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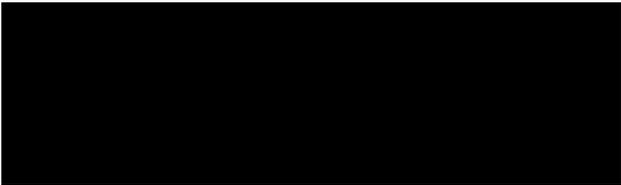
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D8



FILE:



Office: TEXAS SERVICE CENTER

Date: JUN 20 2005

IN RE:

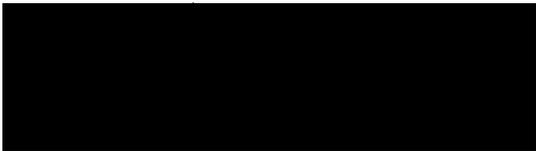
Petitioner:



Beneficiary:

PETITION: Petition for 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.

Mari Johnson

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

The petitioner is a new business, established in 2003, formed for the purpose of providing services to the Mega and Super Yacht industry. On March 17, 2004, the petitioner filed a Form I-129, Petition for Nonimmigrant Visa, 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 the yachting industry. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as its head captain and vice president.

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 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 31-year old native and citizen of Australia. The record reflects that the beneficiary has worked as a deckhand, first mate, master, dive master, and captain on yachts.

After reviewing the evidence submitted in support of the petition, the director found the petitioner had submitted insufficient evidence to demonstrate that the beneficiary has "sustained" national or international acclaim and that his achievements have been recognized in his field of endeavor through "extensive documentation."

On appeal, the petitioner asserts that the evidence on the record is sufficient to establish that the beneficiary is qualified for O-1 visa classification. The petitioner failed to indicate how the evidence satisfied the O-1 criteria.

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 criterion number one.

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 asserts that because the beneficiary has a Master Class IV Certificate, he belongs to an association that requires outstanding achievements of its members. The evidence does not establish that the beneficiary is a member of any association by virtue of his certification. 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, the petitioner submitted a publication entitled *The Yacht Report* dated October 2003, which lists the beneficiary as a captain for [REDACTED] and another dated June 2003, which lists the beneficiary as captain of the *Phoenicia*. Mere mention in a publication is not evidence of acclaim. 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.

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.

For criterion number five, the petitioner provided Citizenship and Immigration Services (CIS) with several statements that are almost identical in content. The statements were written by a general manager of a marine service company, a licensed realtor, an attorney, a captain and director of marine operations at a yacht club, a sales executive and a yacht captain. The opinions of members of the beneficiary's industry carry greater weight than those from individuals outside the industry. The statements provide that the beneficiary has progressively worked his way up from deckhand to captain. All state that the beneficiary "as a Master Class IV Captain, is in the top percentile in the field of Professional Yachting." The evidence does not establish that the beneficiary has made an original scientific, scholarly, or business-related contribution of major significance. The testimonials are insufficiently specific as to the nature of the beneficiary's contributions.

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 that was published in the September 2003 edition of *DockWalk*. He also wrote a letter to the editor about crew rotation that was published in the October 2003 edition of *The Yacht Report*. Two published items fall short of establishing sustained acclaim through extensive documentation. 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, counsel for the petitioner asserts that the beneficiary has been employed in a critical or essential capacity for companies that have a distinguished reputation and that he will serve a critical or essential role with the petitioning organization. The criterion requires that the beneficiary must have been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation as of the date of the filing of the petition. The evidence does not establish that the beneficiary was employed in a critical or essential capacity, or that he worked for organizations and establishments that have a distinguished reputation. The beneficiary does not satisfy this criterion.

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 indicated on the Form I-129 that it intended to pay the beneficiary an annual salary of \$52,000. On appeal, the petitioner states that the beneficiary has been paid from \$1200 to \$1700 per foot of yacht per month, which means he made between \$120,000 to \$170,000 per month while on assignment. 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).

In response to the director's request for additional evidence (RFE), the petitioner submitted a salary survey from the U.S. Department of Labor, Bureau of Labor Statistics, which indicates that the average hourly wage for captains, mates and pilots of water vessels was \$23.97. As the regulations require that the beneficiary have sustained national or international acclaim, to evaluate whether the salary is high, CIS would need a wage survey for yacht captains that specifies both the median and highest wages offered nationwide to yacht captain. The petitioner has not established that the beneficiary satisfies 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.

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 appeal is dismissed.