

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D.8



FILE: WAC 03 193 52043 Office: CALIFORNIA SERVICE CENTER Date: NOV 22 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for Nonimmigrant Worker Pursuant to 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:



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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center and the petitioner appealed. The Administrative Appeals Office (AAO) withdrew the director's decision and remanded the petition for entry of a new decision. The matter is now before the AAO upon certification of the director's decision denying the petition. The director's decision will be withdrawn and the petition will be remanded again for further action and consideration.

The petitioner is a business management and accounting firm. 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), as a music composer and screenwriter. The petitioner is the beneficiary's business agent.

The director denied the petition because the petitioner failed to establish that the beneficiary satisfied the standards for classification as an alien with extraordinary ability in the arts.

On appeal, the AAO remanded the petition because the director applied the wrong evidentiary standard. The director assessed the petitioner's evidence under the regulatory criteria that pertain to aliens of extraordinary ability in the arts. However, the record showed that the beneficiary was a music composer and screenwriter for motion pictures and television. Accordingly, the director should have applied the regulatory criteria for aliens of extraordinary achievement in the motion picture or television industry.

Upon remand, the director again applied the wrong evidentiary criteria. Consequently, the petition must be remanded a second time for assessment of the petitioner's evidence under the correct evidentiary criteria, as cited in the following discussion.

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 or, *with regard to motion picture and television productions a demonstrated record of extraordinary achievement*, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability[.]

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) (emphasis added).

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

Extraordinary ability in the sciences, arts, education, business, or athletics, *or extraordinary achievement in the case of an alien in the motion picture or television industry*, must be established for an individual alien. [emphasis added]

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

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

The regulation at 8 C.F.R. § 214.2(o)(3)(v), prescribes the following relevant evidentiary criteria:

Evidentiary criteria for an O-1 alien of extraordinary achievement in the motion picture or television industry. To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

(A) Evidence that the alien has been nominated for, or has been 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.

On the Form I-129, the petitioner states the beneficiary's job title as "music composer/screenwriter" and describes his duties as the "composition of music and writing of screenplays & teleplays for film & television." The petitioner also submitted documentation relevant to the beneficiary's work as a composer and screenwriter for movies and television. However, rather than determining whether the petitioner established that the beneficiary had "a demonstrated record of extraordinary achievement" pursuant to the regulation at 8 C.F.R. §§ 214.2(o)(3)(i), 214.2(o)(3)(v) and the definition of "extraordinary achievement with respect to motion picture and television productions" prescribed by the regulation at 8 C.F.R. § 214.2(o)(3)(ii), the director instead assessed the evidence under the evidentiary criteria for aliens of extraordinary ability in the arts at 8 C.F.R. § 214.2(o)(3)(iv) and the definition of extraordinary ability in the field of arts as "distinction" at 8 C.F.R. § 214.2(o)(3)(ii). The regulations clearly prescribe different evidentiary criteria for aliens of extraordinary ability in the arts as opposed to aliens of extraordinary achievement in the motion picture or television industry. Consequently, the petition will be remanded for application of the correct evidentiary standards at 8 C.F.R. §§ 214.2(o)(3)(i), 214.2(o)(3)(ii), 214.2(o)(3)(v).

As always 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.

ORDER: The decision of the director is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.