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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

DATE **OCT 08 2014** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We 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] an assistant horse trainer.

The acting director denied the petition on March 6, 2014, based on the fact that the O-1 petition filed on behalf of Mr. [REDACTED] was denied. The petitioner subsequently appealed both denials. We dismissed the petitioner's appeal of the O-1 petition denial.

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, we will dismiss the appeal. Pursuant to section 101(a)(15)(O)(ii)(I) 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 petitioner petitioned for the beneficiary's services as an O-2 accompanying alien in conjunction with the services of an O-1 alien, the director denied the O-1 petition, and we dismissed the petitioner's appeal. 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, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.