

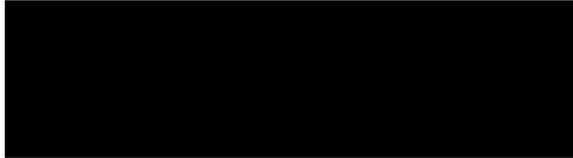


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: LIN-02-053-53648 Office: Nebraska Service Center Date: JUL 18 2002

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, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER



Public Copy

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

Myra L. Rosenberg
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska 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 packaging design and manufacture company. The beneficiary is a packaging designer. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), in order to employ him in the United States for a temporary period of three years as a "user interface designer" at a salary of \$72,000 per year.

The director denied the petition finding that the petitioner failed to establish that the beneficiary met the regulatory standard for classification as an alien with extraordinary ability.

On appeal, counsel for the petitioner argued that the beneficiary does satisfy at least three of the requirements at 8 C.F.R. 214.2(o)(3)(iii).

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.

It must first be noted that the petitioner did not specify whether packaging design should be considered a field of science or business. Nevertheless, as the applicable regulations are the same, the petition is not prejudiced. As the position of a packaging designer may be considered a field of engineering, the petition will be reviewed as a request for classification as an alien with extraordinary ability in science.

The 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 beneficiary is a native and citizen of Canada. He was stated to have a Bachelor of Science degree and 23 years of experience in the field of packaging design for the fishing industry.

In the decision, the center director extensively reviewed the evidence in the form of several statements from professionals in the field as to the beneficiary's accomplishments as a packaging designer. The director found the beneficiary ineligible for O-1 classification based on finding insufficient documentation to show that he is "at the very top" of his field pursuant to 8 C.F.R. 214.2(o)(3)(ii) or that he has had the requisite "sustained acclaim" in the field of engineering required by the statute.

On appeal, counsel disputed the director's analysis and argued that the evidence is sufficient to establish eligibility. Counsel asserted, in part, that the beneficiary is considered an expert in the field of packaging for the salmon roe industry, that he has lectured on the subject at the university level at the College of Fisheries of the University of Washington, that he is known within the industry, and that he will command a high salary relative to the norm in industrial design. Counsel further argued that there are no relevant awards such as those listed in the regulations.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objections. The petitioner's documentation may be considered sufficient to demonstrate that the beneficiary in this matter is recognized as an expert in packaging design for salmon roe products in the fishing industry. At issue is whether this level of recognition is sufficient for O-1 classification.

8 C.F.R. 214.2(o)(3)(iii)(A)&(B) set forth a list of evidentiary criteria that may, or may not, be applicable to a particular field of endeavor that is the subject of an O-1 visa petition. 8 C.F.R.

214.2(o)(3)(iii)(C) allows for the submission of comparable evidence as appropriate. In the field of industrial design there may be no awards equivalent to the Nobel Prize or the Academy Award. However, in any field of technology there are numerous prestigious industry publications that cover the field. Articles in these publications recognizing an individual as one of the top designers in the field would be favorable evidence to support the petition. See 8 C.F.R. 214.2(o)(3)(iii)(B)(3). Other persuasive evidence might include patents or recognition in popular science publications. Advances in industrial design may also be recognized by publication in scholarly journals. See 8 C.F.R. 214.2(o)(3)(iii)(B)(6).

In this case, the petitioner did not submit any scholarly or industrial publications demonstrating the beneficiary's recognition as being one of the few at the very top of the field. Nor is the record persuasive that the proffered salary may be considered "high" relative to industrial standards. The fact that an individual has a degree of recognition as an expert in one specialized application of a field of science is not sufficient to demonstrate that the individual has extraordinary ability in science as contemplated at section 101(a)(15)(O)(i) of the Act.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for extraordinary ability, the Act 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 record does not show that the beneficiary's achievements have been recognized as rising to this level.

The denial of this petition is without prejudice to the filing of a new petition under alternate provisions of the Act.

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

ORDER: The appeal is dismissed.