



U.S. Citizenship
and Immigration
Services

D8



FILE: SRC 03 165 53509 Office: TEXAS SERVICE CENTER Date: OCT 27 2004

IN RE: Petitioner:
Beneficiary:



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)

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent unauthorized
invasion of personal privacy

PUBLIC COPY

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and was rejected on appeal by the Administrative Appeals Office (AAO). The AAO reopened this matter on motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for purposes of entering a new decision. The appeal will be dismissed.

The petitioner filed a Form I-129, Petition for Nonimmigrant Visa, seeking an extension of 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. The beneficiary originally entered the United States in O-1 classification on the basis of an approved petition filed by a different employer. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as an Equine Reproduction and Genetic Handler.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being one of a small percentage at the very top of the beneficiary's field of endeavor.

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 medical science as defined by the statute and the 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.

The regulation at 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.

The beneficiary in this matter is a native and citizen of Colombia. The record reflects that he received his degree in veterinary medicine from the University of La Salle, Bogota, Colombia on August 2, 1983 and became a veterinary doctor on April 3, 1986.

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 the evidence insufficient to demonstrate that he has "sustained" national or international acclaim and that his achievements have been recognized in his field of endeavor through "extensive documentation." In her decision, the director said that the petitioner did not specifically claim the beneficiary meets any of the first seven criteria.

On appeal, the petitioner asserts that the beneficiary will be employed in a critical and essential capacity for the petitioner. Counsel for the petitioner asserts that the beneficiary meets criteria one, two, three, six, seven and eight.

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 petitioner asserts that the beneficiary satisfies this criterion by virtue of his receipt of the National Research Prize in 1984 with his graduate thesis, "Normal Parameters of Equine Electrocardiogram in the Tropics." The beneficiary was competing with fellow students for this award. In any case, academic awards received while preparing for the vocation fall substantially short of constituting a

national or international prize or award for recognition in the field. The petitioner failed to submit any corroborative evidence that the beneficiary received this award.

The petitioner also included certificates of appreciation for the beneficiary's participation in several professional conferences. The petitioner failed to establish that certificates of appreciation are nationally or internationally recognized prizes or awards for excellence in the 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, the petitioner submitted reference letters from the Colombian National Federation of Equine Associations (FEDEQUINAS), the Association of Horsemen of Antioquia, the Association of Paso Horse Breeders and the Equine Development of the Occident Asdeocidente. The petitioner also submitted acknowledgements from associations and one veterinary school indicating that the beneficiary participated and lectured at their behest on several occasions. The petitioner submits no evidence that the beneficiary is a member of any of these associations. 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 translations.

For criterion number three, counsel for the petitioner indicates that he was submitting an article by Dr. Leonidas Robledo about the beneficiary, which was published in the May 2000 *Paso Fino Journal*. A copy of the article is not in the record of proceeding. 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 failed to establish that the beneficiary satisfies 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 in relation to criterion number four.

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

No evidence was submitted in relation to criterion number five.

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

For criterion number six, the petitioner submits several articles written by the beneficiary that have been published in professional journals including the *Paso Fino Report* and the *Revisa FEDEQUINAS*. The petitioner failed to establish that these articles were published in professional journals with a significant circulation or other major media.

The petitioner also submitted a copy of a promotional advertisement written by the beneficiary, but the petitioner failed to establish whether the advertisement was published and if so, where. The beneficiary does not satisfy 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 failed to specifically state how the beneficiary satisfies this criterion, except to assert that the beneficiary will be employed in a crucial and essential capacity for the petitioner. This criterion requires evidence that the beneficiary has been employed in such a capacity as of the date of the filing of the petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

In review, the petitioner failed to establish that the beneficiary has played an essential or critical role for organizations and establishments 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, evidenced by contracts or other reliable evidence.

For criterion number eight, the petitioner submitted a Department of Labor wage survey for zoologists and wildlife biologists in a limited geographical area. The beneficiary is a veterinarian by training. The petitioner proposes to hire the beneficiary as an "equine reproduction and genetic handler." Counsel for the petitioner that the Occupational Employment Statistics (OES) survey fails to include animal geneticists. It is noted that the OES does include a listing for veterinarians. Further, the petitioner is not limited to the OES wage surveys. The petitioner has failed to establish that the beneficiary satisfies this criterion.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. [REDACTED] (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.

In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level.

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 prior decision of the director is affirmed and the petition is denied.