U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536

D8

[redacted] **Public Copy**

File: EAC-99-270-50070 Office: Vermont Service Center Date: MAY 22 2001

IN RE: Petitioner: [redacted]
Beneficiary:

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

IN BEHALF OF PETITIONER: [redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myna L Rosen

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a private commercial art gallery. The beneficiary is a professional artist in the fine arts. The petitioner seeks to extend the beneficiary's stay in the United States in O-1 classification, as an alien with extraordinary ability in the arts under § 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), for one year in order to continue to exhibit and sell his works through the gallery.

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

On appeal, counsel for the petitioner argues that the director erred in basing the decision narrowly on a finding that the beneficiary had not been shown to qualify for classification as an alien with extraordinary ability in the arts because the beneficiary did not command a high salary. Counsel argues that the beneficiary does qualify for extension of stay in O-1 status and submits additional documentation.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (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 beneficiary is a native and citizen of Japan. The record reflects that he was awarded a Bachelor's degree in fine arts in 1993 and a Master's degree in fine arts in 1995. The beneficiary was granted O-1 classification on September 19, 1996 with authorized stay extended through September 19, 1999.

At issue is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts within the meaning of this provision.

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 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.

8 C.F.R. 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability, 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 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; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

On review, it may be concluded that the director improperly relied on only one of the criteria at 8 C.F.R. 214.2(o)(3)(iv)(B) in reaching the decision. Nevertheless, the burden remains on the petitioner to demonstrate that the regulatory requirements of this provision have been satisfied.

In this case, the beneficiary is described as the "resident artist" at a small private gallery. The petitioner asserts that it is a premier gallery in an established "art colony" in the Cape Cod area and that it acts as the beneficiary's agent. The petitioner further asserts that the beneficiary "has achieved extraordinary success and recognition in his field throughout New England and the Northeastern Region."

After careful review of the record, it must be concluded that the petitioner has failed to overcome the decision of the director.

Here, there is no evidence that the beneficiary has received an award equivalent to those listed at 8 C.F.R. 214.2(o)(3)(iv)(A) above. Nor does the record show that the beneficiary meets at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iv)(B). It must be noted that these provisions are only documentary requirements and merely addressing them does not establish eligibility for the benefit sought.

The beneficiary's resume reflects that he has had standing exhibitions at the petitioning gallery and periodic exhibits at other northeast galleries. The resume references seven articles reviewing his work including two local newspapers, four art publications, and a national newspaper. The resume also lists seven awards, six of which are described as "fellowships."

The petitioner did not submit documentation demonstrating the relative standing of the beneficiary's published reviews or the significance of the fellowships in the field of arts. There is no evidence of national recognition of the beneficiary's achievements, of critical reviews in major publications with a distinguished

reputation, of major commercial or critically acclaimed success, or of having commanded a high salary. The record does not establish that the beneficiary satisfies at least three of the above criteria.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for O-1 classification as having "extraordinary ability" the statute requires proof of "sustained" national or international acclaim and a demonstration that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized. While the beneficiary has received a level of regional recognition, there is no evidence to establish that his recognition is "substantially above that ordinarily encountered" in the field of fine arts.

For these reasons, it is concluded that the petitioner has failed to overcome the grounds for denial stated in the decision of the director. The denial of this petition is without prejudice to the filing of a petition on behalf of the beneficiary for any other benefit for which he may be eligible.

Administrative notice is made that, while the record of proceeding of the beneficiary's original petition for O-1 classification is unavailable for review, it is virtually inconceivable that a recent graduate from an art school could establish eligibility for O-1 classification which is based on the sustained recognition of established professionals in the field. It may therefore be presumed that the approval of the original petition was in error.

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.