

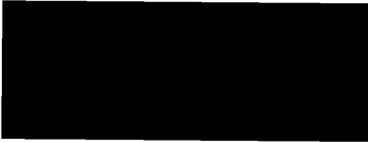


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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: SRC-00-246-53034 Office: Texas Service Center

Date: APR 30 2001

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

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:



Identification 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

Robert P. Wiemann, Acting Director
Administrative Appeals Unit

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

The petitioner in this matter is a newspaper. The beneficiary is a sports journalist. The petitioner seeks O-1 classification of the beneficiary, under § 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in order to employ him in the United States as a journalist/staffwriter for a period of three years.

The director denied the petition finding that the petitioner failed adequately to establish that the beneficiary met the regulatory standard for an alien with extraordinary ability and that it had not been demonstrated that the proposed position required an alien with extraordinary ability.

On appeal, counsel for the petitioner argued that the center director erroneously applied the regulatory standards for an alien in the arts, rather than in business. Counsel further argued that the evidence submitted specifically tracked five of the eight appropriate criteria and requested the decision be reversed.

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 first issue raised by the director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien of extraordinary ability.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim

and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) 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)(5)(i)(A) requires, in pertinent part:

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-2 classification can be approved.

The record indicates that the beneficiary is a native and citizen of Trinidad who last entered the United States as a student in F-1 classification on December 12, 1991, and was granted a change of status on December 15, 1997 to H-1B classification as a temporary worker valid through November 1, 2000. His current immigration status is unknown. The petitioner submitted documentation reflecting that the beneficiary received a Master of Arts degree in Mass Communications in 1993 and has been a professional journalist since such time. The record indicates that the beneficiary was the recipient of six awards and has been a feature writer.

Counsel is correct in arguing that the center director applied the incorrect regulatory standard. It is concluded, however, that no undue harm has accrued from that error.

The determination of "extraordinary ability" for the purpose of this type of visa petition proceeding is necessarily a subjective one. In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his or her field of endeavor. 8 C.F.R. 214.2(o)(3)(ii).

After careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objections. There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). The petitioner submitted documentation showing that the beneficiary received some awards for his work and is highly regarded by his colleagues at the petitioning newspaper and at his former university. The petitioner failed to show the relative standing of the awards received by the beneficiary in his field and failed to show any significant recognition of the beneficiary's achievements outside of the region of the petitioning newspaper. As noted by the director, merely addressing the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B) does not establish eligibility for the benefit sought.

The beneficiary in this matter is a sports writer with approximately six years of experience. There is no evidence that the beneficiary has been recognized as being at the "very top" of

the field of sports writing. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for 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.

In addition, the petitioner submitted no evidence that it requires a writer of O-1 caliber for the proffered position. As noted by the director, the proposed salary of approximately \$40,000 is not the type of "high salary" contemplated by the regulations.

Furthermore, the petitioner failed to submit the required labor consultation.

The burden of proof in these proceedings rests solely with the petitioner. § 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.