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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Administrative Appeals Office
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

JUN 20 2003

File: EAC 02 282 52553 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[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 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the case remanded for further consideration.

The petitioner is a limited liability company that is wholly owned by the beneficiary. The director determined that the beneficiary created a company to serve as his petitioner and employer and is in effect, self-petitioning for an O-1 classification; therefore the petition may not be approved. The director failed to address whether the petitioner established that the beneficiary qualifies for classification as an alien of extraordinary ability in the motion picture or television industry.

On appeal, counsel for the petitioner argues that the director erred in finding that a limited liability company may not file a nonimmigrant petition on behalf of its sole stockholder.

The beneficiary was granted O-1 classification in May 2000 as the result of a different petitioner [redacted] filing a Form I-129 on his behalf. The initial O-1 visa is valid from July 3, 2000 until July 3, 2003. It is unclear whether the beneficiary is still working as an employee of his initial petitioner and is in valid immigration status.

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.

8 C.F.R. § 214.2(o)(2)(i) states in pertinent part that an O alien may not petition for himself, or herself.[1]

Counsel for the petitioner asserts that the beneficiary is not self-petitioning, but rather, the petitioner, as a limited liability corporation, is a distinct legal entity petitioning on behalf of the beneficiary.

The AAO will refrain from making a decision on this issue until the record of proceeding is complete.

The record of proceeding contains the Form I-129 petition and supporting documentation, a request for additional documentation

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[1] *See also* Letter, [redacted] Acting Asst. Commr. Adjudications, CO 214o.IC (July 24, 1992) *reprinted in* 69 Interpreter Releases 1087 (August 31, 1992).

and the petitioner's reply including a consultation from a peer group, the director's decision, the appeal and brief.

Under 8 C.F.R. § 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, 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.

8 C.F.R. § 214.2(o)(5)(i)(A) requires, in pertinent part that:

> 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 O-1 or O-1 classification can be approved.

The petitioner provided the Bureau with a consultation from Promax & BDA, a non-profit organization, which represents more than 4,200 member companies and individuals working in television, radio and digital media.

In review, 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 evidence does not indicate that the beneficiary has satisfied at least three of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B). The director failed to address this issue in his request for additional evidence and his decision, so the case will be remanded to allow the director to request relevant documentation from the petitioner.

The director's decision was deficient in that it failed to address the issue of whether the beneficiary is coming to the United States to perform services relating to an event or events.

Under section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer. 8 C.F.R. § 214.2(o)(1)(i). The term "event" is defined at 8 C.F.R. § 214.2(o)(1)(ii) as an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. In the instant case, the petitioner has not established a specific point in time at which the beneficiary's services will no longer be required. The examples provided by the regulation suggest occurrences or phenomena of definite and finite duration. Therefore, the existence of an event has not been established. An O-1 classification may not be granted to an alien to enter the

United States to freelance in the open market.[2]

Accordingly, this decision will be remanded for the purpose of a new decision. The director must afford the petitioner reasonable time to obtain the evidence described above, and any other evidence that the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

ORDER: The director's decision of date is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision. If adverse to the petitioner, the decision shall be certified to the AAO.

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[2] See Commentary on Final Rule on Temporary Alien Workers Seeking H-1B, O, and P Classifications Under the Act (August 15, 1994).