U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: WAC 02 044 51778 Office: CALIFORNIA SERVICE CENTER Date: NOV 28 2005

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ her in the United States as an acrobat/contortionist for a period of one year.

In a decision dated June 3, 2003, the director denied the petition, finding that the petitioner failed to establish that the beneficiary would be coming to the United States to perform services relating to an event or events as defined by the regulation at 8 C.F.R. § 214.2(o)(3)(ii).

On appeal, counsel for the petitioner submits a brief and additional evidence.

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.

Finding the evidence insufficient to establish the beneficiary's eligibility for the classification sought, on March 1, 2002, the director requested additional evidence, noting:

> Service records indicate that the beneficiary is an intended immigrant. The beneficiary's permanent residency status was granted on December 16, 1998. Therefore, you may withdraw the petition, since the beneficiary is no longer eligible to change her nonimmigrant [status] form a P-1 to an O-1 classification.

In response, the petitioner submitted evidence to establish that the beneficiary was not an intending immigrant and had not adjusted her status. In a second request for additional evidence dated March 25, 2003, the director noted that the dates the petitioner requested for the beneficiary's performance had already elapsed, so he asked the petitioner to submit a new contract with an itinerary and new employment dates. The director also informed the petitioner that the Form G-28 submitted with the Form I-129 petition was invalid because it lacked the attorney's signature.

In response to the latter request for additional evidence, counsel for the petitioner submitted a signed G-28 form. However, the petitioner failed to submit a new contract with an itinerary and new employment dates. The 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 director denied the petition on June 3, 2003, finding that the petitioner had failed to submit the required itinerary. On appeal, counsel for the petitioner asserts that the beneficiary's case was "unfortunately mishandled by BCIS, delayed for several months, was not afforded full review of the facts of this case and inadvertently overlooked for an alternative humanitarian status."

As discussed, the petitioner failed to respond specifically to the director's request for evidence to establish that the beneficiary would be coming to the United States for an "event or events" as defined by the pertinent regulation. The 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). While the director initially erred by indicating that the beneficiary was an

intending immigrant, this error was resolved prior to issuance of the March 25, 2003 request for evidence. This initial error did not obviate the petitioner's obligation to respond to the director's second request for additional, material evidence.

Counsel for the petitioner indicates that the director erred by failing to consider "alternative humanitarian status" for the beneficiary. The nature of counsel's suggestion is unclear. The instant petition seeks authorization to employ the beneficiary as an O-1 nonimmigrant. There is no provision that would allow Citizenship and Immigration Services to assign "an alternative humanitarian status" within the context of adjudication of a nonimmigrant employment-based petition.

Neither of counsel's claims address specifically the grounds for denial set forth in the decision of the director.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, 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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

The burden of proof in these proceedings rests solely 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.