



U.S. Citizenship  
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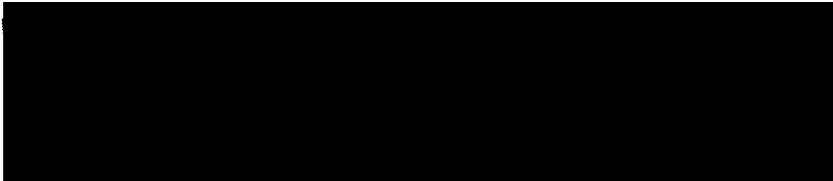
FILE: SRC 04 048 50779 Office: TEXAS SERVICE CENTER Date: **JAN 17 2006**

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 "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a retail music store. The beneficiary is a bagpiper. 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 him as a Highland bagpipe advisor for three years at a monthly salary of \$3,000.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts.

On appeal, counsel submits a brief.

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.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts as defined by the statute and the regulations.

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

*Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

*Extraordinary ability in the field of arts* means distinction. 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)(3)(iv) states that in order to qualify as an alien of extraordinary ability in the arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated 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, governmental 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.

The beneficiary is a native of Scotland, and served in the British army as a member of the Black Watch Regiment and Royal Highland Regiment. The record reflects that he last entered the United States on August 30, 2002 on a B-1 temporary visitor for business visa, and was subsequently approved for a Q-1, nonimmigrant cultural exchange program visa that was valid until December 7, 2003.

The petitioner does not allege, and the evidence does not establish, that the beneficiary has been nominated for, or been the recipient of, any significant national or international awards or prizes in his field of endeavor. The petitioner has submitted evidence that, it claims, meets the following criteria.<sup>1</sup>

*Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.*

To establish that the beneficiary meets this criterion, the petitioner submitted copies of invitations to the beneficiary asking him to perform and letters thanking him for his performance at cultural festivals, concerts, and events for the League of Celtic Nations in Amarillo, Texas; the Episcopal Church of St. Mary the Virgin in Big Springs, Texas; and the High Plains Piping Society in Canyon, Texas. The petitioner submitted no evidence that the beneficiary had a lead or starring role in these programs and events or that these programs and events have a distinguished reputation. The evidence does not establish that the beneficiary satisfies this criterion.

*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.*

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<sup>1</sup> The petitioner does not claim to meet, or submit evidence relating to, the criteria not discussed in this decision.

Counsel for the petitioner asserts that the beneficiary meets this criterion based on his performances with the organizations discussed above. However, the evidence does not establish that the beneficiary performed in a lead, starring or critical role for any of these organizations, or that the organizations have a distinguished reputation. As further evidence, the petitioner submitted letters indicating that the beneficiary performed on a radio program on St. Patrick's Day 2004, and copies of newspaper clippings and articles that picture an individual identified by the petitioner as the beneficiary playing the bagpipes. These articles and clippings do not specifically identify the beneficiary, and do not suggest that he performed in a leading or starring role in the events or productions. An article in the October 13, 2003 *Amarillo Globe-News* reports on the beneficiary's skills as a kilt maker. Therefore, the petitioner's evidence does not establish that the beneficiary meets this criterion.

*Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental 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.*

In his letter accompanying the director's request for evidence (RFE) dated March 8, 2004: counsel stated that this criterion was satisfied based on recognition of the beneficiary's "piping performance by hosts of events, as well as peer groups." Counsel references the documentation discussed in the criteria discussed above as evidence of this criterion, as well as a letter from Mr. Bruce Tiffin, director of the High Plains Piping Society. In his December 9, 2003 letter responding to the petitioner's request for an evaluation of the beneficiary's credentials, Mr. Tiffin stated that after reviewing the beneficiary's credentials, "it is my opinion that he possesses credentials not only qualifying him as an expert but certainly as having extraordinary ability." Mr. Tiffin indicated that he had heard the beneficiary perform and felt "very comfortable" in his evaluation of the beneficiary's abilities." Mr. Tiffin's letter is not evidence of "significant recognition for achievement" from a recognized expert in bag piping, as it is simply an evaluation of the beneficiary's experience and training by the director of a local piping club. The letter does not indicate that recognition of the beneficiary's achievements extend beyond the purpose for which the letter was written, i.e., this visa petition. Further, the letters requesting the beneficiary to perform and the letters to him thanking him for his participation appear to have been published only to the beneficiary and do not indicate "significant recognition" for his achievements.

The petitioner also submitted letters of thanks from various kindergarten, elementary and high schools in which the beneficiary had performed. The evidence does not establish that these organizations are recognized experts in the field, or that these letters constitute "significant recognition."

The evidence does not establish that the beneficiary meets this criterion.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in piping.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.