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U.S. Citizenship
and Immigration
Services

D-8

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FILE: EAC 06 075 53028 Office: VERMONT SERVICE CENTER Date: OCT 04 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition in a decision dated February 16, 2006. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner [REDACTED] is a structural engineering firm. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to temporarily employ him in the United States as a structural engineer for a period of three years.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is among the small percentage who has risen to the very top of his field of endeavor.

The petitioner, through counsel, submitted a timely appeal on March 21, 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 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 native and citizen of Spain. The petitioner filed the Form I-129 petition on the beneficiary's behalf on January 17, 2006. As will be discussed, upon review, we concur with the findings of the director that the evidence contained in the record is insufficient to establish the beneficiary's classification as an alien with extraordinary ability.

Receipt of a major, internationally recognized award, such as the Nobel Prize.

Neither the petitioner nor counsel has asserted that the beneficiary meets this criterion and the record contains no evidence to establish that the beneficiary meets this criterion.

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Neither the petitioner nor counsel has asserted that the beneficiary meets this criterion and the record contains no evidence to establish that the beneficiary meets 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.

As evidence to satisfy this criterion, the petitioner submitted evidence that the beneficiary is a member of the Structural Engineers Association of New York (SEAoNY), the National Council of Spanish Civil Engineers (NCSCE) and the Scientific-Technical Association of Structural Concrete (ACHE).

The director found this evidence was sufficient to establish this criterion. Upon review, we do not agree. The criterion specifically indicates that the associations in which the beneficiary is a member must "require outstanding achievements of their members as judged by recognized national or international experts" In this case, the petitioner has not established that the associations listed require outstanding achievements of their members. For instance, the letter from [REDACTED] Director SEAoNY, indicates only that membership consists of "about 500 members, includ[ing] individuals from most major structural engineering design firms in New York State." Similarly, the letter from [REDACTED] General Secretary of ACHE, states only that the beneficiary is a "member of this association since 2003," while the letter from [REDACTED] Secretary General of NCSCE state that the beneficiary "is enabled since [September 19, 1999], to practice in Spain as a Civil Engineer with the totality of the practice's rights and legal attribution." The letters contain no description of how one becomes a member of the listed associations, whether any requirements must be met prior to becoming a member or any other evidence to establish that the associations require outstanding achievements of its members as judged by recognized national or international experts.

Accordingly, we withdraw the director's finding regarding this criterion and find that the petitioner has failed to establish that the beneficiary is a member of an association in his field which requires outstanding achievements of its members as judged by recognized national or international experts in the field.

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.

Neither the petitioner nor counsel has asserted that the beneficiary meets this criterion and the record contains no evidence to establish that the beneficiary meets this criterion.

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.

As evidence to establish that the beneficiary has participated as "a judge of the work of others" counsel states that the beneficiary was a "panelist on the Congress of Structural Engineers of Spain in 2002 since his extraordinary design work in *New Headquarters of the Provincial Authority of Granada*." To support this statement, the petitioner submitted a letter from [REDACTED] former General Secretary of ACHE who states:

I certify that [the beneficiary] was a panelist for the project of the New Headquarters of the Provincial Authority of Granada during the Congress of Structural Engineers (Congress of

Bridges and Building Structures) organized by ACHE and held [in] Madrid between the 11th and 14th of November, 2002.”

While the letter does support counsel’s contention that the beneficiary served on a panel, it does not establish that the beneficiary served *as a judge of the work of others*. The record contains no evidence to establish the beneficiary’s duties on this panel, such as whether he was a guest speaker or whether he actually judged the designs or work of others in his field. Given that the record reflects that the beneficiary was one of the engineers of Granada’s Provincial Authority’s New Headquarters, it is unclear how he could be a judge of this project as indicated by [REDACTED]. Without any further evidence regarding the beneficiary’s responsibilities as a member of this panel or other evidence that the beneficiary judged the work of others in his field, we find the record is not sufficient to establish that the beneficiary meets this criterion.

Evidence of the alien’s original scientific, scholarly, or business-related contributions of major significance in the field.

In support of this criterion counsel claims that the beneficiary was:

[O]ne of the leading structural engineers in project (sic) of *New Headquarters of Provincial Authority, Grenada Spain*, which brought broad attention for its cutting-edge architectural design and the HIGHEST seismic loads in Spain and achieved national recognition since **it was selected for the Spanish National Congress of Structures in 2002, which should be the strongest vindication of [the beneficiary’s work].** [Emphasis in the original]

While we do not dispute counsel’s claim that the beneficiary’s work was recognized in 2002 by the Congress of Scientific-Technical Association of Structural Concrete, the record does not establish how this work was *original* or how it was a *contribution of major significance in the field*. Although counsel asserts that the beneficiary’s project brought attention for “its cutting edge architectural design” she provides no description of how the design is original. Further, while counsel also asserts that the project carries the highest seismic loads in Spain, there is no evidence that this is the first building to carry such loads or that the beneficiary used new or innovative design or engineering techniques. The record contains no evidence that the beneficiary’s project brought new techniques, ground-breaking designs, or other innovations to his field. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While counsel contends that the project’s selection by the Congress is “the strongest vindication” of the beneficiary’s work, the record contains no evidence regarding the Congress or the reasons why it chose the beneficiary’s project. We note that the beneficiary’s project was one of many others that were chosen by the Congress that year.

Accordingly, we find that the petitioner has failed to establish that the beneficiary meets this criterion.

Evidence of the alien’s authorship of scholarly articles in the field, in professional journals, or other major media.

To establish this criterion, counsel states that the beneficiary's paper regarding his design of the New Headquarters of the Provincial Authority of Granada was published by ACHE in November 2002. Counsel then states that ACHE is "the most prestigious trade organization for structural engineers in Spain." Upon review, while we do not dispute that the beneficiary has authored a scholarly article, the record contains no evidence which establishes the prestige of the ACHE or, more importantly, that the publication in which the beneficiary's article was published is considered to be "major media" or a "professional journal." As previously noted, the assertions of counsel do not constitute evidence. *Id.*

Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

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

To support this criterion, the petitioner has submitted numerous letters regarding the petitioner's role in the project to build a headquarters building for the Spanish national oil company, Repsol YPF.¹ Upon review, however, the letters fail to establish that the beneficiary has been employed in a critical or essential capacity.

For instance, the letter from [REDACTED] President of Halvorson and Partners, cites the beneficiary's fluency in English and Spanish and his knowledge of Spanish standards and building codes as being "unique" and "invaluable" and states that the beneficiary has handled "the coordination with our (sometimes difficult) Spanish client with great elegance and tact." Similarly, the letter from [REDACTED] partner at Foster and Partners indicates the beneficiary is a "member of the design team." While we recognize that the petitioning firm is one of four firms which comprise the entire international design team, the record contains no indication of the beneficiary's responsibilities within the international design team as a whole, much less his role within his own firm. Although the petitioner generally states that the beneficiary has "played a leading roll [sic] in the coordination, the design, and managing our construction services for this project," the petitioner fails to describe the beneficiary's specific duties and where he fits in the hierarchy of his own firm's team. 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)). From the evidence contained in the record, it appears that while the beneficiary is a member of the design team, he does not serve as the project manager or hold other responsibilities which demonstrate that he oversees the project in such as way as to be considered to be employed in a critical or essential capacity.

Accordingly, the petitioner has failed to 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 remuneration for services, evidenced by contracts or other reliable evidence.

¹ Repsol YPF hired the firm [REDACTED] and Partners to build its headquarters building. In turn, [REDACTED] and Partners hired the petitioning firm for its expertise in structural engineering, Foster and Partners in London for its expertise in architectural design, and Aguilera Ingenieros SA in Spain for its expertise in engineering.

The record reflects the beneficiary's annual salary as \$58,000. Neither the petitioner nor counsel has asserted that this salary is high in comparison to others in the beneficiary's field and the record contain no evidence to establish that the beneficiary meets this criterion.

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." In this case, the petitioner has failed to demonstrate the beneficiary's receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. Review of the record does not establish that the beneficiary has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at the national or international 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.

ORDER: The appeal is dismissed.