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U.S. Department of Justice

Immigration and Naturalization Service

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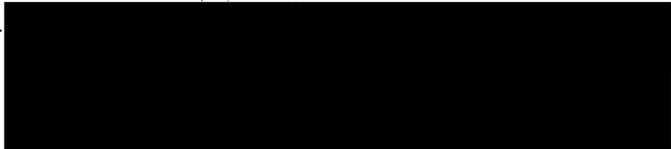


File: EAC-01-273-53763 Office: Vermont Service Center Date: 8 - MAR 2002

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



Public Copy

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 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 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Meera L. Rosenly
for 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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is the United States branch of a multi-national financial corporation. The beneficiary is a securities trading professional specializing in the field of emerging markets fixed income trading. The petitioner seeks O-1 classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in business, in order to continue to employ him in the United States as director of its Latin American Sovereign Debt Trading department.

The director denied the petition finding that the petitioner failed to establish that the beneficiary met the regulatory standard for an alien with extraordinary ability in business which requires recognition as being at the very top of the field of endeavor. The director noted, in part, that the beneficiary satisfied only one of the minimum of three regulatory criteria at 8 C.F.R. 214.2(o)(3)(iii)(B).

On appeal, counsel for the petitioner submitted a written brief arguing, in part, that the beneficiary meets at least five of the pertinent regulatory criteria. Counsel further argued that the center director reviewed the evidence of record under a standard inappropriate to the beneficiary's field of endeavor. Counsel further argued that the center director failed to acknowledge the favorable advisory opinion from the Security Traders of New York, Inc. ("STANY") submitted by the petitioner to satisfy the requirement of 8 C.F.R. 214.2(o)(5)(i)(A).

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

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 Argentina who was last admitted to the United States on September 8, 2001, in H-1B classification as a temporary worker authorized for employment by the petitioner. The classification was valid until December 17, 2001 and the director commented that the beneficiary had exhausted the maximum period of validity under H-1B classification.

Upon review of the record, the decision of the center director relied, in part, on the lack of published material by the beneficiary and the lack of other indicia of recognition of the beneficiary's achievements in his field of endeavor.

On appeal, counsel asserted, in pertinent part, that the beneficiary is an active trader for a prestigious financial services corporation, as opposed to a researcher or an academic professional, and that professional publications are not a part of his activities. Counsel further argued that the beneficiary satisfies numbers 4, 5, 6, 7, and 8 of 8 C.F.R. 214.2(o)(3)(iii)(B) above.

It must first be noted that the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B) are initial evidentiary requirements and are not sufficient to establish eligibility for the benefit sought. It is further noted that the criteria are broad guidelines and may not be directly applicable to all fields of endeavor.

Regarding number 4 above, counsel argued that the beneficiary has been a judge of other security traders in that he offers his opinion on the suitability of job applicants with his firm.

As noted by the director, this is not the type of activity normally contemplated for that criteria. While not defined in the regulations, a person serving as a judge, or on a panel of judges, is usually interpreted as serving as a judge for professional competitions or athletic competitions, judging for distinguished professional awards, or sitting on the editorial board of a professional journal. Merely reviewing the credentials of job applicants for one's firm is not equivalent to such activities.

Regarding number 5 above, counsel argued that the beneficiary offers his expert opinion to prestigious financial analysis firms such as Bloomberg, L.P. and Dow Jones on emerging market trends in Latin America.

As noted by the director, merely being consulted by financial analysts regarding a highly specialized field of business is not the type of original contribution usually contemplated under this provision. Original contributions in the field of business are usually interpreted as the development of new and original business models, economic forecasting models, or innovations of major significance, not merely being consulted regarding current market trends.

Regarding number 6 above, counsel argued that the beneficiary has been written about in prestigious financial publications, specifically in the form of a notice announcing his employment by the petitioner.

Here, the criteria is specifically the "alien's authorship of scholarly articles," not merely being mentioned in trade journals.

Regarding number 7 above, counsel argued that the beneficiary has been employed in a management capacity with organizations such as the Bank of Boston and the petitioner.

The fact that the petitioner has been employed by organizations that have a distinguished reputation is not disputed. However, the beneficiary's positions such as vice president or assistant director of departments within those organizations is not considered a "critical or essential capacity" as contemplated by the provision. In the field of business, only senior management positions would be considered to satisfy the requirement.

Regarding number 8 above, counsel asserted that the beneficiary would be paid a \$140,000 annual salary with an annual bonus of \$175,000 for a total of \$315,000 per year. Counsel argued that this is significantly higher than the \$117,312 average salary of a financial manager according to a Department of Labor survey.

As noted by the director, senior managers in the field of business who would be considered to have "extraordinary ability" under this provision are usually highly compensated. While there are no quantitative criteria for this provision, the director noted that it is reasonable to find that salaries for such managers are far in excess of the \$315,000 relied on by counsel. Clearly, an individual who was demonstrated to be one of a small percentage at the very top of the field of finance could be expected to be compensated far above the level proffered in this matter.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for

this classification, 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 regulation states that this classification is reserved for "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)(ii). Here, the field of endeavor is business. The beneficiary is in the specialty of finance and financial trading. He is further specialized in an area of finance referred to as emerging markets and corporate and sovereign debt trading for Latin American markets. The fact that an individual is one of a relatively few practitioners in a given area of specialization must be distinguished from being one of a small percentage recognized as the top of a field of endeavor. While extraordinary ability in the field of business may be demonstrated by recognition in the general specializations of banking or finance, the argument that extraordinary ability may be demonstrated by recognition in a very narrow sub-specialization is not persuasive.

Counsel's argument that the center director failed to acknowledge the favorable peer group opinion of the Security Traders of New York, Inc. is acknowledged. However, such an opinion is advisory and is not controlling. It is further noted that STANY has not been recognized by the Service as the appropriate peer group for finance or securities trading and it has not been established that the affiant was conversant with the O-1 criteria for the purpose of opining that the beneficiary meets the regulatory standard.

After a review of the record, it cannot be concluded that the grounds for denial of the petition have been overcome. The denial of this petition is without prejudice to the petitioner pursuing immigration benefits for the beneficiary 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.