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U.S. Department of Justice

Immigration and Naturalization Service

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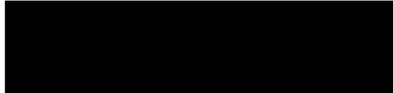
Office of Administrative Appeals
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: SRC 02 198 53278 Office: TEXAS SERVICE CENTER

Date: OCT 15 2002

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under 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 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

Robert P. Wiemann, Director
Administrative Appeals Office

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 dental laboratory. The beneficiary is a dental ceramist. 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 science, in order to employ him in the United States for an additional two years as a technical director and lead dental ceramist at an annual salary of \$62,000.

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

On appeal, the petitioner submits a five-page letter asserting that the beneficiary satisfies five of the eight criteria listed at 8 C.F.R. 214.2(o)(3)(iii)(B) and that he qualifies for the classification sought.

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 issue in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in the sciences as defined in these proceedings.

8 C.F.R. 214.2(o)(3)(ii) provides, 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.

The beneficiary is a native and citizen of Germany. He was previously approved as an O-1 alien of extraordinary ability in the sciences and worked for the petitioner from May 2000 until January 31, 2002. According to the petitioner, the beneficiary began his first job in a dental laboratory twenty years ago, and for five years, he simultaneously attended a school for dental professions. The petitioner states that the beneficiary passed the journeyman's exam, then was accepted for a master's apprenticeship: "After years of school and practical work application and after competitive examinations [the beneficiary] satisfied the demanding requirements to become a Zahntechnikermeister."

The petitioner failed to include copies of academic degrees earned by the beneficiary, or other evidence of academic credentials, including a curriculum vitae.

The record of proceeding consists of the Form I-129 petition and supporting documentation, the director's request for additional documentation and the petitioner's response, the director's decision to deny the petition, and an appeal.

The director concluded that, despite the beneficiary's demonstrated competence to train others in his field, he had not demonstrated the type of sustained national and international recognition of his accomplishments necessary for O-1 classification. The director also found that the record was insufficient to demonstrate that the beneficiary is recognized as one of the small percentage recognized as being at the very top of his field pursuant to 8 C.F.R. 214.2(o)(3)(ii).

On appeal, the petitioner asserts that the beneficiary attained the highest level of excellence by earning the title of Zahntechnikermeister (Master Dental Technician). The petitioner submits expert advisory opinions from the National Association of Dental Laboratories and Dr. Roman Cibirka, attesting to the beneficiary's exceptional accomplishments.

In reaching a determination for O-1 classification, the Service must take into account the evidence of record as a whole and the standards of the field of endeavor in which the beneficiary is engaged. The evidentiary criteria listed at 8 C.F.R. 214.2(o)(3)(iii)(B) are minimum documentary requirements and merely addressing them does not establish eligibility for classification as an alien with extraordinary ability in science.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial. In order to establish eligibility for extraordinary ability, the statute requires proof of "sustained" national or international acclaim and proof 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.

First, 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). Neither is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B).

In evaluating evidence addressing the eight criteria at 8 C.F.R. 214.2(o)(3)(iii)(B), the Service must determine if the criteria has been satisfied at the level contemplated for O-1 classification.

The beneficiary has neither been nominated for, nor has he been the recipient of, any national or international awards or prizes in his field. The beneficiary achieved certification as a Zahn-technikermeister (master dental technician) and as a certified dental technician. The petitioner's assertion that "by passing the test for the certified dental technician [the beneficiary] becomes a member because of his outstanding achievement" is not persuasive. The petitioner failed to establish that only those who reach the very top of their field are certified.

The beneficiary is a member of the National Association of Dental Laboratories (NADL) and the American Prosthodontic Society (APS). The petitioner asserts that APSA accepts only technicians as members if a dentist confirms their extraordinary abilities and achievements. Again, the petitioner offered no documentation in support of its assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

One article published in the Journal of Dental Technology features a German dental lab where the beneficiary was then employed. The article names the beneficiary in a photo which accompanied the article. Another article featured the beneficiary more prominently in the Aiken County News. The petitioner has not demonstrated the reputation of these publications or the value of being mentioned in them. In addition, these publications appear to be local, rather than national or international in scope.

On appeal, the petitioner asserts that the beneficiary has participated as a judge of the work of others. The petitioner failed to explain how and when the beneficiary did so.

The petitioner asserts that the beneficiary commands a high salary. The petitioner states:

I offered [the beneficiary] \$62,000 for twelve months work. The wage library of the Department of Labor shows that a worker in the same field with less than two years experience in the United States makes and [sic] annual salary of \$19,926. The same wage library shows that a worker in the same field with more than

two years experience makes an average of \$33,509 per year.

The documentation provided by the petitioner regarding the beneficiary's wages relate to dental technicians yet she seeks authorization to employ him as a technical director and lead dental ceramist. In the absence of relevant salary data, the petitioner failed to establish that the beneficiary's wages are high in his field.

The letters of recommendation submitted on behalf of the beneficiary were from a practicing prosthodontist and the executive director of the National Association of Dental Laboratories. The letters speak more to the shortage of dental technicians than to the beneficiary's acclaim.

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 extraordinary ability, the statute requires proof of "sustained" national or international acclaim and proof 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 denial of this petition is without prejudice to the petitioner pursuing an employment-based visa classification 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.