



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAR 08 2013**

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

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 ability in the arts. The petitioner, a self-described non-profit institute for education, preservation and promotion of Indian Classical Music (ICM), seeks to employ the beneficiary in the position of vocal music teacher 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 evidence submitted was insufficient to establish that the beneficiary's achievements and recognition have reached the level of "distinction" as defined at 8 C.F.R. § 214.2(o)(3)(ii). The director observed that the evidence submitted failed to meet any of the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(A) or (B).

The petitioner subsequently filed an appeal. The petitioner filed a brief and documentary evidence in support of the appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review.

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.

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

*Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

*Extraordinary ability in the field of arts* means distinction. 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)(3)(iv) states, in pertinent part:

*Evidentiary criteria for an O-1 alien of extraordinary ability in the arts.* To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

- (A) Evidence that the alien has been nominated for, or the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

- (1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
- (2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
- (3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
- (4) Evidence that the alien has a record of major commercial or critically-acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
- (5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
- (6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

On appeal, the petitioner's Form I-290B, Notice of Appeal or Motion, indicates that the bases for the petitioner's appeal are provided in an accompanying brief. The petitioner's brief states as follows:

In response to the denial of an 'O' – Visa to [the beneficiary] we wish to state the following facts . . . The criteria: Academy/Emmy/Grammy awards . . . are not relevant to this art form, ICM . . . However, [the beneficiary] did receive a prestigious award [redacted] as a brilliant singer under forty . . .

As documentary evidence in support of the appeal, the petitioner submitted an award certificate dated December 20, 2008, indicating it was issued by the [REDACTED]. The award certificate indicates that at the [REDACTED] the beneficiary was given the [REDACTED]

[REDACTED] as [REDACTED]. As set forth above, if the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has been the recipient of, significant national or international awards or prizes in the particular field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulation lists an Academy Award, an Emmy, a Grammy, or a Director's Guild award as examples of qualifying significant awards or prizes.

The petitioner has not submitted evidence that would establish that the [REDACTED] received by the beneficiary is an award or prize that rises to the level comparable to an Academy Award or Grammy Award, the examples provided in the regulation. The record does not contain sufficient evidence regarding the purpose of the award, the application, nominating, or selection process used by the issuing body, the eligibility criteria, or the extent to which the winner of such awards is recognized beyond the issuing body. The winners and nominees of Emmy and Grammy awards, for example, receive significant national and international media attention as the result of their recognition, and the awards themselves are considered among the highest achievements attainable in the performing arts. Accordingly, the petitioner has not submitted evidence on appeal which overcomes the director's finding that it failed to meet the plain language requirements of the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iv)(A).

The petitioner's brief goes on to state:

. . . However, the general public and news media are indifferent to [ICM] . . . Thus, one cannot expect any major US newspaper to cover [the beneficiary's] performances. . . [The beneficiary's] performance in India did get published in some major newspapers, but [the beneficiary] was too modest to collect them . . .

Regarding these contentions, the petitioner did not specifically indicate which regulatory evidentiary criterion it was claiming under 8 C.F.R. § 214.2(o)(3)(iv)(B). Regardless, 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner's brief further states:

Besides paying [the beneficiary] \$12,000 for 36 weeks, we provided him with his airfare, lodging/food/transportation fully, plus \$5500 for concert performances.

The petitioner has not establish through the submission of reliable evidence that the beneficiary's proffered weekly compensation of approximately \$333 for 15 hours of work per week meets the criteria of a "high salary" for a professional vocal music teacher, such as statistical comparisons of

the salaries in the field of endeavor. Accordingly, the petitioner has not submitted evidence on appeal which overcomes the director's finding that it failed to meet the plain language requirements of the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B)(6).

On appeal, the petitioner simply asserts that the beneficiary is qualified for O-1 classification, without addressing how the submitted evidence demonstrates the beneficiary's eligibility under the relevant regulatory evidentiary criteria.

The 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.

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the petition. On appeal, the petitioner does not specifically identify an erroneous statement of fact or conclusion of law on the part of the director. The petitioner's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, do not address the grounds stated for denial of the petition, nor has the petitioner presented additional evidence relevant to the grounds for denial. Accordingly, the appeal will be summarily dismissed.

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. 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.