identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

D8

FILE: [redacted] Office: [redacted] Date: SEP 15 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

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 $585. 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, initially approved the nonimmigrant visa petition. The director subsequently issued a notice of intent to revoke, and upon review of the petitioner's response, revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, an artist representation and promotion company, 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 indicates that the beneficiary will work as a producer for three musical artists for a period of two years.

The director approved the petition on March 4, 2009, granting the beneficiary O-1 classification from March 4, 2009 until February 27, 2011. On July 24, 2009, the director issued a notice of intent to revoke the approval, advising the petitioner that based upon a re-examination of the petition and evidence, USCIS determined that the approval of the petition involved gross error. After reviewing the petitioner's rebuttal evidence, the director revoked the approval of the petition on September 29, 2009. The director determined that the petitioner failed to provide an adequate explanation of the events or activities, beginning and end dates of such events, or an adequate itinerary, and, as such failed to establish that the beneficiary is coming to the United States to perform services relating to an event or events.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the revocation was based on the director's "erroneous conclusion that there were contradictions in the evidence demonstrating the beneficiary's role with the artists and groups with which he works and these artists and groups status." Counsel asserts that the decision to revoke the petition was "arbitrary and capricious on its face, as everything they allege is not only clear in the contracts but the itineraries and our previous responses and submissions in this case." Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that he would submit a brief and/or evidence in support of the appeal within 30 days. As of this date, no additional documentation has been submitted and the record will be considered complete.

I. The Law

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.

Section 101(a)(46) of the Act states that the term "extraordinary ability" means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction. Pursuant to the definition at 8 C.F.R. § 214.2(o)(3)(ii) pertaining to aliens of extraordinary ability in the arts, "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)(1)(i) provides that under section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer.

The regulation at 8 C.F.R. § 214.2(o)(2)(ii) provides that petitions for O aliens shall be accompanied by the following:

(A) The evidence specified in the particular section for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary, or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written advisory opinion(s) from the appropriate consulting entity or entities.

Pursuant to 8 C.F.R. § 214.2(o)(3)(ii), "event" means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances and stopovers which are incidental and/or related to the event. A group of related activities may also be considered to be an event.

Pursuant to 8 C.F.R. § 214.2(o)(2)(i), an O-1 petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. An O alien may not petition for himself or herself.

The regulatory requirements for agents as petitioners are set forth at 8 C.F.R. § 214.2(o)(2)(iv)(E):

> A United States agent may file a petition in cases involving workers who are traditionally self employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent.

Finally, the regulation at 8 C.F.R. § 214.2(o)(8)(i)(B) provides that the director may revoke a petition approval at any time, even after the validity of the petition has expired. The regulation at 8 C.F.R. § 214.2(o)(8)(iii) sets forth the grounds for revocation on notice:

(A) *Grounds for revocation.* The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition was not true and correct;

(3) The petitioner violated the terms or conditions of the approved petition;

(4) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or

(5) The approval of the petition violated paragraph (o) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

In the present matter, the director provided a statement of the grounds for the revocation and cited to 8 C.F.R. § 214.2(o)(8)(iii)(A)(5) as the basis for revocation, noting that the approval of the petition involved gross error.

The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. *See Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's New College Dictionary* 502 (3rd ed. 2008).

As the term "gross error" was created by regulation, it is most instructive to examine the comments that accompanied the publication of the rule in the Federal Register. The term "gross error" was first used in the regulations relating to the revocation of a nonimmigrant L-1 petition. In the 1986 proposed rule, an L-1 revocation would be permitted if the approval had been "improvidently granted." 51 Fed. Reg. 18591, 18598 (May 21, 1986)(Proposed Rule). After receiving comments that expressed concern that the phrase "improvidently granted" might be given a broader interpretation than intended, the agency changed the final rule to use the phrase "gross error." 52 Fed. Reg. 5738, 5749 (Feb. 26, 1987)(Final Rule).

Based on the regulatory history and the common usage of the term, the AAO interprets the term "gross error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that USCIS determines to have been approved contrary to law must be considered an unmitigated error, and therefore a "gross error." This view of "gross error" is consistent with the example provided in the Federal Register. *See* 52 Fed. Reg. at 5749.

Upon review and for the reasons discussed herein, the present petition was properly revoked as the director clearly approved the petition in gross error, contrary to the eligibility requirements provided for in the regulations.

II. The Issue on Appeal

The sole issue on appeal is whether the petitioner established that the beneficiary is coming to the United States to perform services related to an event or events pursuant to 8 C.F.R. § 214.2(o)(1)(i). The petitioner is required to submit an explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities. 8 C.F.R. § 214.2(o)(2)(ii)(C).

Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 26, 2009. The petitioner indicated on Form I-129 that the beneficiary will work in the United States as a producer responsible for "production of all live and video presentations." On the O and P Classification Supplement to Form I-129, where asked to explain the nature of the event, the petitioner stated that the beneficiary will "produce live and video events for three different internationally recognized musical groups across the USA." The petitioner further described the beneficiary's proposed duties as follows: "Hire and fire personnel, contract venues, lodging, transportation, etc to ensure that all events go without hassle and where [the beneficiary] will be the stellar producer for all events."

In a letter dated January 23, 2009, the petitioner, filing as agent for the beneficiary, stated that the beneficiary has worked as a producer for such musical groups as [redacted], [redacted] and others. Notwithstanding the fact that the beneficiary is a record producer and the supporting evidence supports a finding that he has achieved the level of distinction in that field, there are numerous references in the letter to the beneficiary as a musical group. For example, the petitioner stated: "Our relationship with the members of [the beneficiary] is long-standing, and we are proud to bring the group to the United States for their up and coming tour."

The petitioner also stated:

> [The beneficiary] plans to start its United States tour in the [redacted], where it will be the starring entertainment group at events of distinguished reputation in cities such as [redacted] and [redacted] Thereafter, the group plans to head to [redacted] and [redacted] where [redacted] music is widely popular. Because of the group's immense popularity in [redacted], it will be traveling back there for concerts and related events.
>
> Specific details regarding dates, venues and contact persons can be found in the attached itinerary.

The attached 2009 to 2011 "itinerary" for the beneficiary, in pertinent part, provides the following information:

Day/Month/Year	Name of Venue	Complete Address
[redacted]	Contract for 10 years	General Producer
[redacted]	Contract for 5 years	General Producer
[redacted]	Contract for 5 years	General Producer

The petitioner attached copies of three employment agreements. The first was made between the beneficiary and [redacted], the petitioner's owner, and states that [redacted] shall employ the beneficiary as a general producer for [redacted]. Under the terms of the agreement, the beneficiary will be responsible for "production of all the yearly band's presentations in the USA for ten (10) years."

The second employment agreement is between the beneficiary and [redacted]. [redacted] agrees to employ the beneficiary as general producer for the group [redacted] responsible for "all the yearly band's presentations in the USA for FIVE (5) years."

The third employment agreement is between the beneficiary and [redacted], who agrees to employ the beneficiary as a general producer for "[redacted]" providing "production of all the yearly band's presentations in the USA for Five (5) years."

All three contracts are otherwise identical and the AAO notes that [redacted] all identify their address as [redacted] All three contracts are "made effective as of August 20, 2008" and signed and dated "1/09."

The director issued a request for additional evidence ("RFE") on January 29, 2009, in which she requested, in pertinent part: All written contracts between the petitioner and the beneficiary for each event; an itinerary with the dates and locations of work; and an explanation of the nature of the events and activities and a copy of a complete itinerary for all events. The director specified that the petitioner should list the exact periods for each service. In a response dated February 26, 2009, the petitioner re-submitted the above referenced contracts and itinerary. The director initially approved the petition on March 4, 2009.

Notice of Intent to Revoke and Revocation

The director issued a notice of intent to revoke the approval of the petition on July 24, 2009. The director questioned the validity of the employment agreements, noting that the agreements were in boilerplate format and did not clearly specify the terms and conditions of the beneficiary's employment with each employer. Therefore, the director requested affidavits attesting to the authenticity of the contracts, advising that the affidavits must specify the terms and conditions of employment.[1]

[1] The director also questioned whether the petitioner is doing business as an agent, noting that [redacted] Secretary of State records indicate the company "[redacted]" is a suspended corporation. The

The director also noted that an agent filing on behalf of multiple employers pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E)(*2*) must provide a complete itinerary which includes the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues or locations where the services will be performed.

With respect to the itinerary requirement, the director stated:

> [A]n examination of the itinerary does not indicate that the beneficiary is coming to the United States to perform services related to an event. The itinerary names three bands, the length of each contract, and that the beneficiary will be a general producer. The validity periods of the contracts are between 5 and 10 years. There is no explanation as to where the beneficiary will perform such services and what the beneficiary will be doing while in the United States. Additionally it is unclear whether the groups that he will be performing services for are or will be in the United States during the time period requested. Since the beneficiary's services appear to be dependent upon the groups being in the United States, it does not appear that the beneficiary will be coming to the United States to perform services related to an event.

The director instructed the petitioner to provide evidence, including but not limited to: (1) a complete itinerary listing exact dates and locations of employment; (2) a list of specific duties to be performed; (3) the status of the musical groups for which the beneficiary will perform services; (4) affidavits from each group's label; and (5) contracts with the recording studios in which the albums will be produced.

In a response dated August 20, 2009, counsel for the petitioner first addressed the employment agreements. Counsel acknowledged that the contracts are boilerplate but emphasized that they were "legally executed in [redacted]," are lengthy, and adequately set forth terms such as employment, compensation, confidentiality, term and termination. Counsel further stated:

> Maybe the contracts don't go into a lengthy detail of what a "General Producer" does, but it is a simple understanding by reading the whole contract that each contract is by the Beneficiary and a specific music entity. The time specified for the job to be completed is that of two (2) years as per the recordings and video productions that will take place in the United States, and the rest of the contract's life is for the continuation of the Beneficiary's job in [redacted]. This is where the finalizing of each production will take place. This was not mentioned or explained before because it is outside of the scope of this petition.

In response to the director's request for an explanation of the events or activities and beginning and end dates for such events and activities, counsel expressed his belief that the director likely misplaced evidence, noting that the original petition "covered this issue in detail." Counsel stated that the petitioner had submitted "a

---

petitioner provided evidence that the entity to which the director referred is a separate entity, unrelated to the petitioner, which is a [redacted] sole proprietorship owned by [redacted]

complete and informative itinerary" and contracts for "each and every event in such itinerary." Counsel states that the itinerary including all requested dates, venue names and addresses, telephone numbers and contacts.

The petitioner emphasized that, notwithstanding the submission of employment agreements that are valid for between five and ten years, the petitioner clearly requested that the beneficiary be granted O-1 classification for a period of only two years. Counsel further stated:

> We must make the following crystal clear. The beneficiary is intending to come to the US to perform as a music producer and only as a producer. This is what he does, and that is what his reputation demonstrates. The beneficiary has no intention of performing any other job but that as a producer and when you state: "it does not appear that the beneficiary is coming to the United States to perform services related to an event" you could not be more wrong.

In support of its response to the notice of intent to revoke, the petitioner submitted a statement from the beneficiary, who described the duties he performs in producing an album from listening to songs, writing, selecting songs, arranging, recording, mixing, mastering and choosing final track lists for an album. He states that the mastering process is usually done in the United States "because it is there that the best mastering studios in the world are found."

The petitioner submitted slightly revised versions of the three employment agreements into which the beneficiary's statement regarding his duties has been inserted as article 3: "Description of Producer's Job."

Finally, the petitioner submitted a revised 2009-2010 itinerary for the beneficiary. The petitioner added the following events which were not included in the original itinerary:

Day/Month/Year	Name of Venue	Complete Address
February 27, 2009	[redacted]	
March 19, 2009		

The director revoked the approval of the petition on September 29, 2009, concluding that the petitioner failed to establish that the beneficiary will be coming to the United States to perform services in relation to a specific event or events as defined in the regulations. Addressing the petitioner's response to the notice of intent to revoke, the director stated:

> Counsel for the petitioner states that the beneficiary will be coming to perform as a music producer and that the time requested is for the physical studio recordings and video productions that will take place in the United States. The petitioner provide[d] identical contracts to the ones submitted with the original submission and provided a new itinerary with an additional two events that have passed for what appears to be concerts. The evidence does not address where the beneficiary will perform services as a producer nor does it address whether the beneficiary's artists/groups are or will be in the United States. Arguably, it is impossible for the beneficiary [to] perform services as a music producer during studio recordings and video productions in the United States without having the artists/groups in the

> United States. The O-1 classification is not intended as a blanket approval to cover dates in which the beneficiary may perform services in the United States but rather is intended to cover specific events. Without knowing the status of the beneficiary's artists/groups and without knowing the exact venues and dates where services will be performed, it has not been shown that the beneficiary will be coming to the United States in relation to a specific event or events.

On the Form I-290B, Notice of Appeal or Motion, counsel states that the basis for the appeal is as follows:

> The Service Center erred in revoking the Nonimmigrant Petition due to its erroneous conclusion that there were contradictions in the evidence demonstrating the beneficiary's role with the artists and groups with which he works and these artists and groups status. The revocation is arbitrary and capricious on its face as everything they allege is not only clear in the contracts but the itineraries and our previous responses and submissions in this case. . . .

As noted above, although counsel indicated that he would submit a brief and/or additional evidence in support of the appeal, the AAO has received nothing further and the record of proceeding is considered complete.

Analysis

Upon review, the AAO concurs with the director that the petitioner failed to establish that the beneficiary would be coming to the United States to perform services related to a specific event or events, pursuant to 8 C.F.R. § 214.2(o)(1)(i). The petitioner failed to submit an explanation of the nature of the events or activities and the beginning and end dates for the events or activities as required by 8 C.F.R. § 214.2(o)(2)(ii)(C). Moreover, as an agent filing on behalf of the beneficiary and multiple employers, the petitioner is required to provide a complete itinerary which specifies the dates of each service or engagement, the names and addresses of the actual employers and the names and address of the establishment, venues or locations where the services will be performed. 8 C.F.R. § 214.2(o)(2)(iv)(E)(*2*). As discussed further below, the petitioner has not done so. Therefore, the director correctly determined that the petition was approved in gross error, contrary to the requirements stated in the regulations.

Contrary to counsel's assertions on appeal, the director did not revoke the approval based on "contradictions in the evidence demonstrating the beneficiary's role with the artists and groups with which he works and these artists and groups status." Rather, the director denied the petition based on a lack of any specific evidence or explanation regarding the event or events which required the beneficiary's services as a producer during the requested period of employment. The AAO does not doubt that the beneficiary is a well-known record producer, and the evidence of record does show that he has previously worked with the three artists with whom he has five- and ten-year employment agreements. However, the evidence submitted does not explain exactly why and for what purpose any of these artists require the beneficiary to perform services in the United States during the next two years. There is no evidence that any of these musical artists are based in the United States or that they will be in the United States for any purpose during the beneficiary's requested period of employment. The director clearly requested evidence including affidavits from the artists' record labels and contracts with recording studios as evidence that production for their studio albums would occur in

the United States. 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). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Furthermore, an itinerary which lists the "day/month/year" of events requiring the beneficiary's services as [redacted]," the "name of venue" as "contract for ten years" and the address at which service will be performed as "general producer" does not satisfy the regulatory requirements for an itinerary set forth at 8 C.F.R. § 214.2(o)(2)(ii)(C) or 214.2(o)(2)(iv)(E)(*2*). The director clearly identified the deficiencies in the evidence with respect to the contracts and itineraries and gave the petitioner ample opportunity to specify the exact services to be provided in the United States. The general employment agreement between the beneficiary and the three musical acts is wholly inadequate to establish the need for his services in the United States for specific events for a two-year period. Given counsel's statement that "the time requested is for the physical studio recordings and video productions that will take place in the United States," it was reasonable for the director to request evidence with respect to when, where and with whom these studio recordings are anticipated to occur. The record is devoid of evidence that any of the three musical acts for which the beneficiary has agreed to act as general producer intends to record studio albums or videos in the United States at any time in between 2009 and 2011.

In addition, although not addressed by the director, the AAO notes that the petitioner has also submitted confusing evidence with respect to the nature of the services the beneficiary will provide. For example, as noted above, the petitioner initially referred to the beneficiary himself as a musical group that was about to embark on a tour of the western United States. The petitioner also initially stated on Form I-129 that the beneficiary would be producing "live and video events . . . across the USA," thus suggesting that he would be a producer for the groups' tours, rather than studio recordings. Such a reading is further supported by the petitioner's statement that the beneficiary would be contracting venues, lodging and transportation to ensure that "all events go without hassle." This description of duties suggested that the beneficiary's role would be more akin to that of a tour manager than that of a studio record producer. Finally, the petitioner's revised itinerary submitted in response to the notice of intent to revoke included two dates which appeared to be concert dates, rather than studio recording or video production work. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the evidence of record, the AAO concurs with the director's assessment that the petitioner was essentially requesting a blanket authorization for the beneficiary to enter the United States to provide as yet undetermined services on behalf of the three musical artists. The beneficiary's proposed activities, as minimally documented in the record, are not the types of specific events contemplated for an alien with extraordinary ability in the arts. Accordingly, the appeal will be 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. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.