

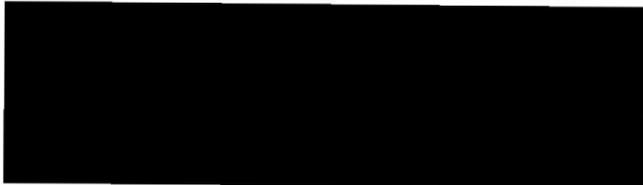
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Dg

FILE: SRC 06 039 50380 Office: TEXAS SERVICE CENTER Date: **MAY 10 2006**

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

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:

SELF-REPRESENTED

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. Wienmann, Chief
Administrative Appeals Office

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

The petitioner is self-described as a “supplier for manufacturers in the automotive industry, mainly dealing with the German companies BMW, Mercedes Benz and their sub-contractors.” The beneficiary is a personnel training manager. The petitioner seeks to classify the beneficiary as an O-1 nonimmigrant, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in business.

The director denied the petition on January 23, 2006, finding that although the petitioner may be considered an asset to his current employer, the petitioner failed to establish that the beneficiary is one of a small percentage at the very top of his field of expertise. The petitioner submits a timely appeal, dated February 6, 2006.

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 raised by the director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in business 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 regulation at 8 C.F.R. § 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, an appeal and letter supporting the appeal. 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). Further, the record does not demonstrate that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

For criterion number one, the petitioner submits certificates indicating that the beneficiary participated in three language immersion programs. Such certificates do not demonstrate that the beneficiary has received nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

For criterion number two, the record contains no evidence which demonstrates the beneficiary'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 three, the record contains no evidence to establish that there has been published material in professional or major trade publications or major media about the beneficiary alien, relating to his work in the field for which classification is sought.

For criterion number four, the record contains no evidence which documents the beneficiary'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.

For criterion number five, the record contains several letters attesting to the value of the beneficiary's work. [REDACTED], Project Manager at the petitioning company, indicates that the beneficiary "has become an essential part of [the] team and our company," and that they "rely and depend on [him] every day." A letter from [REDACTED] a teacher at Greenville County Public Schools, states that the beneficiary's "abilities and knowledge far surpass those of the average foreign language instructor," and that his "specific expertise would be difficult, if not impossible, to duplicate." The letters, however, do not indicate that the beneficiary's contributions were original and that they were of a major significance to his field of endeavor.

For criterion number six, the record contains no evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

For criterion number seven, the regulation clearly requires evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. In this instance, the petitioner failed to provide any evidence which establishes that it possesses a distinguished reputation. Further, although the petitioner asserts that the beneficiary is its "most essential communication interface between company contacts in Germany and the United States," we do not find the position held by the beneficiary, essentially the position of a language instructor, is considered employment in a "critical or essential capacity" as would be the position of director or president, for instance.

For criterion number eight, although the Form I-129 petition indicates that the beneficiary will earn an annual salary of \$45,000 per year, the record contains no documentary evidence of the beneficiary's salary history or salary surveys to determine whether such a salary is considered high in comparison to others in the beneficiary's field of endeavor.

On appeal, the petitioner asserts it has submitted comparable evidence consisting of "letters from customers and people dealing with [the beneficiary who give] undeniable testimonials of the extraordinary abilities of [the beneficiary] and how those skills are not to be found in translators or instructors with the same qualifications." While it is true that the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) permits "comparable evidence" where the eight criteria do not "readily apply" to the alien's occupation, the petitioner has not shown how these criteria do not readily apply to the beneficiary's occupation. Regardless, the regulation neither states nor implies that student evaluations or general letters regarding the beneficiary's skills are "comparable" to the strict documentation requirements in the regulations setting forth the eight criteria.

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 beneficiary's achievements have not yet 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.

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.