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

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

D 2

[redacted]

FILE: LIN 00 081 53360 Office: NEBRASKA SERVICE CENTER Date: FEB 18 2005

IN RE: Petitioner: [redacted]
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:

[redacted]

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 Nebraska Service Center Director approved the nonimmigrant visa petition on March 1, 2000. Upon further review, the director issued a notice of intent to revoke (NOIR) approval of the petition to the petitioner. The petitioner responded to the NOIR. The director revoked the approval of the petition on November 2, 2001. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a golf resort. 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 business. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of two years as an assistant golf professional at an annual salary of $37,500.

The director revoked approval of the petition, finding that the petitioner failed to establish that the beneficiary is recognized as one of the small percentage at the very top of her field of endeavor.

Under CIS regulations, the approval of an O-1 petition may be revoked on notice under five specific circumstances. 8 C.F.R. § 214.2(o)(8)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(o)(8)(iii)(A)(*5*).

In the present matter, the director provided a detailed statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. Referring to the eligibility criteria at 8 C.F.R. § 214.2(o)(3)(iii), the director reviewed the rebuttal evidence and concluded that the petitioner had not established that the beneficiary qualifies as an alien of extraordinary ability. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(o)(8)(iii)(A)(*5*): "The approval of the petition violated paragraph (o) of this section or involved gross error."

The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. *See Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's II New College Dictionary* 491 (2001).

Accordingly, upon review of the regulatory history and the common usage of the term, the AAO interprets the term "gross error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that CIS determines to have been approved contrary to law must be considered an unmitigated error, and therefore a "gross error."

Upon review, the present petition was properly revoked as the prior petition was approved in gross error, contrary to the eligibility requirements provided for in the regulations.

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, or more specifically, the golf resort industry, 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.
>
> (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.

The beneficiary in this matter is a 27-year old native and citizen of Canada.

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

On appeal, counsel for the petitioner submits a brief.

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).

The AAO will address only those criterion that the petitioner asserts the beneficiary satisfies.

The petitioner asserts that the criteria in subparagraphs 2 and 3 of 8 C.F.R. § 214.2(o)(3)(iii) do not readily apply to the beneficiary's occupation; therefore, it submits comparable evidence in the form of letters of recommendation.

As comparable evidence to 8 C.F.R. § 214.2(o)(3)(iii), the petitioner submitted a letter written by [redacted] President, Professional Golfers Association of America (PGA), dated April 5, 2001. [redacted] wrote:

> I am aware of [the beneficiary's] recent accomplishments in the PGA of America's Golf Professional Training Program ("GPTP"). The GPTP is the PGA of America's Education Program for aspiring golf professionals. [The beneficiary] completed Level I of this program and received very high test scores in each discipline.

The operative word in [redacted] letter is "aspiring." The statute and regulations require "sustained national or international acclaim." The beneficiary has not yet reached the top of her field; rather, she is aspiring to become a certified golf professional.

As comparable evidence to 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*), the petitioner submitted additional testimonials.

[redacted] Director of Golf for the petitioning organization, wrote that the beneficiary's career began at the age of 12 when she was ranked as one of the top ten junior golfers in Canada.

In review, Citizenship and Immigration Services (CIS) and AAO are evaluating the beneficiary for O-1 classification in the field of her proposed employment, as an assistant golf professional in the golf resort industry. We are not evaluating the beneficiary, nor has the petitioner proposed that we evaluate the

beneficiary as an O-1 alien of extraordinary ability in athletics, or more specifically, golf.

[redacted] president, PGA of America, wrote:

> The golf service business does not measure an individual's stature and reputation by awards, certificates, degrees, and publications or by being featured at a public event. Rather, it grows by being known and accepted by the leaders of the industry. [The beneficiary], despite her youth, has been given recommendations and acceptance by individuals who have long-established and trusted relationships in the business.
>
> [The beneficiary's] experience, training and exposure to the world of golf make her an extraordinary person in this field. Her talent is indispensable in this highly demanding and competitive field.

[redacted] President of the National Golf Coaches Association, wrote that the beneficiary "was a significant contributor to the success [of the Iowa State University's] women's golf team," that "she was named 3 times to the Academic All-American team, and named 3 times to the Academic All Big 8/12 1st team." She wrote further, "[j]ust to be selected for employment at the Broadmoor - or any of the top ten resort properties - is an enormous achievement."

In review, the letters' authors fail to establish that the beneficiary has received national or international recognition for her achievements.

[redacted] Sports Editor for The Tribune, Ames, Iowa, wrote:

> I have known [the beneficiary] since she came to Iowa State University as a student-athlete and played on the women's golf team. She was an extraordinary player for ISU . . . and had great success in other amateur events before committing herself to the business of professional golf.
>
> * * *
>
> The mere fact that she was hired to work at a facility like the Broadmoor is an enormous achievement.

[redacted] Coordinator, Special Marketing Projects, The Golf Channel, wrote that the beneficiary "serves [the petitioner] as a stellar ambassador in each endeavor asked of her. . . . it is my feeling that she is, in many ways, greatly responsible for the continued high level of service associated with the Broadmoor."

The petitioner submitted several letters with identical language. These boilerplate letters are issued in support of the visa petition and simply list the beneficiary's credentials. While the references attested to the contents of the letters by signing them, the use of identical boilerplate language diminishes the evidentiary value of these letters.

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 has been employed in a critical or

essential capacity for the petitioning organization and that the petitioner ahs a distinguished reputation. The evidence on the record establishes that the petitioner has a distinguished reputation.

The petitioner failed to establish that the beneficiary has played a critical or essential role for the petitioning organization.

According to the evidence on the record, the beneficiary has been employed by the petitioner from April 1999 through the present with a two-month hiatus in late 1999. She has held the position of an assistant golf professional. In a letter dated August 31, 2001 [redacted] President and Chief Executive Officer of the petitioning organization, describes the beneficiary's job duties as follows:

> Even though her title is that of an "Assistant" her job is not that of a "helper." She is the First Assistant (service end) golf professional at one of the top five golf resorts in the world. [The beneficiary] is in charge of a staff of 60 people including up to ten (service end) assistant golf professionals. She is personally responsible for managing a payroll of over $100,000 and handling all player billings which totaled $5 million last year. She coordinates the course schedules, the work schedules and the millions of details involved in each round of golf for up to 500 golfers a day. The Broadmoor normally has 3 courses in operation during our peak season form April to October. We have 750 private members, 700 guest rooms in the resort, and host over 450 special golf events and corporate outings a year. [The beneficiary] is responsible for the balancing act of keeping our members (who have paid a $60,000 initiation fee) happy, while providing the ultimate in services to our guests.
>
> She also has the responsibility of overseeing the golf shop (totally $1.6 million in revenue annually), teaching golf, and organizing tournament play - being responsible for the smallest details such as that golf carts are properly assigned, arranged and provisioned and the layers names are properly spelled and neatly hand printed on the scoreboard.

In review, the record fails to establish that the beneficiary has played or is playing an essential or critical role for the petitioning organization.

In a letter dated December 6, 1999, [redacted] Editor and Publisher of *Gary Galyean's Golf Letter*, wrote that the petitioning organization holds a "lofty position" in the golf resort industry and attributes the petitioner's success to [redacted] and the beneficiary. [redacted] failed to explain how the beneficiary could have played such a significant role at the petitioning organization in a short period of time (eight months).

[redacted] Coordinator, Special Marketing Projects, The Golf Channel, wrote, "[t]here is no doubt that the [beneficiary] is a valued member of the staff at the Resort and someone who is vital to the success shared by [the petitioning organization].

It is noted that the beneficiary is highly valued by the petitioner; nonetheless, the record fails to establish that the beneficiary has played a critical or essential role for the petitioning organization. The beneficiary's role has not been critical to the petitioner in the sense that her loss would cause the petitioner irreparable harm such as a loss of stature in the golf resort industry. It is noted that the beneficiary is not employed at a high level of the petitioning organization's hierarchy.

The petitioner has failed to establish that the beneficiary satisfies 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 asserts that the beneficiary's salary, $37,500, is high for the industry. The petitioner submitted two charts presenting statistics on the income of PGA apprentice assistant golf professionals. The petitioner asserts that the proffered wage is substantially above the industry median of $26,000. This criterion must be indicative of national or international acclaim in the field. The petitioner should have submitted wage survey information for assistant golf professionals at the very top of their field. To evaluate whether the salary is high, CIS needs to compare it to the median and highest wages offered nationwide to assistant golf professionals. The statistical survey indicates the wage for the top 25th percentile, but this is insufficient to evaluate what the very top of the field earns in the industry. 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.

In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of her 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.