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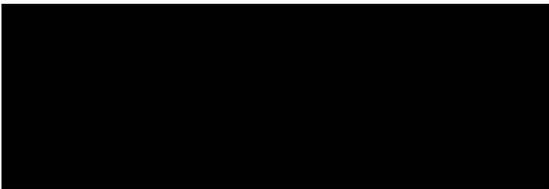
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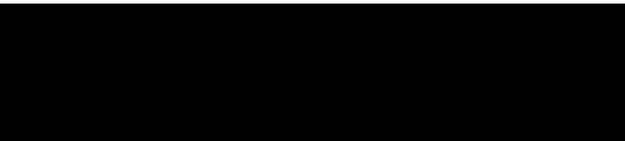


FILE: WAC 07 800 12235 Office: CALIFORNIA SERVICE CENTER Date: **FEB 09 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The petitioner filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in business. The petitioner, a mortgage bank, seeks to employ the beneficiary as an executive/manager.

The director denied the petition, finding that the petitioner failed to establish through the submission of extensive documentation that the beneficiary has achieved sustained national or international acclaim and recognition for achievements in his field. In denying the petition, the director found that the petitioner had not clearly indicated what it considers to be the beneficiary's field of endeavor. The director concluded that the petitioner had failed to show that the beneficiary had achieved the required acclaim and recognition in any one area of endeavor.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner can establish that the beneficiary meets six of the eight evidentiary criteria set forth at 8 C.F.R. §§ 214.2(o)(3)(iii)(B) and (C). Counsel states that the beneficiary "has held key positions within the world of graphic design," and "possesses skills not normally found in the workplace."

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 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 O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii).

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

Extraordinary ability in the fields 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:

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 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 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.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.

- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

It is noted that the decision of U.S. Citizenship and Immigration Services (USCIS) in a given case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien satisfies the criteria and is eligible for O-1 classification. The evidence submitted must establish that the beneficiary qualifies as an alien of extraordinary ability. *See* 59 Fed. Reg. 41818-01, 41820.

The record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, an appeal and an appellate brief. The beneficiary in this case is a native and citizen of Venezuela, who, according to his resume, has worked in advertising/marketing, as a sales representative, as a graphic designer, and as an art department manager for various employers since 1999. The beneficiary's resume indicates that he has associate degrees in the fields of graphic design and advertising.

In denying the petition, the director found that while the beneficiary appears to have professional experience in various areas, including graphic design, advertising, and the mortgage banking industry, the evidence of record does not show that he has achieved the requisite national or international acclaim and recognition in any one area of endeavor. The director found that the evidence submitted failed to meet the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A), (B) or (C). The director also determined that the petitioner did not clearly identify the beneficiary's claimed area of extraordinary ability.

On appeal, counsel for the petitioner asserts that the petitioner established that the beneficiary meets at least five of the eight evidentiary criteria for O-1 classification as outlined at 8 C.F.R. § 214.2(o)(3)(iii)(B), and also submitted other comparable evidence establishing his eligibility. The petitioner submits additional documentary evidence on appeal in support of its claims.

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary ability in business.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award, such as the Nobel prize, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. Here, the petitioner has not submitted evidence that the beneficiary has received a major, internationally recognized award, nor has the petitioner claimed that the beneficiary meets this criterion.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

In order to meet criterion number one, the petitioner must submit documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(I). The petitioner does not claim that the beneficiary meets this criterion, and the AAO can find no evidence in the record of such awards or prizes.

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), the petitioner must document 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. Again, the petitioner does not claim that the beneficiary is a member of such an organization, and the record contains no evidence indicating that the beneficiary satisfies this criterion.

To meet the third criterion, the petitioner must submit 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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). On appeal, the counsel and the petitioner assert that the beneficiary meets this criterion, but does not further elaborate or identify what specific evidence satisfies this requirement. The evidence submitted on appeal includes the May 1999 issue of *Sambil La Revista*, a Spanish-language Venezuelan magazine. While it appears that this magazine is likely a major, national publication, the petitioner did not indicate where in this magazine one would find an article about the beneficiary, nor did it provide an English translation of any part of the magazine. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Furthermore, the AAO notes that as of 1999, the beneficiary was working for an advertising agency as an intern, thus raising questions as to whether the submitted magazine actually contains an article about the beneficiary, relating to his work in the field.

To meet the fourth criterion, the petitioner must submit evidence of 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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4). Counsel and the petitioner assert on appeal that the petitioner submitted evidence of the beneficiary's "service as the judge of the work of others in the same field," but again, no further explanation is provided and the AAO can find no evidence in the record that supports this claim. 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)). The petitioner has not established that the beneficiary meets this criterion.

The fifth criterion requires the petitioner to submit evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). The petitioner claims that the beneficiary has made "original scholarly research contributions to the field of advertising and graphic design." Once again, the petitioner has not elaborated as to what constitutes the beneficiary's original contribution. The petitioner has submitted a few documents which are presumably examples of the beneficiary's graphic design work, but there is no basis for a conclusion that this work represents a contribution of major significance to the field. The documents submitted appear to be standard

promotional marketing materials similar to what any person in the beneficiary's profession would be expected to produce for their clients.

The petitioner has submitted complimentary letters from various individuals who claim to know the beneficiary and to be familiar with his work. Several of the persons who provided letters mentioned the beneficiary's understanding of various cultures and his use of design in creating effective marketing and advertising campaigns. However, none of the testimonials submitted indicate that the beneficiary has been recognized for an original contribution of major significance in his field of endeavor. The petitioner has not established that the beneficiary meets this criterion.

The sixth criterion requires the petitioner to establish that the beneficiary has authored scholarly articles in the field, which appeared in professional or major trade publications or other major media. 8 C.F.R. § 214.2(o)(3)(iii)(B)(6). Again, counsel claims that the beneficiary has authored such articles "in the academic field of advertising and graphic design," yet the record contains no documentary evidence of such achievements. 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). Therefore, the petitioner has not established that the beneficiary meets this criterion.

In order to meet the seventh criterion, the petitioner must submit evidence that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The petitioner has submitted a resume for the beneficiary which lists his employment history and includes the names of his employers and brief descriptions of the duties he performed for each employer as an advertising/marketing specialist, graphic designer, sales representative, graphic designer and art department manager. Only one of the beneficiary's former employers, [REDACTED] (JOK), has submitted a reference letter on his behalf. [REDACTED] of JOK mentions that the beneficiary "is a serious Venezuelan Graphic Designer with extensive exposure and experience," and she notes his "unique understanding and sensitivity to other cultures," his "deep understanding of his own culture," and his "use and concept of design in creating effective marketing and advertising campaigns." She makes no specific reference to the beneficiary's employment capacity with the organization, nor does she provide any background information or documentation regarding the company, such that it could be determined that it is an organization with a distinguished reputation. This letter and the beneficiary's resume are insufficient to establish that the beneficiary has been employed in a critical or essential capacity for organizations with a distinguished reputation, notwithstanding the petitioner's claim that the beneficiary can satisfy this criterion. The petitioner has not adequately documented the beneficiary's employment history or the distinguished stature of the organizations which have employed him in the past. Again, 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. at 165.

The eighth criterion requires the petitioner to establish that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(8). The petitioner has not documented the beneficiary's previous or current salaries

or remunerations, nor has it claimed that his offered annual salary of \$65,000 should be considered a "high salary" for the position offered in the Washington, D.C. metropolitan area. The petitioner has not established that the beneficiary meets this criterion.

Finally, the regulations allow the petitioner to submit comparable evidence to establish the beneficiary's eligibility if the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) do not readily apply to the beneficiary's occupation. The petitioner has not established that the above-referenced criteria cannot readily apply to the beneficiary's occupation. Rather, the petitioner claims that the beneficiary can meet at least five of the eight criteria.

Nevertheless, the petitioner claims that it has submitted "other evidence" of the beneficiary's eligibility in the form of letters of reference from respected members of the beneficiary's profession. The majority of these letters appear to have been solicited in connection with a separate nonimmigrant visa petition and many are identical in content, which raises questions as to who actually authored the letters, and diminishes their probative value. The letters in question include: a letter dated November 10, 2005 from [REDACTED] of [REDACTED]; the above-referenced letter from [REDACTED] of [REDACTED]; and a letter dated November 9, 2005 from [REDACTED] of [REDACTED]. All of the witnesses refer to the beneficiary's employment offer from [REDACTED]." and state that the beneficiary's "resume and portfolio are evidence of his work dedication and recognition received by various organizations." None of them mention any specific recognition or achievement received by the beneficiary. On appeal, the petitioner offers an updated letter from [REDACTED] which has essentially the same content, and a letter dated February 8, 2008 from [REDACTED] who states that he is an editor and journalist who has received professional benefits from the beneficiary's services.

The one reference letter that varies in content was provided by [REDACTED] of [REDACTED] who states that he is familiar with the beneficiary's work in the areas of mortgage loans and marketing/advertising for the Hispanic community. [REDACTED] states that the beneficiary has the expertise and leadership needed in the areas of marketing and graphic design and would be an asset to the petitioning organization. Notably, none of the witnesses providing letters have indicated that the beneficiary has achieved national or international recognition in his field, identified him as an individual of extraordinary ability, or suggested that he has risen to the very top of his profession. Rather, they acknowledge that he's a skilled graphic designer who specializes in marketing and advertising for the Hispanic community.

Whether one relies on the standard regulatory criteria or on comparable evidence, the petitioner must show that the beneficiary has earned sustained national or international acclaim at the very top of his field. Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(ii), (iii). None of the available documentary evidence submitted, including the witness letters, suggests that the beneficiary is an individual with sustained national or international acclaim in his field. The petitioner has not provided any unsolicited materials reflecting his acclaim or recognition in the field.

As noted above, the regulation at 8 C.F.R. 214.2(o)(2)(iii) provides that affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability shall specifically describe the alien's recognition and ability or achievement in factual terms. While the persons providing testimonials are complimentary of the beneficiary's skills, they fail to establish how his abilities are nationally or internationally

recognized, nor do they identify his achievements in the field beyond successfully carrying out his job duties as a graphic designer.

Upon review of the totality of the evidence submitted, the petitioner has not established that the beneficiary has extraordinary ability in business, which has been demonstrated by sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Nor has the petitioner satisfied that the alternative requirement set forth at 8 C.F.R. § 214.2(o)(3)(iii)(C) is applicable. Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition must be denied.

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 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). Despite the recommendations and endorsements submitted, it must be concluded that the beneficiary's achievements have not yet risen to this level. As noted by the director, the type of sustained national or international recognition of accomplishments necessary for O-1 classification has not been presented.

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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.