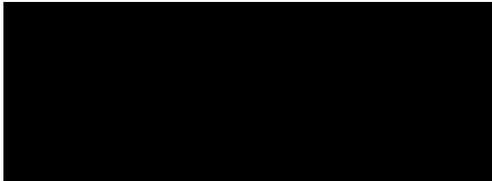




U.S. Citizenship
and Immigration
Services

D8

PUBLIC COPY



FILE: EAC 02 294 53706 Office: VERMONT SERVICE CENTER

Date: FEB 11 2004

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:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

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

The petitioner is a company specializing in the manufacture and sale of custom pressure-sensitive labels. The petitioner seeks 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), as an alien with extraordinary ability in business, in order to employ him in the United States for a period of three years as a sales and marketing manager.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is at the very top of his field of endeavor.

On appeal, counsel for the petitioner submits a brief arguing that the beneficiary qualifies for O-1 classification.

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.

The regulation at 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.

On appeal, the petitioner asserts that the criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(B) are inapplicable to the beneficiary's occupation.

The beneficiary is a 60-year old native and citizen of the United Kingdom. The beneficiary began his professional career with the British Aluminum Company as a management trainee, and in sales. After three years at British Aluminum, he took a sales position for Rapp Metals Ltd. He subsequently worked in sales for Aluminum & Alloy Services Ltd. and started his own company, Extrusion Facilities Ltd. Most recently, the beneficiary has worked as a consultant for Aluminum 2000 Ltd. (the petitioner) and Crown Dilectric Industries.

After reviewing the evidence submitted in support of the petition, the director found that, although the beneficiary possessed talent in business, he had not demonstrated the type of sustained national or international recognition of his accomplishments necessary for O-1 classification. The director concluded that the record was insufficient to demonstrate that the beneficiary was recognized as one of the small percentage recognized as being at the very top of the field of business pursuant to 8 C.F.R. § 214.2(o)(3)(ii).

On appeal, counsel for the petitioner asserts that the director ascribed too little weight to the beneficiary's salary and compensation package.

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

No evidence was submitted in relation to 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.

Although the evidence indicates that the beneficiary is a member of the Institute of Sales Management and Marketing, the petitioner submitted no evidence to establish that it is an association that requires outstanding achievements of their members. The beneficiary does not satisfy criterion number two.

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.

The petitioner submitted no evidence in relation to 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.

No evidence was submitted to satisfy criterion number four.

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

The beneficiary asserts that he “developed and pioneered color anodizing¹ techniques that have been adopted as a standard in the industry.” 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).

The petitioner submitted several testimonials, one of which reiterates that the beneficiary “pioneered and developed practices that have become standards set in the anodization and finishing of aluminum extrusions.” In the absence of corroborative evidence of the beneficiary’s original contributions of major significance, the evidence is insufficient 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.

No evidence was submitted to satisfy criterion number six.

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

The petitioner did not explicitly assert that the beneficiary satisfies this criterion. The evidence shows that the beneficiary has been employed as a management consultant, a managing director, and founder of his own company. The evidence is insufficient to establish that the beneficiary was employed in a critical or essential capacity for organizations that have a distinguished reputation.

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

The petitioner has offered to pay the beneficiary an annual salary of \$150,000. The petitioner submitted evidence of the median wage for sales managers (\$68,520) and the average wage for sales managers in the petitioner’s area (\$94,453). The petitioner should have provided more than just the average (mean) and median wages. To

¹ *Annodize* is defined as to put a protective, often colored, oxide film on a light metal by an electrolytic process in which the metal serves as the anode. *Webster's New World College Dictionary*, 4th Edition, 2000.

evaluate whether the salary is high, CIS needed to compare it to the median and highest wages offered nationwide to sales managers. The beneficiary does not satisfy this criterion.

On appeal, the petitioner asserts that all of the evidence submitted should be considered as comparable evidence to establish the beneficiary's eligibility pursuant to 8 C.F.R. § 214.2(o)(iii)(C). However, the petitioner failed to establish that the criteria at 8 C.F.R. § 214.2(o)(iii)(B) do not readily apply to the beneficiary's occupation. 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).

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.