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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

08



MAY 04 2009

FILE: WAC 06 224 53958 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



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).


John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an O-1 alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i). The petitioner breeds, raises and trains horses. It seeks to employ the beneficiary as a reining horse trainer for a period of two years.

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 the small percentage who has risen to the very top of his field of endeavor. The director observed that the petitioner had failed to establish that the beneficiary meets the criteria for an alien of extraordinary ability in athletics set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) and (B). The director noted that much of the evidence submitted pertained to the beneficiary's performance as a competitive rider rather than as a horse trainer.

On appeal, counsel for the petitioner asserts that the petitioner submitted evidence to satisfy six of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Counsel emphasizes that the nature of the sport requires trainers to ride their horses in judged competitions. Counsel submits a brief and additional evidence in support of the appeal.

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 his or 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) 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:

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.

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 brief, and additional evidence supporting the appeal. The beneficiary in this case is a native and citizen of Canada. The record shows that the beneficiary has competed in reining horse competitions in Canada and the United States since 1999. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a reining horse trainer.

In denying the petition, the director found that, although the beneficiary may meet one or more of the

evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) as a competitive reining horse rider, the petitioner had not established that the beneficiary met at least three of the criteria as reining horse trainer. The director also observed that there was 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).

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 athletics.

Preliminary, the AAO emphasizes that the statute requires that the beneficiary seek entry into the United States "to continue work in the area of extraordinary ability." Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) (2007). The director based her determination, in part, on a finding that reining horse training is not the same area of expertise as competitive reining horse riding. Generally, competitive athletics and sports instruction are not the same area of expertise and USCIS will not assume that an alien with extraordinary ability as an athlete has the same level of expertise as a coach or trainer in his or her sport. However, in this case, the petitioner has clarified that reining horse trainers act as both trainers and competitive riders in the sport and the evidence of record supports the petitioner's assertions. Therefore, the beneficiary's accomplishments as a trainer are measured by the results of the horses he trains and rides in competition.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award 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. The regulation lists the Nobel Prize as an achievement that rises to the level of a major, internationally recognized award. The petitioner does not claim that the beneficiary meets this criterion and the AAO can find no evidence that the beneficiary has won a major internationally recognized award.

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). To meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), the petitioner must submit evidence that the beneficiary has received nationally or internationally recognized prizes or awards for excellence in the field.

In a letter dated June 21, 2006, the petitioner indicated that the beneficiary won 11 competitions of increasing difficulty sponsored by the National Reining Horse Association (NRHA) between 2000 and 2005, and that he qualified for American Quarter Horse World Championship competitions in both 2000 and 2004. The petitioner further indicated that since 2005, the beneficiary has participated in derby and futurity events which are considered "premier competitions in equine sports." Specifically, the petitioner indicated that the beneficiary won two Stampede Slide Derby championships and the 2005 Carizzo Oil & Gas Sparktacular. The petitioner further stated that the beneficiary was a finalist in the 2005 National Reining Breeders Classic (NRBC) Derby, the 2005 All-American Quarter Horse Congress Futurity, and the 2005 Southwest Reining Horse Association Futurity.

The petitioner submitted the beneficiary's detailed show record from the NRHA website for the period 1999 through June 2006, which indicates a total of seven first place finishes in a total of 69 events. The beneficiary also

recorded 14 second-place finishes in NRHA events during this time period. The beneficiary's year-to-date monetary earnings for 2006 were \$12,149.52, while his prior year earnings totaled \$12,151.75. According to the record, the majority of the beneficiary's competition has been at the "intermediate open" or "limited open" division level, while the highest level of competition is in the "open" division. The beneficiary's greatest monetary award, prior to the filing of the petition, came as a result of his second place finish in the Limited Open final at the National Reining Breeders Classic in 2006, where he received winnings of \$6,584.37.

The director determined that the beneficiary meets this criterion as an athletic competitor. The AAO disagrees and withdraws the director's finding.

Overall, the record shows that the beneficiary only began competing in the sport's "premier" events relatively recently, and typically does not train or show horses competing at the highest level. For example, the petitioner submitted evidence that the beneficiary, at the end of 2006, was ranked 48th among all open riders, with earnings of \$30,670. By contrast, the top 12 riders all earned over \$100,000. The beneficiary did not appear on the cumulative list of top money earners for the period 2002 through 2006. Furthermore, more than half of the beneficiary's 2006 earnings were awarded to him subsequent to the filing of the petition. There is no evidence that the beneficiary ever appeared on a list of top earners in the sport prior to 2006, or won a national or international event at the open level of competition.

In order to establish that the beneficiary qualifies as an alien of extraordinary ability in athletics, the petitioner must show evidence of *sustained* national or international acclaim and recognition that places him among the small percentage at the very top of the profession. The awards and prizes received by the beneficiary to date do not place him among that small percentage. Rather, the beneficiary has been shown to be a rising competitor who is just beginning to compete among the sport's most established and successful riders/trainers. The petitioner has not established that the beneficiary meets this criterion.

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(ii), 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.

The petitioner submitted a "fact sheet" for the beneficiary which indicates that he is a member of the NRHA, the American Quarter Horse Association, the American Paint Horse Association, the Southwest Reining Horse Association, the Central Plains Reining Horse Association, the Oklahoma Reining Horse Association, Reining Canada, and Reining Alberta. The petitioner did not provide evidence that membership in any of these associations requires outstanding achievements as judged by national or international expert. Therefore, the petitioner did not establish that the beneficiary meets this criterion as a result of his membership in the listed associations.

Counsel addresses this criterion on appeal, and asserts that the petitioner submitted testimonial letters from experts in the field attesting to the beneficiary's extraordinary ability to fulfill this evidentiary requirement.

The petitioner has submitted approximately 30 testimonial letters solicited from persons associated with the reining horse field, including owners, breeders, trainers, veterinarians and corporate sponsors. Many of the letters are similar in content. For example, ██████████ of Troy Heikes Quarter Horses states that he is impressed with the beneficiary's skill, and notes that the beneficiary is "dependable, responsible and truly dedicated to the sport of reining." This particular phrase, and several others, appears repeatedly among the many letters submitted. Such repetition indicates that the language of many of these letters is not the authors' own and greatly detracts from the documents' probative value. ██████████, who indicates that he is the NRHA's All Time money earning trainer, describes the beneficiary as a "superior and very talented Reining horse trainer," whose professionalism "sets a good example" for the reining industry.

██████████ of Purina Mills indicates that the beneficiary "has that dedication, skills and ability to become a top reining horse trainer," rather than indicating that the beneficiary's achievements to date place him among the small percentage of trainers at the very top of the field. Similarly, Patrice St.-Onge of St.-Onge Reining Horses, Inc. states that the beneficiary "has the capabilities of becoming one of the industry's top horseman [sic]."

One testimonial letter, from ██████████ of Burgmeijer Quarter Horses, stated that the beneficiary "has always preformed [sic] with character and confidence. Thus placing him in the top percentage of our industries [sic] trainers." While ██████████ indicates that the beneficiary is among the top percentage of trainers in the industry, it is unclear that such evaluation is based upon the beneficiary's level or recognition and achievement in the field or based on his assessment of the beneficiary's character.

The testimonial letters clearly show that the beneficiary is highly regarded, both as a trainer and as a person, by individuals in the industry who know him personally. However, they do not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), which requires the petitioner to 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. None of the letters specifically refer to the beneficiary's specific achievements in the field.

To meet the third criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), 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.

The petitioner submitted evidence that the beneficiary appeared on the cover of the July 15, 2000 issue of *Quarter Horse News*. The magazine reported that the beneficiary rode Busy in Hollywood in the South Country Derby and Reining Horse Show held in Alberta, Canada in May 2000. The article indicates that the beneficiary won the Limited Open Derby Division and placed third in the Open Division at the event, and that he had recently placed 15th in the NRHA Derby's Limited Open Division. The beneficiary was interviewed regarding the horse and its prospects in future competitions. The article mentioned that the beneficiary had been training horses for four years and was previously a member of the Canadian National Ski Team.

The beneficiary and the horse Busy in Hollywood were also pictured on the cover of the October 2000 issue of *Northern Horse Review*. The article, titled "Spring Classic Soars at Spruce Meadows," essentially provides a rundown of the results at all of the events held at the Reining Alberta Spring Classic Maturity Show held in June 2000, and includes a brief mention of the beneficiary's results. The article is not specifically about the beneficiary. The petitioner also provided an article titled "National Reining Breeders Classic" published in the June 1, 2006 edition of *Quarter Horse News*. The article provides an overview of the results of the competition. The beneficiary is mentioned as the champion of the Limited Open Reserve class of the competition, and the author notes that the beneficiary has been working for the petitioner for a year. The beneficiary comments on the quality of the horse he rode in the competition, and expresses his appreciation for the experience he has gained as a trainer with the petitioner's organization.

The beneficiary's results in the 2006 National Reining Breeders Classic were also reported in the June 2006 issue of *NRHA Reiner*, and the beneficiary was briefly mentioned in the July 2006 issue of *NRHA Reiner* for his third place finish in the Limited Open Division of the 2006 NRHA Derby. The petitioner submitted a number of other articles from published print and Internet sources, mainly from 2006, that mentioned the beneficiary as part of an overview of competition results. However, such articles do little more than confirm the show record already discussed above.

Overall, the evidence submitted does not demonstrate sustained national or international acclaim as recognized by major media or trade publications. Although the beneficiary twice appeared on the cover of such publications, only one of the submitted articles was specifically *about the beneficiary* and his work in the field. A single article published six years prior to filing is insufficient to satisfy this criterion.

To meet the fourth criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), the petitioner must submit 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. The petitioner does not claim that the beneficiary can satisfy this criterion.

The fifth criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), requires the petitioner to submit evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field. In this regard, counsel for the petitioner asserts that "[the beneficiary's] contributions to his professional career have greatly rewarded horse owners economically and establishing great recognition among the National Horse Reining Association (NRHA) nationally and internationally."

Counsel appears to be stating that the beneficiary contributed to his field of endeavor by winning prize money for the owners of the horses he trains and rides. When considering the petitioner's claim that the beneficiary meets this criterion, USCIS cannot ignore the wording of the regulation. Whereas other regulatory passages refer to "extraordinary ability in the fields of science, education, business, or athletics," 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) refers to "the alien's original scientific, scholarly, or business-related contributions." The omission of "athletic contributions" is a realistic reflection of the nature of athletic competition. Winning a competition is not an "original contribution;" it is expected that any given athletic event will have a winning athlete or team that outscores or outperforms rival competitors. Similarly, possessing a high level of the skills needed to succeed in a particular sport is generally a matter of degree, rather than an "original contribution" to

the sport. Therefore, attestations regarding the beneficiary's talent, skills and success will not satisfy 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) as evidence of the beneficiary's original contributions. Competitive success is already taken into account by 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), pertaining to prizes and awards, and 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) instructs USCIS to take into account any major media attention that an athlete may earn by standing out from others in a particular sport.

While some of the submitted testimonial letter indicate that the beneficiary is an "asset" to the industry and provides a "needed service," there is no specific claim that he has made a significant, original contribution. Many of the persons providing letters indicate that the United States reining industry is in need of qualified trainers and that the beneficiary is "eager to share his training advice." However, this visa classification was not intended to be used to fill shortage occupations in the United States. Again, the beneficiary is not making an *original contribution simply by competing in the sport*. While the respect the beneficiary has received from people he knows in the industry is commendable, and he is clearly highly regarded as a person and as a trainer, the testimonials do not establish that the beneficiary has made a significant contribution to the field.

The petitioner has not submitted evidence to meet the sixth criterion at 8 C.F.R. 214.2(o)(3)(iii)(B)(6). The petitioner claims that the beneficiary can meet the seventh criterion, which requires the petitioner to submit evidence that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have distinguished reputations. 8 C.F.R. 214.2(o)(3)(iii)(B)(7).

In this regard, counsel states the following on appeal:

[The beneficiary] has been selected by [the petitioner] to continue the success of [REDACTED]
... [The petitioner] has a very high reputation in the industry as noted by the success
of [REDACTED] [The beneficiary] has trained and ridden some of the top horses in current
competition, such as 2006 Top Horses Starlight Slim; Top Maternal Grandsires, Escalante Chic
and Dun Dazzled Whiz; owned by Top Owners [REDACTED]. .

The petitioner submits extensive background information regarding [REDACTED] and the petitioning organization from its website, where the beneficiary is identified as one of two assistant trainers working for Mr. [REDACTED]. The AAO acknowledges that the petitioner and [REDACTED] enjoy a distinguished reputation in the reining industry. However, the petitioner has not documented the beneficiary's prior employment with the petitioner or any other organization. It appears that the beneficiary has been working for the petitioner on some basis since 2005, although USCIS records do not indicate that he attempted to obtain any type of employment authorization prior to filing the instant petition in July 2006. The petitioner did not provide payroll records or other evidence of the beneficiary's employment with the organization, nor did the petitioner provide any letters or information regarding any of the beneficiary's previous employers. 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). While it may be correct to state that the beneficiary will be employed in an essential capacity for a distinguished organization, the regulations require the petitioner to show that the beneficiary to establish the beneficiary's prior essentiality to and employment with such an organization. The petitioner has not established that the beneficiary meets this criterion.

In order to satisfy the eighth and final criterion, the petitioner is required to submit 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. 8 C.F.R. 214.2(o)(3)(iii)(B)(8).

The petitioner emphasizes that the beneficiary was ranked among the top 50 Leading Money Earners in the NRHA's All Open Earnings Category in 2006. Since the petition was filed in July 2006, the beneficiary's year-end ranking and winnings cannot be considered as evidence of the beneficiary's previous high salary or remuneration. It has not been established that he was ranked among leading money earners at the time of filing or any time prior to that date. As noted above, the beneficiary's total show earning between 1999 and 2005 amounted to \$12,151. The petitioner has not demonstrated that this constitutes high compensation for a reining horse trainer. The petitioner did not provide evidence of the beneficiary's prior earnings beyond providing a copy of his show record.

The petitioner indicated in its letter dated June 21, 2006 that the beneficiary would receive annual compensation of \$24,000, which includes housing and utilities, and that he would keep a percentage of his competition winnings. The petitioner did not provide a contract stipulating the percentage of winnings that would go to the beneficiary, nor did it provide any evidence that would assist USCIS in comparing the proffered salary to that offered to other trainers/riders in the United States. Therefore, the AAO cannot conclude that the beneficiary would command a high salary or other remuneration in the United States. The petitioner has not established that the beneficiary meets this criterion.

The record does not establish that the beneficiary is an alien of extraordinary ability in athletics, 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)(i) of the Act. The petitioner failed to establish that the beneficiary has received a major, internationally recognized award or that he satisfies at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B).

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). The beneficiary's achievements have not yet risen to this level.

Beyond the decision of the director, the AAO notes that the petitioner has not provided copies of any written contracts between the petitioner and the beneficiary, or, in the alternative, a summary of the terms of the oral agreement under which the beneficiary will be employed in the United States, as required by 8 C.F.R. § 214.2(o)(2)(ii)(B). Such evidence was specifically requested in the director's RFE dated October 12, 2006. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). For this additional reason, the petition cannot be approved.

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).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.