

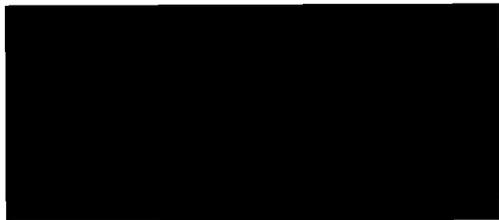
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



58

FILE: WAC 09 800 06254 Office: CALIFORNIA SERVICE CENTER Date:

MAY 12 2010

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(O) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)

ON BEHALF OF PETITIONER:



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, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed the nonimmigrant visa petition seeking classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in the sciences, art, education or business. The petitioner is self-described as a distributor. It seeks to employ the beneficiary in a marketing and sales position for a period of three years.

The director denied the petition on June 16, 2009, concluding that the petitioner did not establish the beneficiary's eligibility as an alien who has a demonstrated record of extraordinary ability in the sciences, arts, education, business or athletics. In denying the petition, the director emphasized that the petitioner failed to submit any of the required initial evidence in support of its petition, which was filed using the U.S. Citizenship and Immigration Services (USCIS) Electronic Filing (e-Filing) system.

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 appeal, counsel for the petitioner asserts that he believes that the petition was erroneously denied "in light of [the beneficiary's] unique skills." He requests that the AAO review "the affidavits and evidence" and grant the approval of the petition to allow the beneficiary to work as "a specialized worker with a type O visa." The only evidence submitted in support of the appeal is an affidavit from the petitioner's president, who states that the petitioning company requires an employee who can speak the native languages of its clients, namely, the Arabic, Uzbek, Turkish, Farsi, Russian and Kyrgyz languages. The petitioner states that the beneficiary is the only individual the petitioner was able to find who could "speak the languages, understand the cultures, and understand the business in which [the petitioner] is engaged." Counsel indicates that the petitioner is a distribution company that "deals with many mall kiosks" owned by persons who prefer to do business in their native languages.

The regulation at 8 C.F.R. § 214.2(p)(1)(ii)(A)(2) provides P-1 classification to an alien who is coming temporarily to the United States to perform with, or as an integral part of the performance of, an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and who has a sustained and substantial relationship with the group (ordinarily for at least 1 year) and provides functions integral to the performance of the group.

The evidentiary requirements for a petition for members of an internationally recognized entertainment group are set forth at 8 C.F.R. § 214.2(p)(4)(iii)(B). In addition, P classification petitions must be accompanied by the evidence set forth at 8 C.F.R. § 214.2(p)(2)(ii).

The issue in this matter is whether the director appropriately denied the petition based on the petitioner's failure to submit the required initial evidence for the visa classification in support of its electronically filed petition.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, using the USCIS e-Filing system on January 22, 2009. The form instructions for Form I-129 advise that if a petition is filed without the required initial evidence, the petitioner will not establish a basis for eligibility and USCIS may deny the petition. The

instructions for electronic filing further instruct the petitioner that the required initial evidence must be received by the Service Center within seven business days of filing the form electronically.

Pursuant to 8 C.F.R. § 103.2(a)(1), the instructions contained on a petition are to be given the force and effect of a regulation:

Every application, petition, appeal, motion, request or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission....

The regulation at 8 C.F.R. § 103.2(b)(1) states:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

Finally, the regulation at 8 C.F.R. § 103.2(b)(8)(ii) states, in pertinent part:

Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or ineligibility. . . .

The director denied the instant petition on February 24, 2009, after waiting one month for submission of the required initial evidence, which, as noted above, was due within seven business days of the date of filing. While the regulations at 8 C.F.R. § 214.2(p)(13) provide that no supporting documents are required when a petitioner seeks to extend the validity of a beneficiary's original P-1 petition, the instant petition was for new employment. Therefore, the AAO concludes that the director's decision to deny the petition based on lack of initial evidence was proper.

On appeal, the petitioner claims that it was initially unaware of the timeline for submitting supporting documentation and was awaiting instructions from USCIS after filing the petition electronically. The AAO notes that detailed instructions for electronically filing a Form I-129 Petition are available at <http://www.uscis.gov>, and it is unclear why the petitioner expected to receive an e-mail from USCIS with additional instructions. The petitioner further claims that it spoke to "an agent" a few days following the filing of the petition and was provided with a mailing address for the supporting documentation. The petitioner states "we send on the fist [sic] days of February, unfortunately we misplaced the proof receipt for the postal service, we didn't know we will need it in the future."

Upon review, the record does not contain the documentary submission that the petitioner claims to have mailed to the service center in early February. The petitioner's unsupported assertion that it mailed the required evidence is

not sufficient. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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.

On appeal, the petitioner does not identify an erroneous conclusion of law or statement of fact on the part of the director. The petitioner states that it misunderstood the requirements for submitting required initial evidence and submits evidence in support of the petition that was required to be submitted within one week of filing the petition electronically on January 22, 2009.

Even assuming, *arguendo*, that the petitioner had timely submitted the documentation provided on appeal, the AAO notes that the denial of the petition would have been within the scope of the director's discretionary authority, pursuant to 8 C.F.R. § 103.2(b)(8)(ii). The evidence submitted does not include: (1) copies of any written contracts between the petitioner and the beneficiaries or a summary of the terms of the oral agreement under which the beneficiaries will be employed; or (2) a written consultation from a labor organization. *See* 8 C.F.R. §§ 214.2(p)(2)(ii)(B) and (D).

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.

The denial of this petition is without prejudice to the filing of a new petition by the petitioner accompanied by the appropriate supporting evidence and fee.

ORDER: The appeal is summarily dismissed.