

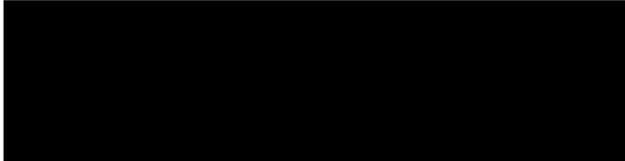


U.S. Department of Justice
Immigration and Naturalization Service

D8

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

File: WAC 02 181 52203 Office: CALIFORNIA SERVICE CENTER Date: **REMAIN** 10/1/02

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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 Office

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 Catholic preschool. The beneficiary is a traditional Korean mask-dancer and musician. 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), in order to employ her part-time for a period of three years at an hourly rate of \$25. The petitioner intends to hire the beneficiary to teach traditional Korean mask-dancing and music to fifty pre-school children.

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. The director also denied the petition because the beneficiary is a member of an ensemble and accolades received by the ensemble are not evidence of the beneficiary's acclaim. Furthermore, the director denied the petition because the petitioner failed to provide the Service with the required consultation.

The petitioner filed a motion to reconsider. The director declined to treat the appeal as a motion to reconsider, and forwarded the appeal and the related record to the Associate Commissioner for review. 8 CFR 103.3(a)(2).

Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, the individual is not authorized under 8 CFR 292.1 or 292.2 to represent the applicant. Therefore, this decision will be furnished to the applicant only.

On appeal, the petitioner provides the Service with additional documentation, including a letter of recommendation from the Korean Cultural Center's Director at the Consulate General of the Republic of Korea in Los Angeles, California.

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 . . . and 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 the Republic of Korea. According to the record, the beneficiary completed two dance

courses in Korea.¹ According to the petitioner, the beneficiary has performed as a mask-dance player and as a member of a Samulnori traditional Korean music ensemble on international and national tours over the last twenty-five years.

At issue is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts as defined in the Act.

8 CFR 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.

8 CFR 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 that 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

¹ The record contains one certificate indicating that the beneficiary completed an administrative practical training course at a business college and another certificate indicating that she completed a Songpa mask-dance course.

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.

In order to establish eligibility for O-1 classification as an alien with extraordinary ability in the arts, a petitioner must establish that the alien beneficiary has distinction in the field of arts. *Distinction* is defined as a high level of achievement and recognition substantially above that ordinarily encountered, and a demonstration that the alien is renowned, leading or well known in the field of arts. 8 CFR 214.2(o)(3)(ii).

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

The record is silent as to whether the beneficiary has performed as a lead or starring participant in productions that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. The petitioner provided the Service with copies of untranslated program brochures. The petitioner failed to establish the significance and relevance of these program brochures.

The petitioner failed to establish that the beneficiary 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. The petitioner provided the Service with a copy of one newspaper article that is captioned: "This couple devotes their whole life to keep Korean traditional culture." The translation states that the husband drums and the wife (beneficiary) dances. The article does not establish that the beneficiary has received national or international recognition for her achievements. The article does not indicate the full date of publication.

The petitioner failed to provide 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.

The record contains numerous photographs of the beneficiary posing and performing in a mask-dance costume. The petitioner failed to establish the context and significance of the photographs.

The petitioner failed to provide evidence to establish that the beneficiary has a record of major commercial or critically acclaimed successes.

Similarly, the record does not demonstrate that the beneficiary has received significant recognition for her achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. The petitioner provided the Service with a letter of recommendation from the Chairman of Conservation of Intangible Cultural Asset Number 49, that states that the beneficiary has been trained to perform the traditional Korean mask-dance and that her mask-dance was chosen by the City of Seoul as the "intangible local cultural asset number 49." It is unclear whether Seoul chose the beneficiary alone, her dance group, or the dance form as an intangible cultural asset. In any event, the petitioner failed to establish that the beneficiary has received significant recognition for her achievements.

The record contains no evidence of the beneficiary's salary history. The petitioner has not established that the proposed hourly wage of \$25 constitutes a high salary in relation to others similarly employed.

Finally, the director denied the petition, in part, because the petitioner failed to provide the Service with a consultation as required by the regulations. 8 CFR 214.2(o)(5)(i)(A) states that a petition for an O-1 visa requires a:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for an O-1 or O-2 classification can be approved.

On appeal, the petitioner provided the Service with additional documentation, but failed to include a consultation.

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 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.