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U.S. Department of Justice

Immigration and Naturalization Service

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Office of Administrative Appeals
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Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: WAC 02 265 55041 Office: CALIFORNIA SERVICE CENTER Date: JAN 10 2003

IN RE: Petitioner: [redacted]
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:

[redacted]

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 CFR 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 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Unit

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

The petitioner is a talent agency that seeks to employ the beneficiary as a director of photography for a period of two years. The director determined that the petitioner had not established that the beneficiary qualifies as an alien who has a demonstrated record of extraordinary achievement in motion picture and or television productions.

On appeal, counsel for the petitioner argues 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.

Under 8 CFR 214.2(o)(3)(v), in order 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 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.

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 satisfies the criteria and is eligible for O-1 classification. The evidence submitted must establish that the beneficiary qualifies as an alien of extraordinary ability.

The beneficiary recently[1] graduated from the Art Center of Design located in Pasadena, California. The beneficiary has collaborated with other artists to produce television commercials, a film, and

[1] April 2001.

an interactive training media.

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.

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.

For criterion number one, counsel for the petitioner asserts that the beneficiary has "played a leading role for some of the most prestigious entities in the world and has performed critical roles in the most distinguished of productions." Counsel for the petitioner asserts that the testimonials it provided to the Service satisfy this criterion. Counsel's assertions are not persuasive. The criterion clearly requires evidence in the form of critical reviews, advertisements, publicity releases, publications contracts or endorsements. The petitioner has not demonstrated that the beneficiary meets this criterion.

The petitioner has not submitted evidence in relation to criterion number two.

Evidence that the alien has performed, and will perform, services as a lead, starring, or critical participant in productions or events which have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials.

The petitioner provided the Service with testimonials. The President and Executive Producer at Size, Inc, a production company, wrote that the beneficiary "was cinematographer for our national [ad] campaign for Meiji LG-21 Yogurt." The Creative Director of the digital interactive media production company Substanz wrote that the beneficiary was "an integral part of the success of the production [of an educational interactive hyperstory]." A commercial and music video director at a production company, Level 7, wrote that the beneficiary was "an outstanding collaborator and artist on several occasions, namely the short film 'Appleville Eats its All Stars,' and the commercial 'Fizz' for Tide Tablets." The commercial director at Reactor Films wrote that he had worked with the beneficiary on numerous commercials in the United States and in Japan. The petitioner failed to provide evidence that the beneficiary performed in productions with distinguished reputations. The beneficiary does not satisfy this criterion.

The petitioner did not provide evidence in relation to criterion number four.

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.

The petitioner provided the Service with evidence that the beneficiary worked on several projects that received significant recognition. The beneficiary worked on two projects that were accorded CLIO awards. The director noted that these awards were in the student category. Given that these awards were accorded to only students, they are not evidence that the beneficiary has risen to the top of his field of endeavor.

The record contains no evidence that the beneficiary has commanded a high salary. In the absence of wage surveys, the Service cannot evaluate whether the proffered rate of pay is high in relation to that received by others equally qualified.

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 achievement in the motion picture or television industry.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.