



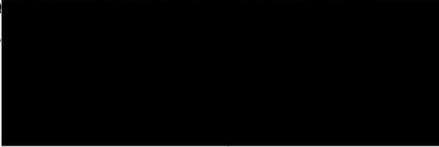
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U.S. Department of Justice

Immigration and Naturalization Service

Identification card related to
present study terminated
because of removal order

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



File: EAC-01-266-52026 Office: Vermont Service Center Date: 2 MAR 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: [Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 03/22/01 BY 60322 UCBAW

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

Myra L. Rosenly
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 described as a "horse show operation" engaged, in part, in competitive show jumping. The beneficiary is a professional competitive rider. 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 athletics, in order to employ him in the United States for a period of three years as a rider at a salary of \$19,200 per year.

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 athletics which requires sustained national or international acclaim and recognition as being at the very top of the field of endeavor.

On appeal, counsel for the petitioner filed a Form I-290B Notice of Appeal. Counsel submitted a written brief as a "motion to reopen" and furnished additional information.

The center director forwarded the record to the Administrative Appeals Office without comment regarding the request for a motion to reopen. Based on the Form I-290B, the matter will be treated as an appeal.

Section 101(a)(15)(O)(i) of the Immigration and Nationality 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 director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien who has extraordinary ability in athletics.

8 C.F.R. 214.2(o)(2)(ii) states that petitions for O aliens shall be accompanied by the following:

(A) The evidence specified in the particular section for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written advisory opinion(s) from the appropriate consulting entity or entities.

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 described as a native and citizen of Argentina who was last admitted to the United States on June 12, 2001, as a visitor under the visa waiver program. His current immigration status is unknown. The petitioner is a Virginia corporation engaged, in part, in competitive equestrian show jumping.

In denying the petition, the director relied, in part, on evidence that the beneficiary competed in "category 2" show jumping in Argentina and stated that only athletes competing at the highest level of the sport, or "category 1," would be considered eligible for consideration as an athlete of extraordinary ability. The director also noted that the petitioner failed to submit any evidence that the beneficiary had competed at the highest levels, such as that of an Olympic competition or international competition on a national team.

On appeal, counsel submitted documentation regarding the sport of equestrian show jumping in general and in Argentina in specific. It was explained that the ranking system in Argentina is based on the combined merits of horse and rider and that the top three categories are considered jointly as the highest level of competition. It was further explained that Argentina has not had

an Olympic equestrian team since 1996 and that it has no national team. Counsel argued, in pertinent part, that the beneficiary has the requisite acclaim demonstrated by his competitive wins in Argentina, his news clippings in Argentina, and the fact that he rode for a distinguished jockey club in Argentina.

Upon a review of the record, it cannot be concluded that the grounds for denial of the petition have been overcome. 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). Nor has it been established that the beneficiary satisfied at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B).

The petitioner's explanation of the sport of "show jumping" is acknowledged and is sufficient to show that the beneficiary competes at the highest level of the sport in Argentina. That fact alone, however, is insufficient to establish the beneficiary's eligibility. The evidence submitted is sufficient to show that the beneficiary has achieved a degree of national acclaim in the sport in Argentina. The evidence however, does not reflect the period of time during which the beneficiary has competed in category 1 through 3 levels to establish that the acclaim has been "sustained," as required by the regulations.

The petitioner is a corporation operated by a distinguished U.S. athlete and former Olympic gold medalist. The petitioner submitted his own testimony as well as that of other top competitors and show jumping "farms" in the sport. The sum of the testimony reflects that such experts in the field are impressed by the beneficiary's skill as a rider and that he has the ability to be a top rider, particularly when he can be teamed with top horses in the United States.

The petitioner also submitted an advisory opinion from the National Equestrian Federation of the United States (NEF) as the national governing body for equestrian sport in the United States. The director of that body stated that while he is not familiar with the beneficiary, based on the recommendations of the petitioner and other professionals he has "...no doubt that [the beneficiary] is a skilled horseman who will contribute greatly to the sport...." The NEF official also stated that there is no labor organization for equestrian athletes in the United States.

As noted by the director, the testimony submitted tends to reflect the beneficiary's potential in the sport, rather than recognition of his achievements. This is an insufficient basis to establish eligibility for O-1 classification which is based on recognition of accomplishments in the sport.

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. The fact that an athlete has competed at, and has won, some national competitions is not sufficient to establish the requisite level of extraordinary ability.

Furthermore, the controlling regulation states that O-1 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). The field of endeavor in this matter is athletics. The petitioner has not shown any appropriate criteria in equestrian sport, such as national and international ranking systems, to demonstrate that the beneficiary is recognized as one of the few at the very top of the sport. Based on the evidence submitted, it must be concluded that the petitioner has failed to overcome the director's concerns.

It is further noted that the petitioner requested classification of the beneficiary for the maximum period of three years. The petitioner did not submit a copy of its contract with the beneficiary or provide an itinerary of the events for which his services are desired as required by 8 C.F.R. 214.2(o)(2)(ii).

The denial of this petition is without prejudice to the petitioner pursuing classification of 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.