

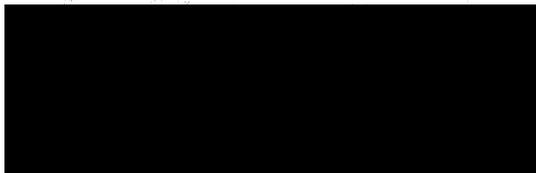
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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Administrative Appeals Office
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536



FILE: LIN 03 092 54484

Office: NEBRASKA SERVICE CENTER

Date:

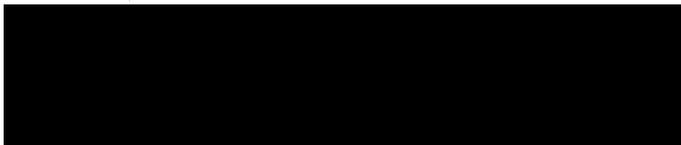
DEC 05 2003

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)

ON 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 Citizenship and Immigration Services (CIS) 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.

Man Johnson

for 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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Fortune 500 company, seeking O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in business. The petitioner asserts that the beneficiary is an expert in the field of "value-based marketing." The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a category manager for its jewelry division.

The director denied the petition, finding that the evidence did not sufficiently demonstrate that the beneficiary has sustained national or international acclaim.

On appeal, counsel for the petitioner submits a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in her field and that she meets at least three of the eight criteria set forth in 8 C.F.R. § 214.2(o)(3)(iii).

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, and the appeal documents.

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 to be addressed in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in business as defined by the statute and regulations.

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 34-year old native of France. She completed a bachelor's degree in commerce at McGill University in Montreal in 1989. She received an MBA from the Anderson School of Business Management at University of California at Los Angeles (UCLA) in 1998.

After reviewing the evidence submitted in support of the petition, the director found the beneficiary ineligible for O-1 classification based on finding the sum of evidence insufficient to demonstrate that she has sustained national or international acclaim.

On appeal, counsel for the petitioner asserts that the director erred in weighing the evidence, and that the beneficiary satisfies at least three of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(B).

There is no evidence that the beneficiary has received a major, internationally recognized 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).

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

For criterion number one, the evidence states that the beneficiary has been the recipient of a Certificate of French National Distinction and a United States Agency for International Development Fellowship to attend the Anderson Graduate School of Management at UCLA.

The petitioner failed to establish the significance of the Certificate of French National Distinction. The evidence did not explain the criteria used in granting the Certificate and who were eligible for the award.

Academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work, scholarships and fellowships cannot be considered awards in the

field of endeavor. Moreover, only students compete for such awards. As the petitioner did not compete with nationally or internationally recognized experts in the field, the awards cannot be considered evidence of the beneficiary's national or international acclaim. The petitioner failed to demonstrate that the beneficiary's fellowship was an award for excellence in the field of endeavor.

The petitioner stated that the beneficiary should be credited for creating a program, the Amazon Gift Certificate, which was judged the winner of the Most Innovative New Voucher Product during the 2002 Motivation Awards, sponsored by *Incentive Today*, a marketing trade journal and the United Kingdom Voucher Association. The petitioner explained that the award was presented to Ignition Clayden Heeley but that the beneficiary led the team that developed the product that won the award. While leadership on a award winning team may establish eligibility under this criterion, the evidence fails to establish that the beneficiary can be credited for this award. Further, the petitioner failed to establish that this award is a nationally or internationally recognized prize or award for excellence in the beneficiary's field of endeavor. The beneficiary does not satisfy this criterion.

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.

For criterion number two, while the beneficiary is a member of the British Association of Record Dealers (BARD), the Institute of Direct Marketing, and High Tech Women, there is no evidence that these are associations that require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. The beneficiary does not satisfy this criterion.

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.

For criterion number three, the petitioner's counsel states that:

While working as an advisor to the President of Benin, the beneficiary directed the production of promotional material for the Francophone Summit, including a limited edition art collector book about Benin. The petitioner submitted a copy of the cover of this book.

The beneficiary organized and successfully marketed and promoted "Modafolies," the first West African Fashion Festival, which took place during the Francophone Summit. An article featuring the Fashion Festival and quoting the

beneficiary appeared in *Le Monde*, France's leading newspaper.

The beneficiary was pictured and quoted in a promotional publication for UCLA's Anderson Graduate School of Management.

The beneficiary is "frequently quoted in company press releases that are distributed to the press in the United Kingdom and globally."

The director determined that the record did not contain published material about the beneficiary's achievements and career in the field of marketing. The AAO concurs. The published material is not about the alien. The book about Benin does not mention the beneficiary. The article featuring the Fashion Festival is about the festival, rather than about the beneficiary. The beneficiary's inclusion in school promotional material is not indicative of her acclaim. Quotations in press releases are not about the alien and her work. The beneficiary does not satisfy this criterion.

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.

For criterion number four, the petitioner asserts that as a consultant and expert in her field, the beneficiary has served as the judge of the work of others. The evidence indicates that the beneficiary has served as a consultant a few times. The petitioner failed to establish that the beneficiary was selected to serve as a consultant on the basis of her sustained acclaim and that the petitioner was actually serving as a judge of the work of others in her field in the capacity of consultant. Consulting is more akin to advising than judging. The petitioner failed to establish that the beneficiary satisfies this criterion.

Evidence of the alien's original scientific, scholarly, or business related contributions of major significance in the field

For criterion number five, the evidence indicates that the beneficiary has been successful in the various positions she has held with different employers. The petitioner asserted that the beneficiary was instrumental in increasing sales and introducing value-based marketing programs to her employers. The director noted that the beneficiary could not be credited with the creation of customer value-based marketing because the topic is taught in introductory marketing courses for MBA students. Several testimonial letters indicate that the beneficiary's contributions may be significant, but the petitioner failed to corroborate these claims with objective verifiable evidence of sustained national or international acclaim. The evidence does not indicate that the beneficiary has had a greater impact upon her field than other capable managers. The petitioner failed to establish that the beneficiary satisfies this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

For criterion number six, the beneficiary has authored one article on Customer Relationship Management (CRM) that was published in *Telecommunications Magazine*, a professional journal early in her career. It is just one article. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

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

For criterion number seven, the petitioner asserts that the beneficiary meets this criterion by playing a lead or critical role for organizations and establishments that have a distinguished reputation.

The petitioner asserts that the beneficiary will play a critical role for the petitioner in the future. This criterion requires evidence that the beneficiary has played a lead or essential role as of the date of filing the petition. See 8 C.F.R. § 103.2(b)(12). See also *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The petitioner states that the beneficiary played a critical role for Amazon.co.uk. The petitioner wrote:

Since joining Amazon, the beneficiary has held critical positions of the utmost significance and value. As Head of Customer Acquisition for Amazon.co.uk, the beneficiary was the single most important person responsible for increasing the customer base in the U.K. and in Europe. Now as the General Manager of DVD & Video, the beneficiary is the most senior executive responsible for Amazon.co.uk's second best selling product line.

The petitioner asserts that the beneficiary was instrumental in introducing the concept of Customer Relationship Management (CRM) to help her employer, Deloitte Consulting, and its clients to achieve sustainable profits.

The director agreed with the petitioner that the beneficiary had been employed by distinguished organizations. The director further determined that the petitioner failed to establish that the beneficiary played a lead or critical role for these organizations. The AAO concurs. The beneficiary served as the Head of Customer Acquisition then as General Manager for the DVD and Video business at Amazon.co.uk. She previously held the position of Senior Consultant at the London office of Deloitte Consulting Ltd. The evidence does not demonstrate that the beneficiary holds or has held a critical or essential position within these organizations.

Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services.

For criterion number eight, the petitioner states that the beneficiary will "receive a base salary of \$102,000 plus equity (stock options) that will bring her annual compensation to approximately \$223,380." Evidence has been submitted to show that the beneficiary's base compensation places her in the top two percent of all employees at Amazon.com and above the top five percent of all household adjusted gross incomes in the United States. The wage survey submitted is both too restrictive and too general respectively. The petitioner should have submitted wage survey information for category managers in the electronic commerce industry on a nationwide basis. To evaluate whether the salary is high, the AAO needs to compare it to the median and highest wages offered nationwide to category managers. The beneficiary does not satisfy this criterion.

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 evidence of "sustained national or international acclaim" and evidence 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 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.