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U.S. Citizenship  
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FILE: WAC 06 262 52536 Office: CALIFORNIA SERVICE CENTER Date: OCT 09 2007

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

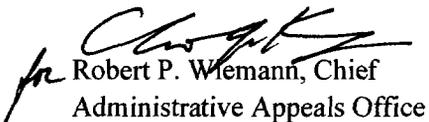
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

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. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a management consulting firm. The petitioner seeks O-1 nonimmigrant 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), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ her temporarily in the United States as a senior management consultant for a period of three years at an annual salary of \$60,000.

The director denied the petition, finding that the petitioner failed to provide sufficient information regarding the temporary project for which the petitioner requires the beneficiary's services.

On appeal, the petitioner submits an unsigned letter and a project schedule.

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.

#### I. Event

The regulation directs that "[u]nder section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an *event or events* if petitioned for by an employer" (emphasis added). 8 C.F.R. § 214.2(o)(1)(i). Pursuant to 8 C.F.R. § 214.2(o)(2)(ii)(C), petitions for O aliens shall also be accompanied by an explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines "event" as follows:

*Event* means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event. A group of related activities may also be considered to be an event.

On the O and P Classifications Supplement to Form I-129, under "Explain the nature of the event," the petitioner stated that it "has a project with Tobyhanna Army Depot in the Directorate of Engineering for the Department of Defense to develop and install an enigneering [*sic*] workload management system."

The Form I-129 petition includes this job description:

Must work with clients to ensure productivity and reduced cost goals can be achieved. Position entails working with the client personnel to identify and analyze activities within specific job categories to determine value added activities. Must be able to use this data to

develop a set of metrics, graphs, supervisor controls and management reports that show productivity and efficiency within the department. Also must be able to develop training manuals and presentations to train the client personnel in the use and understanding of the tools developed.

While the Form I-129 indicate that the term of intended employment would be for three years, ending September 30, 2009, an "Employment Agreement" submitted with the petition stated: "The term of employment shall commence on this 1<sup>st</sup> day of October, 2006 and will remain in effect until terminated by either party hereto, giving the other notice."

On October 10, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit, among other things, "a complete itinerary for all events" including exact dates, and "evidence that the beneficiary has a specified beginning and ending date of employment."

The next day, in response to the notice, the petitioner submitted an addendum to the Employment Agreement, indicating that the term of employment "will remain in effect for a period of three years from [the] employment commencement date, or until terminated by either party hereto, giving the other notice."

The director denied the petition on October 16, 2006, stating:

When a petition is filed for an alien of extraordinary ability in business, the petitioner must show that the beneficiary is coming to the United States to perform services relating to an event or events for an employer.

In this case, the petitioner has not explained the specifics of the proffered duties and how long it would take the beneficiary to perform those duties. Further, the petitioner has not submitted an itinerary; or defined a project or engagement.

The record does not establish that the beneficiary will be performing in a particular project. There [are] no beginning or ending dates to the beneficiary's employment. Instead, the evidence indicates that the beneficiary will be performing the usual duties of someone employed as a management consultant.

On appeal, the petitioner submits an unsigned letter on the petitioner's letterhead. The letter reads, in part:

[The petitioner] is a global operations management consulting firm providing services to multinational organizations in North America and Asia. Being primarily a private sector consulting services provider, [the petitioner] is currently expanding into the US Government sector through a long term contract with the Department of [the] Army. The contract awarded is to provide services to Tobyhanna Army Depot. . . .

Attached is a copy of the project schedule, with start and end dates, along with detailed activities relating to the above summary.

The "Project Schedule," bearing the insignia of Tobyhanna Army Depot, covers 18 weeks, from the week ending October 13 to the week ending February 9 of the following year. The schedule does not specify the years covered, but given the petition's September 15, 2006 filing date, it appears that the schedule covers the period from October 2006 to February 2007. The petition may not be filed more than 6 months before the actual need for the alien's services. 8 C.F.R. § 214.2(o)(2)(i). Therefore, if the project schedule relates to any period other than 2006-2007, then the petition was filed prematurely.

Because the project schedule covers only 18 weeks, it cannot justify a three-year term of nonimmigrant status for the beneficiary as requested. The final task shown on the schedule refers to "Phase 2," suggesting future activity beyond the 18-week period shown, but the petitioner has submitted nothing about this future activity.

We concur with the director's decision. The petitioner failed to submit the requisite explanation and documentation of the project or other event(s) which would require the beneficiary's services for the three-year period requested pursuant to 8 C.F.R. § 214.2(o)(1)(i), (2)(ii)(C), (3)(ii).

## II. Consultation

Beyond the decision of the director, review of the record reveals other serious deficiencies in the petition. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

8 C.F.R. § 214.2(o)(5)(i) reads, in pertinent part:

(A) 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 an O-1 or O-2 classification can be approved.

(B) Except as provided in paragraph (o)(5)(i)(E)<sup>1</sup> of this section, evidence of consultation shall be in the form of a written advisory opinion from a peer group (which could include a person or persons with expertise in the field), labor and/or management organization with expertise in the specific field involved.

(C) Except as provided in paragraph (o)(5)(i)(E) of this section, the petitioner shall obtain a written advisory opinion from a peer group (which could include a person or persons with expertise in the field), labor, and/or management organization with expertise in the specific

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<sup>1</sup> Paragraph (o)(5)(i)(E) does not apply in this proceeding; the cited paragraph applies only "where the alien will be employed in the field of arts, entertainment, or athletics, and the Service has determined that a petition merits expeditious handling."

field involved. The advisory opinion shall be submitted along with the petition when the petition is filed. . . . Advisory opinions must be submitted in writing and must be signed by an authorized official of the group or organization.

8 C.F.R. § 214.2(o)(3)(ii) states, in pertinent part:

*Peer group* means a group or organization which is comprised of practitioners of the alien's occupation. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, such a representative may be considered the appropriate peer group for purposes of consultation.

On the Form I-129 O and P Classifications Supplement, the petitioner identified the beneficiary's "Recognized Peer Group" as the "United States Army Europe, 21<sup>st</sup> Theater Support Command." The petitioner's initial submission included no advisory opinion from that entity or from any peer group.

The director, in the RFE, instructed the petitioner to submit "a consultation from an appropriate U.S. peer group." In response, the petitioner submitted a copy of an electronic mail message from [REDACTED] Deputy General Manager of the General Support Center-Europe. [REDACTED] stated:

There is no doubt in my mind that [the beneficiary] will excel in the position you hired her for. . . .

[The beneficiary] worked as a Local National employee with the General Support Center-Europe (GSC-E) in Kaiserslautern Germany. The GSC-E is a subordinate organization of the 21<sup>st</sup> Theater Support Command, United States Army Europe.

While [REDACTED] praises the beneficiary's past work for GSC-E, [REDACTED] does not describe the beneficiary's ability and achievements in her field beyond her work for GSC-E, does not describe the nature of the duties to be performed for the petitioner and does not state whether the position requires an alien of extraordinary ability. Accordingly, [REDACTED] electronic mail message does not constitute a consultation pursuant to 8 C.F.R. § 214.2(o)(5)(ii)(A).

Furthermore, the beneficiary is a management consultant by occupation. The regulation defines a peer group as a group or organization with expertise in the alien's specific field and which is comprised of practitioners of the alien's occupation. 8 C.F.R. § 214.2(o)(5)(i)(C), (o)(3)(ii). Accordingly, in this proceeding, the peer group must be comprised of management consultants. The petitioner has not demonstrated that the GSC-E of the United States Army is an organization with expertise in the field of management consulting. Therefore, we find that the petitioner has not submitted the required advisory opinion from a United States peer group.

### III. Extraordinary Ability

Finally, we note that the O-1 nonimmigrant classification is reserved for aliens of extraordinary ability. 8 C.F.R. § 214.2(o)(3)(ii) defines "extraordinary ability," in pertinent part, as follows: "*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.”

8 C.F.R. § 214.2(o)(3)(iii) states:

*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.

When the petitioner first filed the petition, the petitioner never explained how the beneficiary supposedly qualifies as an alien of extraordinary ability. Indeed, the petitioner's initial submission consisted of little more than the petition form and the employment agreement.

When the director issued the RFE on October 10, 2006, the director requested "evidence that the beneficiary has sustained national or international acclaim." Relating to this requirement, the director listed, and described in great detail, the regulatory, evidentiary requirements cited above. Pursuant to 8 C.F.R. § 103.2(b)(8), the director allowed the petitioner 12 weeks to collect and submit evidence in response to the RFE. The petitioner's response consisted of copies of [REDACTED]'s electronic mail message, the petitioner's letter to [REDACTED] and the addendum to the Employment Agreement. None of these documents are sufficient to establish the beneficiary's eligibility under any of the requisite evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii).

Despite having had two opportunities to do so (in the initial filing, and then in response to the RFE), the petitioner has never submitted any evidence that the beneficiary is an alien of extraordinary ability, nor has the petitioner even expressly claimed as much (beyond the *implied* claim inherent in the petitioner's filing of an O-1 petition). The petitioner's evident failure to offer any evidence of the beneficiary's extraordinary ability and sustained acclaim is, by itself, a fatal flaw beyond which the petition cannot progress, even if there were no other problems.

The petitioner has indicated that the beneficiary would work on an 18-week project, during which she would apparently be performing the routine duties of a management consultant. The petitioner has not established that the beneficiary's services are needed for a qualifying project or other event (or events) for the duration of the three-year term of employment specified on the Form I-129. The record also does not contain the requisite peer group advisory opinion. Finally, the petitioner has failed to establish that the beneficiary is an alien of extraordinary ability in business, which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. Consequently, the petitioner has not demonstrated that the beneficiary is eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition cannot be approved.

The appeal will be dismissed 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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.