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U.S. Department of Justice
Immigration and Naturalization Service

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Office of Administrative Appeals
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: SRC 02 072 56104

Office: TEXAS SERVICE CENTER

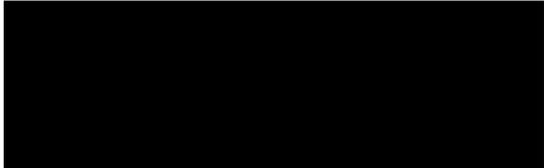
Date: **JAN 09 2003**

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)

IN BEHALF OF PETITIONER:



**Identifying data deleted to
prevent disclosure of unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision 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.

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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Unit

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

The petitioner is an internet company that publishes a companion print magazine. The petitioner seeks authorization to employ the beneficiary as an art director for a period of two years at an annual salary of \$50,000. The director determined that the petitioner had not established that the beneficiary qualifies as an alien of extraordinary ability in the arts. The director also found that the itinerary is inadequate.

On appeal, counsel for the petitioner states that the beneficiary is qualified for the classification sought.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(O)(i), 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, has 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.

In order to qualify as an alien of extraordinary ability in the field of 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 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.

8 C.F.R. 214.2(o)(3)(iv). No claims have been made that these standards do not readily apply in this matter.

It is noted that the Service's decision in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. The evidence submitted must establish that the beneficiary qualifies as an alien of extraordinary ability.

In addition, regulations define extraordinary ability in the field of arts to mean distinction. Distinction, in turn, is defined as "a high level of achievement in the field of 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)(ii).

The beneficiary has neither been nominated for, nor has he been the recipient of, any significant national or international awards or prizes in his field of endeavor.

The petitioner failed to provide the Service with any critical reviews or published material about the beneficiary.

Counsel for the petitioner asserted that the beneficiary has performed in a lead, starring or critical role for organizations and establishments that have a distinguished reputation. However, the petitioner has not provided sufficient evidence in support of this assertion. The record shows that the beneficiary worked as a mobile promotions coordinator, planning and executing various marketing programs at Transamerica Radio Station. The beneficiary performed as the special programs coordinator for Metropolitana Radio Station where he produced and arranged music selections for the "station's most popular Saturday night show." As an intern at *Sadia*, a Brazilian meat processor, the beneficiary produced employee relations materials. The beneficiary was a reporter for *Match Point Magazine*, a Brazilian tennis magazine. He wrote and edited for *Contigo Magazine*. In each instance, the petitioner failed to demonstrate that the beneficiary performed in a lead, starring or critical role.

The beneficiary was a newsroom director for *Trip College Magazine*. He served as Editor-in-Chief of the *Brazilian Post*. He established his own company, Brush One Computer Artwork and Design. In 1997, he became the Editor-in-Chief and Art Director for *Vitale Advertising*. Most recently, the beneficiary worked as art director and designer for the petitioner. Counsel for the petitioner asserted that the beneficiary developed the first issue of *Ponto* and worked on the premier issue of *Loft Magazine*. The petitioner provided the Service with two articles that herald the arrival of new Latin American publications. The articles mention the petitioner and its publications, but the petitioner failed to establish that these organizations have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

As evidence that the beneficiary has a record of major commercial or critically acclaimed successes, counsel for the petitioner cites recognition the beneficiary received from the National Association of Photoshop Professionals when it selected and featured the beneficiary's work in the member gallery portion of its website. The petitioner failed to demonstrate how this recognition rises to the level of an occupational achievement. The beneficiary is a member of the National Association of Photoshop Professionals. It is not uncommon for associations to publicize the work of their members, but such publicity is not tantamount to acclaim.

Counsel for the petitioner submitted two letters from experts in graphic design, journalism and art direction. The petitioner's creative director writes one letter. A former employer of the beneficiary writes the other. The letters are devoid of any evidence that the beneficiary has received significant recognition for his achievements.

The record is silent as to the beneficiary's salary history and whether the salary offered is high in relation to others in his field.

The executive director of Local 3030 of the Graphic Artists Guild UAW stated in a letter dated November 29, 2001 that his organization acknowledges that the beneficiary's graphic design abilities are consistent with the standards of the O-1 regulations, and has no objection to granting an O-1 visa. In a request for additional documentation, the director determined that the Graphic Artists Guild UAW Local 3030 did not appear to be the correct consultation source. He wrote that consultations should be from a national labor union. In reply, counsel for the petitioner asserts that the Graphic Artists Guild is a national union. Counsel failed to address the director's concern that the consultation was written by a union local, rather than by someone at the national union office. Nonetheless, the director decided that the consultation was acceptable. In any event, such consultations are advisory in nature and are not binding on the Service. 8 C.F.R. 214.2(o)(5)(i)(D).

The director determined that the petitioner's itinerary for the beneficiary is inadequate. In her decision, the director noted that the itinerary was comprised of two events already scheduled for the beneficiary in Brazil and another of a "date to be announced." The director noted that all three of these events are unrelated to the projects of the beneficiary. On appeal, counsel for the petitioner asserts that the beneficiary is scheduled to attend these events as a representative of the petitioner. In reply to the request for additional documentation, the petitioner added two more projects to the beneficiary's itinerary, namely, to develop two new publications. In review, the petitioner overcame the director's objections to the itinerary.

After a careful review of the entire record, including the opinion of the Graphic Artists Guild UAW Local 3030, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in the arts.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the director's decision will not be disturbed.

ORDER: The appeal is dismissed.