R. § 214.2(o)(3)(v) outline the evidentiary requirements that must be met in order for a petitioner to establish that an alien is recognized as having a demonstrated record of extraordinary achievement in the motion picture or television industry. 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.

Pursuant to section 214(c)(3)(A) of the Act, an O-1 petition with respect to aliens seeking entry for a motion picture or television production shall be approved only after consultation with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. Specific consultation requirements for an O-1 alien of extraordinary achievement are set forth at 8 C.F.R. § 214.2(o)(5)(iii):

In the case of an alien working on a motion picture or television production, consultation shall be made with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, the written advisory opinion from the labor and management organizations should describe the alien's achievements in the motion picture or television field and state whether the position requires the services of an alien of extraordinary achievement. If a consulting organization has no objection to the approval of the petition, the organization may submit a letter of no objection in lieu of the above.

As noted above, the director denied the petition based on the petitioner's failure to submit the required consultations from an appropriate union representing the beneficiary's occupation peers and from a management organization in the area of the beneficiary's ability. It is noted that the director issued a detailed request for evidence ("RFE") on December 2, 2010, in which the director clearly advised the petitioner of the consultation requirement and allowed the petitioner six weeks to submit the two required consultations. While the petitioner submitted a response to the RFE, the petitioner's response did not include the required consultations. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the petitioner submits a consultation from the [REDACTED] the appropriate labor union in the beneficiary's field, along with two letters apparently intended to meet the requirement that the petitioner submit a written consultation from a management organization in the beneficiary's area of ability. The petitioner describes the entities that provided the letters as "management companies."

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The petition was denied based on the petitioner's failure to submit required evidence and the petitioner does not claim that such evidence was, in fact, submitted prior to the adjudication of the petition. The petitioner has not specifically identified any erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. The record before the director contained neither of the required written consultations required for the requested visa classification pursuant to section 214(c)(3)(A) of the Act, and the petition was properly denied for this reason.

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. § 1362. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.