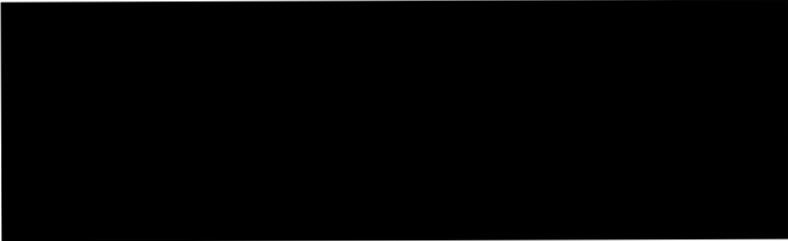




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



D8

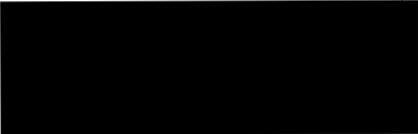
FILE: EAC 04 204 50274 Office: VERMONT SERVICE CENTER Date: FEB 21 2006

IN RE: Petitioner:
Beneficiary:



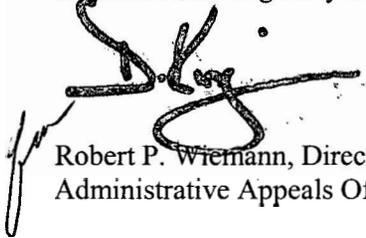
PETITION: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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.


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 an old house restoration designer. The beneficiary is restorer. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in the arts 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 as an historian and designer for an unspecified period of time at a wage of \$30 per hour.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts.

On appeal, counsel submits a brief and additional documentation.

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 established that the beneficiary qualifies as an alien with extraordinary ability in the arts as defined by the statute and the regulations.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability in the arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

The beneficiary is a resident and native of England and has earned a bachelor's of arts degree in restoration and decorative studies. According to the Form I-129, Petition for a Nonimmigrant Worker, the beneficiary currently resides in Leicester, England.

The petitioner does not allege, and the evidence does not establish, that the beneficiary has been nominated for, or been the recipient of, any significant national or international awards or prizes in her field of endeavor. The petitioner also submitted no evidence that the beneficiary meets the first two criteria. The petitioner did not initially indicate the specific criteria that it believes the beneficiary meets. On appeal, counsel stated that the petitioner was submitting evidence to establish that the beneficiary met the last three criteria.

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.

The director determined that the petitioner had submitted sufficient evidence to establish that the beneficiary meets this criterion. We withdraw this determination by the director.

The petitioner stated that the beneficiary would serve as an advisor and historian. The petitioner failed to establish that this position is a lead or critical role for the petitioning organization. The record contains a copy of a newspaper article indicating that the owner of the petitioning organization had served two and one-half years on the Nantucket Massachusetts Historic Districts Commission. Another article states that the petitioning organization's owner joined the Board of Directors of the Nantucket Preservation Trust in 2002. While the latter article refers to the petitioning organization as a "respected business," the evidence is insufficient to establish that it enjoys a "distinguished reputation."

The evidence does not establish that the beneficiary meets this criterion.

Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.

The petitioner submitted no evidence that the beneficiary met this criterion with the petition or in response to the director's request for evidence (RFE) dated August 31, 2004. Although counsel stated that evidence relating to this criterion was submitted on appeal, he does not specify the evidence he believes is applicable and none of the documentation submitted appears to relate to this criterion. The evidence does not establish that the beneficiary meets this criterion.

Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

In a letter dated March 19, 2004, [REDACTED] "Course Leader BA/HND Restoration and Decorative Studies" at the University of Portsmouth, stated that during the beneficiary's final year of study at the university:

[S]he was commissioned to produce and install an altarpiece for a listed church in Portsmouth following the original architect's drawings of the mid 1800s. This work was exemplary for which she has received the highest accolades.

Her part time studies at the local college were also outstanding, for which she was entered for the Unibond £5,000 Award, which she deservedly won. This is an award given by industry for outstanding professionalism and commitment.

She has also been registered as a member of the Worshipful Company of Plaisterers, which is a Guild based in London, UK, founded in the 19th century as a foundation in the promotion of excellence in the profession.

The petitioner submitted no evidence to substantiate the recognition that Mr. [REDACTED] stated that the beneficiary received for her work at the Portsmouth church. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). On appeal, the petitioner submits what appear to be statements by the beneficiary, indicating that she worked on the St. Agathers Church in Landport, Portsmouth and Stowe **House in Buckingham**. The record is unclear as to whether these projects are the same ones referenced in Mr. [REDACTED] letter. An article in the January 29, 2004 edition of *Country Life* discusses the restoration of Stowe House; however, the beneficiary is not identified as one of those responsible for the restoration.

In an undated letter, [REDACTED] the trade developments manager for Henkel Consumer Adhesives, stated:

[The beneficiary] applied for a major award sponsored by this company that required students to not only prove their technical excellence but to demonstrate with a detailed business plan how they would use a bursary of £5000 to further their career in construction. [The beneficiary's] submission was assessed by a marketing and business studies panel as the clear winner and the award was duly presented to her by this company.

Mr. [REDACTED] letter does not reflect that the award given by his company was for excellence in the beneficiary's field of endeavor but rather for business acumen in running and marketing a business. The documentation does not reflect that the beneficiary was recognized for her skill in historical or decorative restoration.

[REDACTED], "Head of School Construction & Building Studies" at Highbury College, stated in a letter dated May 4, 2004 that the beneficiary was "an excellent student . . . throughout her 2 years with us. She managed to complete the course successfully, which is a magnificent achievement in what is primarily a male dominated profession." Mr. [REDACTED] letter does not attach any significance to the beneficiary's studies beyond her accomplishment in completing a school denominated by males. Mr. [REDACTED] did not allege and the petitioner submitted no evidence of any significant recognition for achievement bestowed upon the beneficiary as a result of this schooling.

On appeal, the petitioner submits a December 15, 2004 letter from [REDACTED] who states that he is a plasterer with 41 years of experience and who regularly gives talks and lectures. Mr. [REDACTED] further states:

During the second half of 2004, at [REDACTED] I have had the pleasure of meeting and working with [the beneficiary]. She is one of those rare individuals, in that sometimes two things come together and work, a conservator and a plasterer, a combination that is not always possible, a university degree with a craft skills qualification, one requiring academic study, the other a through [sic] knowledge of a practical craft, there is one other talent that is absolutely essential, the ability to use your hands, [she] has all these virtue's [sic], plus a hard working attitude to the problems met with on site.

Mr. [REDACTED] does not identify any specific achievements of the beneficiary that would indicate she has achieved acclaim in the field of restoration.

On appeal, the petitioner submitted documentation providing background information on the Associates of the Worshipful Company of Plasterers. The documentation indicates that practicing plasterers can apply for membership in the organization if they meet qualifications such as serving a full apprenticeship, obtaining their guilds craft certificates, or obtaining certain levels on skills tests. These qualifications as outlined by the organization do not indicate a specific recognition for accomplishments.

The evidence does not establish that the beneficiary meets this criterion.

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it would pay the beneficiary \$30 per hour. With the petition, the petitioner submitted a copy of a February 19, 2004 letter from the Commonwealth of Massachusetts Division of Employment and Training, indicating that the prevailing wage for an "old house restoration design historian and advisor" was \$20.26 per hour. This determination was valid until January 3, 2005.

On appeal, the petitioner stated that, while "much of her work will be contracted at a firm price, we'll be able to command \$120-\$150 per hour" for the beneficiary's work in scagliola, "depending on who we're working for." The petitioner contrasts that with the \$55-\$65 per hour that it would charge for its "best woodworkers." The

petitioner also submitted a letter from _____ of Nantucket Decorative Painting, who stated that she would pay \$150 an hour for scagliola work.

The petitioner, however, must demonstrate that the beneficiary's salary places her at the top of her field at the national level, not simply at what her work would command at the local level. Local prevailing wage figures do not meet this standard. We find no evidence showing that the beneficiary is among the highest-paid in her field at the national or international level.

The petitioner has not established that the beneficiary meets this criterion.

There is a final issue in this proceeding. 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.

The director noted that the petitioner did not specify a particular time frame for the beneficiary's employment and therefore the petitioner had not established the existence of an event. The petitioner has made no reference to a specific point in time at which the beneficiary's services will no longer be required. The examples provided by the regulation suggest occurrences or phenomena of definite and finite duration. Therefore, the existence of an event has not been established.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in restoration.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.