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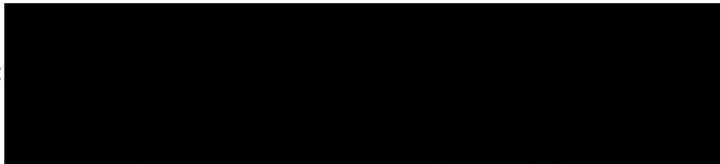
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FILE: SRC 05 150 50069 Office: TEXAS SERVICE CENTER Date: NOV 28 2005

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:



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*

Σ Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Texas Service Center Acting Director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a day spa that was opened in 2005. The beneficiary is a principal of the petitioning organization. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in business under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ her in the United States as a skin care specialist for an indeterminate period.<sup>1</sup>

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is an alien of extraordinary ability and is one of a small percentage who have risen to the very top of her field of endeavor.

On appeal, counsel for the petitioner submits additional evidence.

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.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have arisen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 214.12(o)(3)(iii). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a skin care specialist. The regulation at 8 C.F.R. § 214.2(o)(3)(iii) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien’s receipt of such an award, the regulation outlines eight criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, it claims, meets at least three of the eight criteria set out at 8 C.F.R. § 214.12(o)(3)(iii).<sup>2</sup>

Initially, the petitioner submitted evidence of the beneficiary’s employment history, and training. Finding the evidence insufficient to establish that the beneficiary satisfied the eligibility criteria and that the petitioner was a bona fide business, the director requested additional evidence on May 11, 2005. The director specifically requested the petitioner to submit evidence related to the eligibility criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii). The director provided the eligibility criteria to the petitioner in the request for additional evidence. The petitioner responded to the request for additional evidence.

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

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<sup>1</sup> The petitioner failed to indicate on the Form I-129 the length of proposed employment.

<sup>2</sup> The petitioner did not claim to meet or submit evidence relating to the criteria not discussed in this decision.

For criterion number one, the petitioner asserts that the beneficiary satisfies this criterion by virtue of the following:

- The Gold Venus Maximum Award for Business Incentive granted to Martha Chomiak del Moral from the Gold Venus Organization of Venezuela, October 1977.
- A photograph of the beneficiary captioned "Israel Women's Committee, Israel Embassy, 20 hours training course for women's daily make up, Caracas, Venezuela, 1982.
- Two photographs of the beneficiary giving a facial, captioned, "TV Program 'Que Facil Es,' (It's so easy!), Make-up advances and facial care, channel 8 and 8 (Venezolana de Television), National TV, Venezuela, March 1983."
- A photo of the beneficiary, another cosmetologist and a client, captioned "High Fashion Make Up Designer Herrera Pacanis, Intercontinental Hotel, Caracas/Venezuela, 1983."
- A photo of the beneficiary with a client in front of a sign "Martha Chomiak, Estudio de Estetica" with a caption "TV Program conducted by Neyla Moronta, Daily make-up and facial care, Channel 2 RCTV, National TV, Venezuela, 1985."
- The Gold Eagle award from the Inter-American organization of managerial distinction for "innumerable services in work of the social and economic growth of the country," dated April 22, 1985.
- A photograph of two women captioned "Cosmetic Advance Workshop by Ann Sorel from Spain, Los Galgos Hotel, Caracas/Venezuela, September 15, 1985."
- In 1987, the beneficiary received an award for the stimulation of the cosmetology industry in Caracas, Venezuela.
- An award from the Radio and Newspaper Corporation given to the beneficiary "for the stimulation of private business," dated January 30, 1987.
- Numerous certificates of completion of courses, e.g., seminar of facial and corporal treatments.

The petitioner failed to establish that the beneficiary's participation in workshops is a nationally or internationally recognized prize or award for excellence in her field of endeavor. The petitioner failed to establish that the beneficiary's awards are nationally or internationally recognized prizes or awards for excellence. It is further noted that the petitioner failed to submit any corroborating evidence to establish the significance of these events. 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, counsel for the petitioner asserts that the beneficiary satisfies this criterion because of her active membership in the Venezuela Society of Cosmetology and because she became the exclusive distributor in Venezuela for the Guinot product line in 1999. The petitioner failed to establish that holding a

distributorship is equivalent to holding a membership. The petitioner failed to establish that the Venezuela Society of Cosmetology and the Rene Guinot Laboratories Company require outstanding achievements of their members (or distributors), as judged by recognized national or international experts in the beneficiary's field of endeavor. 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.*

The petitioner submitted numerous magazine advertisements for the beneficiary's spa and the Guinot product line. Advertisements are not published material about the beneficiary. 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.*

On the Form I-129, the petitioner indicated that it would pay the beneficiary an annual salary of \$28,000. On appeal, counsel for the petitioner asserts that the petitioner made a typographical error and that it intends to pay the beneficiary an annual salary of \$280,000. The petitioner cannot amend its petition by claiming a typographical error. The petitioner must establish eligibility at the time of filing the nonimmigrant visa 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Accordingly, the AAO may not consider the amended wage of \$280,000.

Counsel for the petitioner asserts that the business plan for the "Martha International Spa" demonstrates that the beneficiary "with her 'investment' in Miami, Florida, will command a high salary." In the absence of wage salaries, the AAO cannot evaluate the proffered wage. The beneficiary does not satisfy this criterion.

After a careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial of the petition. The record is insufficient to establish that the beneficiary is an alien with extraordinary ability in her field of endeavor.

Beyond the director's decision, the petitioner has not established that the alien will be performing services related to an event or events. Under section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer. 8 C.F.R. § 214.2(o)(1)(i). The term "event" is defined at 8 C.F.R. § 214.2(o)(3)(ii) as an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. In the instant case, the petitioner failed to state the duration of intended employment; therefore, the existence of an event has not been established.

An additional issue beyond the director's decision, the petitioner failed to submit a consultation as required by the regulation at 8 C.F.R. § 214.2(o)(5)(i)(A). For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683

(9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.