

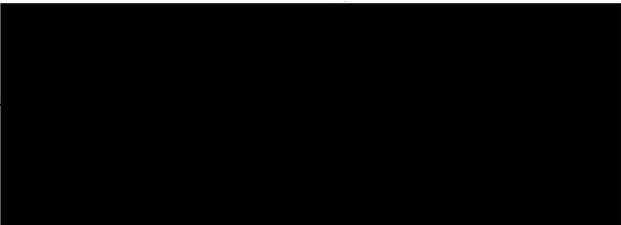
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U.S. Citizenship
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FILE: LIN 04 157 52612 Office: NEBRASKA SERVICE CENTER Date: MAY 03 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

Maiphusa

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a ski resort operator. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics 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 general manager at their ski and snowboard school.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is an alien of extraordinary ability as a general manager.

On appeal, counsel for the petitioner submits a brief.

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 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 55-year old native and citizen of Sweden. The evidence on the record indicates that the beneficiary last entered the United States as an H-2B nonimmigrant alien on November 25, 2003.

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 the proposed field of endeavor.

On appeal, counsel for the petitioner submits a brief and asserts that the petitioner is seeking to classify the beneficiary as an individual of extraordinary ability in athletics, not in management. Counsel further states that the director erred in requiring the petitioner to establish that the beneficiary is an alien of extraordinary ability in management, rather than in athletics.

In review, counsel's argument is not persuasive. The regulation at 8 C.F.R. § 214.2(o)(2)(A)(1) states, in pertinent part:

An O-1 classification applies to an individual who has extraordinary ability in the sciences, . . . education, business, or athletics which has been demonstrated by sustained national or

international acclaim and who is coming temporarily to the United States *to continue work in the area of extraordinary ability.*

Emphasis added.

The petitioner seeks to employ the beneficiary as a general manager at its ski and snowboarding school; therefore, the petitioner must establish that the beneficiary is an alien of extraordinary ability in management.

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 the receipt of 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, which, it claims, meets the following criteria.

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 stated that the beneficiary won first place in the 1973 National Swedish Downhill Championship in Are and is a former member of the Swedish National Ski Team.

These awards may be evidence of the beneficiary's acclaim as an athlete, but not as a manager, the field of intended employment. 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 asserts that the beneficiary's membership in the Swedish Alpine Training group in the years 1969 through 1971 satisfies this criterion. The petitioner submitted a translated letter from the Swedish Ski Association that states "only the very best in the country are selected for the training." The petitioner submitted a letter from the training manager at the Vail and Beaver Creek Ski and Snowboard Schools that states:

All major winter sport nations have Demonstration Teams. Members of these groups are leaders of the ski teaching profession in their respective countries and represent their organizations at national and international instructor events, culminating in "Interski," the renowned international educational event that occurs every four years. Demonstration team selection is a rigorous exam process from which . . . the best instructors in the world are chosen. All ski schools regard Demonstration Team Members as outstanding teachers and extraordinary contributors to their operations.

Again, this evidence does not establish the beneficiary's eligibility for O-1 classification in the field of management.

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 four articles relating to the beneficiary's work as a professional skier and a ski instructor. This evidence does not establish the beneficiary's eligibility for O-1 classification in the field of management.

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.

The director determined that the petitioner established that the beneficiary's experience as an examiner and chief examiner for the New Zealand Ski Instructors Alliance relates to the job offered by the petitioner. The director determined that the beneficiary satisfies this criterion. This portion of the director's decision will be withdrawn.

The record fails to show that the beneficiary was selected to judge the work of others on the basis of her acclaim. She was not judging the work of her peers, but rather, of her subordinates. The beneficiary's work evaluating others in this capacity is not indicative of the beneficiary's sustained acclaim. She evaluated the work of others as an integral part of her job. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

More importantly, the beneficiary's experience as an examiner does not relate to the prospective field of endeavor, management. 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 asserts that as a member of Sweden's and New Zealand's Demonstration Teams, and as Team Manager for the New Zealand Demonstration Team, the beneficiary played a critical or essential role for organizations that have a distinguished reputation. Again, the beneficiary's participation on Demonstration Teams is not related to her future field of endeavor, management; therefore, the beneficiary does not satisfy this criterion.

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.