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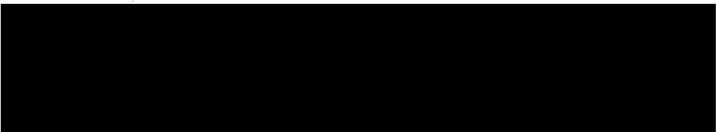


FILE: EAC 05 167 53726 Office: VERMONT SERVICE CENTER Date: MAR 24 2006

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.

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 a horse breeding farm. It seeks O-1 classification of the beneficiary as an alien with extraordinary ability as a horse trainer 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 him in the United States as a horse trainer for a period of three years at a weekly salary of \$525 plus housing, insurance and transportation.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has received sustained national or international acclaim and is one of a small percentage who have risen to the very top of his field of endeavor.

On appeal, counsel for the petitioner 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 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 35-year old native and citizen of Mexico. According to the Form I-129, the beneficiary last entered the United States on January 17, 2005 pursuant to H-2B classification and worked for the petitioner as an assistant horse trainer.

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 as a horse trainer.

The petitioner stated that none of the regulatory criteria are applicable to the beneficiary and the proffered position. Therefore, the petitioner seeks to establish the beneficiary's eligibility as an alien of extraordinary ability as a horse trainer pursuant to subsection (C) of 8 C.F.R. § 214.2(o)(3)(iii). We note, however, that the petitioner does address criterion number seven in its submissions:

*Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.*

The petitioner describes itself as a small horse breeding farm in the specialty niche of the sport of “3-day eventing.” The petitioner stated in its response to the director’s request for evidence (RFE) dated May 31, 2005, that it has a distinguished reputation and that the beneficiary is employed in a critical capacity for the organization.

The petitioner submitted letters from several individuals, including riders, veterinarians, and fellow breeders indicating that the petitioner has an “excellent reputation” and is “one of the best sport horse breeding farms in America.” The eight regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii) reflect the statutory demand for “extensive documentation” in section 101(a)(15)(O)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. The record contains little objective evidence demonstrating that the petitioner has a distinguished reputation.

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

The comparable evidence submitted by the petitioner consists of statements by various players in horse breeding and the three-day eventing sport, as discussed above. Each of the authors attests to the beneficiary’s skills as a horse trainer and several state that he is one of the best trainers that they have seen. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim, however. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)).

The petitioner submitted sufficient evidence that the enumerated criteria are not applicable for this petition. The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) permits consideration of comparable evidence if the listed criteria are not applicable.

As comparable evidence to criterion one, the director considered the success of horses allegedly trained by the beneficiary. The director noted that, of the ten horses that the petitioner stated that the beneficiary trained, only two received “awards” and that the evidence indicated that this recognition was not at the national or international level. On appeal, counsel states that the director ignored the achievements of other horses trained by the beneficiary. Counsel further states, “It is important to understand that most of the horses trained by the Beneficiary are still relatively young. An event horse does not come into its prime until the age 7-14. Horses trained by the Beneficiary are beginning to compete at the upper levels of the sport and show tremendous promise.” The petitioner submits, on appeal, a list of the horses that it stated were trained by the beneficiary with the results of their competitions. The document indicates that [REDACTED] won a first place event at a horse

show in 2004, that "[redacted]" had "[o]ver twenty-one impressive wins," and that "[redacted]" had "over forty impressive wins;" however, although the record contains some documentary evidence that corroborates the results indicated by the petitioner for "[redacted]" the petitioner failed to submit documentary evidence of the 21 wins by "[redacted]" or the 40 wins by "[redacted]" Further, the petitioner submitted no documentary evidence to establish that any of these results are recognized as national or international significance in the field of "3-day eventing" or horse breeding, or that the beneficiary was primarily responsible for the training that resulted in the horses' successes.

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 his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The petitioner has not established that the beneficiary's achievements have risen to this level.

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.