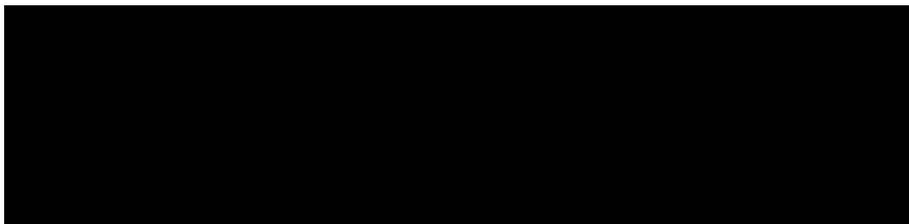


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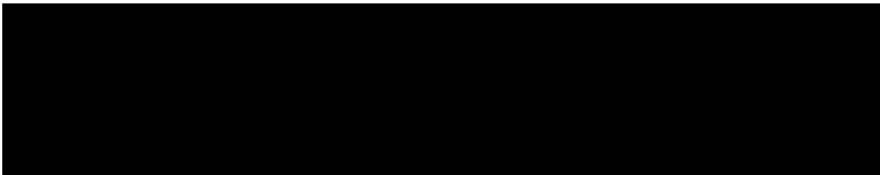
FILE: EAC 05 050 52533 Office: VERMONT SERVICE CENTER Date: **MAR 24 2006**

IN RE: Petitioner:
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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

The Vermont Service Center Acting Director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The petitioner's motion to reopen and reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv). The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is an international management consulting firm and seeks O-1 classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a management consultant.

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 her field.

On appeal, counsel submits a brief in which she asserts that the director failed to send the petitioner a request for additional evidence (RFE) and denied the petition based on a lack of initial evidence. Counsel expounds, stating:

The Denial stated that “the petition contains all of the required initial evidence and therefore a final decision will be made based on the record of the proceeding” . . . We contend, however, that the Service failed to acknowledge a substantial portion of the evidence that was submitted. Thus, the Service adjudicated the petition as if the petition lacked initial evidence. In such cases, the Service must issue an RFE unless clear ineligibility for approval of the petition exists. Since no such clear ineligibility was present here, the petition should be reopened and an RFE issued to the petitioner.

Although we do not concur with counsel’s assertion that the director “failed to acknowledge a substantial portion of the evidence,” and that as a result, adjudicated the petition “as if the petition lacked initial evidence,” we find that the petition did not include all of the initial evidence required by the regulation. Additionally, as there was no clear evidence of ineligibility, pursuant to regulations, the director should have issued an RFE.

The regulation at 8 C.F.R. § 214.2(o)(2)(ii) requires that a written advisory opinion from the appropriate consulting entity must accompany petitions for O aliens. On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicated that it had not obtained a written consultation. The petitioner submitted no evidence that it had requested a consultation in accordance with the regulation.

The regulation at 8 C.F.R. § 103.2(b)(8) states, in pertinent part:

Request for evidence. If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence . . . [I]n other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence.

As the petition was not accompanied by all of the initial evidence, there was no evidence of ineligibility in the record, and the evidence did not fully establish eligibility, an RFE was appropriate and required.

Accordingly, the record is remanded for the director to issue an RFE in accordance with the above-cited regulation.

This matter is remanded. The director may request any additional evidence deemed warranted. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.