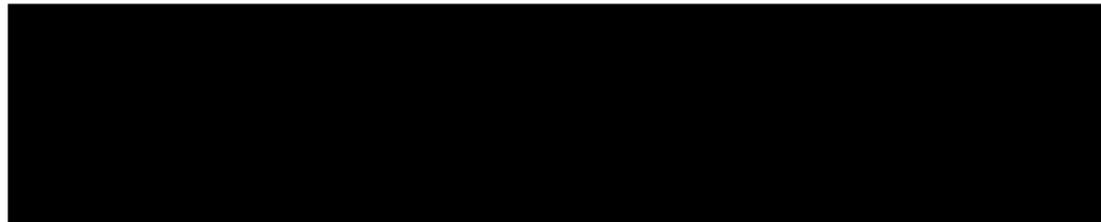


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



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DATE: **AUG 10 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

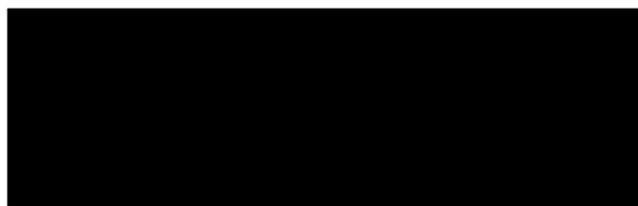
Petitioner:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and dismissed the petitioner's subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

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), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in the field of refugee support. The petitioner states that it is a non-profit religious and human rights organization. It seeks to employ the beneficiary in the position of refugee integration coordinator for a period of one year.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has received "sustained national or international acclaim" or to demonstrate that he is one of the small percentage who has risen to the very top of his field of endeavor. Specifically, the director determined that the evidence submitted did not satisfy the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the petitioner's motion was wrongly denied, and that a review of the evidence in its entirety will establish that the beneficiary meets three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Counsel asserts that the director undervalued the testimonial evidence in the record. Specifically, counsel emphasizes that the denial failed to recognize the international nature and acclaim associated with the [REDACTED] the original contributions of major significance to the field of refugee support and Eritrean human rights, and that the beneficiary's authorship of a book entitled, [REDACTED] has placed him at the top of his field, and that the beneficiary is employed in a critical capacity.

For the reasons discussed below, the AAO will uphold the director's decision and dismiss the appeal.

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides for the classification of 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 . . . and whose achievements have been recognized in the field through extensive documentation, and 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 extraordinary ability provisions of this visa classification are intended to be highly restrictive for aliens in the fields of business, education, athletics, and the sciences. *See* 59 FR 41818, 41819 (August 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the lower standard for the arts).

In a policy memorandum, the legacy Immigration and Naturalization Service (INS) emphasized:

It must be remembered that the standards for O-1 aliens in the fields of business, education, athletics, and the sciences are extremely high. The O-1 classification should be reserved only for those aliens who have reached the very top of their occupation or profession. The O-1 classification is substantially higher than the old H-1B prominent standard. Officers involved in the adjudication of these petitions should not "water down" the classification by approving O-1 petitions for prominent aliens.

Memorandum, Lawrence Weinig, Acting Asst. Comm'r., INS, "Policy Guidelines for the Adjudication of O and P Petitions" (June 25, 1992).

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.

The decision of U.S. Citizenship and Immigration Services (USCIS) in a particular 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 is eligible for O-1 classification. 59 Fed Reg at 41820.

The AAO will utilize a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. The AAO finds this two part approach to be appropriate for evaluating the regulatory criteria set forth for O-1 nonimmigrant petitions for aliens of

extraordinary ability at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v). *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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

In the present matter, the petitioner has submitted evidence pertaining to five of the evidentiary criteria, but has not established that the beneficiary has risen to the very top of his field or that he has achieved sustained national or international acclaim. 8 C.F.R. §§ 214.2(o)(3)(ii) and (iii).

II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on June 22, 2011. The petitioner describes its business activities and the beneficiary's proposed position as "Refugee integration coordinator" as follows:

[The petitioner] will provide social, economic and educational services to the inner city residents of Phoenix and assist with resettling of refugees.

The record consists of: the Form I-129 petition and supporting evidence, the director's request for evidence dated July 22, 2011 and the petitioner's response; the director's decision dated December 14, 2011; the petitioner's appeal. The AAO has reviewed the evidence of record in its entirety in reaching its decision.

A. The Beneficiary's Eligibility under the Regulatory Criteria

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 regulations cite to the Nobel Prize as an example of a major award. *Id.* The petitioner does not claim that the beneficiary can meet 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). The petitioner has satisfied the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). The petitioner has submitted evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), (5), (6), and (7). The petitioner has not submitted any evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), (4), and (8), and raises no objection to the director's determination that these criteria have not been met. The remaining five criteria will be discussed below.

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

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)(B)(1).

The petitioner states that the beneficiary qualifies for this criterion due to his receipt of the [REDACTED] in 2008. At the time of filing, the petitioner failed to submit evidence describing the [REDACTED] or how it qualifies as a nationally or internationally recognized prize or award for excellence in the field of endeavor. On appeal, the petitioner submits a statement signed by the beneficiary in which he describes the [REDACTED]. The beneficiary states:

The [REDACTED] is a Community College prize awarded to a person or persons who have shown civil courage. The [REDACTED] in Sweden which awards the prize makes its selection based on the following definition of courage. "When a person, driven by her/his heart and conscience, has the courage to stand up against the group's unwritten laws or forces or written laws, and is prepared to face the consequences of his/her actions, he/she demonstrates moral courage, a characteristic that is both universal and uniquely human."

The petitioner goes on to state that the 2012 prize was awarded for the fifth time and that anyone can be nominated. The winning candidate is chosen by a jury composed of the principal of the school, a representative of the Board, two teachers and two students.

At the time of filing, the petitioner provided a copy of a letter dated August 28, 2006 which was apparently submitted in support of a previous petition filed on behalf of the beneficiary. The petitioner addressed the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), but did not claim that the beneficiary meets this criterion.

While the petitioner has provided evidence of the beneficiary's receipt of this award, the petitioner has not explained how this award is considered a nationally or internationally recognized award or prize. The AAO notes that the beneficiary should be commended for his receipt of this award, however, the petitioner has not demonstrated that the prize is known outside of the community college in Sweden. Furthermore, the beneficiary's receipt of the prize offers no meaningful comparison between him and experienced professionals in the field who have long since completed their educational training. Further, the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) specifically requires that the awards be nationally or internationally recognized in the field of endeavor and it is the petitioner's burden to establish every element of this criterion. The petitioner has not provided any documentation, aside from the statement of the beneficiary, explaining the significance of this award, and thus there is no evidence demonstrating that the beneficiary's award is tantamount to a nationally or internationally recognized prize or award for excellence in the beneficiary's field of endeavor.

For the reasons stated above, the petitioner has not submitted evidence that meets this criterion.

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

The petitioner submitted seven letters of support from the beneficiary's eligibility for this criterion. We cite representative examples here.

At the time of filing, the petitioner submitted a letter dated June 17, 2011 from [REDACTED], the co-chair of the Eritrean Refugee Initiative (ERI), an outreach ministry of the petitioner. [REDACTED] states:

In 2010 [the beneficiary] graduated with a master's degree in Human Rights and Social Justice. His thesis on forced conscription is now used by Eritrean asylum seekers. With his encouragement, members of [the petitioner] formed ERI which provides English classes, bead to succeed cottage industry and mentoring. [The beneficiary] forms the bridge between our other volunteers and his country men and women. He took it upon himself to take interpreter training at the IRC so he could do a professional job of helping refugees in situations where they encountered language barriers and cultural differences . . . It is my firm belief that ERI cannot continue the level of good work we do to help the Eritrean refugees feel welcome and learn to live in the Phoenix area without [the beneficiary's] participation.

The petitioner submitted a letter from [REDACTED] co-chair of the ERI. [REDACTED] states that the beneficiary "is intimately familiar with the personal, legal, professional, financial, and social challenges of the refugees; he is fluent in several of their languages; he knows their home countries and societies; he knows our organization and what we can best do to assist the refugees; and his human rights background and work with a local refugee organization have put him in contact with a wide variety of sources and resources valuable both to us and to the refugees."

The petitioner also submitted a letter from [REDACTED], Associate Professor of Political Science, Arizona State University. [REDACTED] states:

[The beneficiary] has garnered quite a reputation in the Phoenix community. For instance, while working with attorneys from the Florence Project on other issues, I learned that they routinely include his masters thesis as part of their documentation for Eritrean asylum and CAT cases, and they have found it to be the most thorough and insightful treatment of the country's conditions.

In the request for evidence, the director noted that the petitioner's evidence failed to establish that the beneficiary has made an original business-related contribution of major significance in this field. The director determined that the evidence submitted was insufficient to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

In support of its subsequent motion, the petitioner submitted three additional testimonials which are claimed to meet the requirements at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). The petitioner submitted a letter from [REDACTED], a representative of the petitioner. [REDACTED] states:

[The beneficiary] may not have a Nobel Prize, but he has proven that he has extraordinary ability to rise to the top wherever he finds himself. Born in a village of a third world country, he served his country in their fights for independence, achieved the highest scores in secondary school, became Student President of [REDACTED] where he also excelled

and earned a law degree, stood up to a repressive government, survived a year in solitary confinement, convinced a guard to help him escape, continued his advocacy for rights among Eritrean refugees and made the most of his experiences in Phoenix. He is an expert in Eritrean Human Rights and Refugee Resettlement.

The petitioner also provided a letter from [REDACTED], JSD Candidate at Notre Dame Law School. [REDACTED] states that he has known the beneficiary personally and professionally for many years. With respect to the beneficiary's credentials, he states:

I understand [the beneficiary] is being asked to demonstrate extraordinary ability, and from a slightly different perspective, he is not far from this standard. He is one of the highly educated Eritreans uniquely suited for the resettlement work he has been doing. He has an LLB degree in law and social justice and human rights. He knows Eritrea, Ethiopia and Sudan. He shares the refugee experience.

[The beneficiary] may not have contributed something intellectually extra-ordinary. However, given the circumstances of his life in the last 10 years, he has accomplished a great deal.

The declarant does not indicate the capacity in which he has worked with the beneficiary or provide any detailed examples of how the beneficiary's work is original and of major significance.

The petitioner submitted a third letter from [REDACTED] who states:

Beyond the incredible technical assistance [the beneficiary] has been able to provide, the unique contribution he makes is through his exceptional cultural capacity. His ability to navigate cultural misunderstanding and expectations with the utmost respect and candidness enables him to make a positive impact above and beyond the standard.

Upon review, the preceding letters of recommendation demonstrate that the beneficiary's work has earned the respect and admiration of those with whom he has collaborated and consulted, but these letters do not establish that he has made original business-related contributions of major significance in his field.

According to the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner is admired and commended for his skills in the field of *refugee integration*, the record lacks specific examples and documentation of how the beneficiary's work is of major significance. For example, the record does not indicate the extent of the petitioner's influence on others in his field nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a business executive who has sustained national or international acclaim. Without extensive documentation showing that the beneficiary's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media

The record indicates that the beneficiary is the author of a book entitled "[REDACTED]" along with a graduate thesis which documents the protests of Asmara University students, the banning of the private press in Eritrea and the resulting final ruling rendered. The book is co-authored by [REDACTED] of the University of Orebro in Sweden. The petitioner indicates that the beneficiary's book has been referenced multiple times in a book entitled, "[REDACTED]". The director concluded that the petitioner failed to submit evidence that this book is considered a professional journal or other major media. The director noted that the beneficiary did not submit evidence of other major publications or major media that cite his work. Beyond the fact that the book was cited in [REDACTED] and the fact that it is available at several libraries in Sweden, the petitioner has not submitted any other evidence that the beneficiary's work has received national or international acclaim.

On appeal, the petitioner submits statement indicating that "The Ruling" has been published worldwide and continues to be cited as a source for major media publications. However, the petitioner does not submit any evidence supporting his statement. The only evidence submitted on appeal consists of a Google search with cites in [REDACTED]"

Therefore, we agree with the findings of the director that the evidence fails to satisfy the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

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

The director determined that the petitioner did not submit evidence to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

The petitioner asserts that the beneficiary has served in a critical or essential role as an advisor to the [REDACTED] along with a Social Service Supervisor for the [REDACTED], a non-profit organization.

In support of this criterion, the petitioner has submitted several letters attesting to the beneficiary's role in refugee resettlement, outreach and cultural assimilation. The AAO finds that the petitioner has demonstrated that the beneficiary does serve in a critical role for the petitioner. However, the record does not contain evidence that the petitioner or the [REDACTED], have a distinguished reputation in the field. The AAO does not mean to diminish the refugee work or the impact that the [REDACTED] an outreach ministry of the petitioner, has on the refugee community. However, the record does not contain evidence that the petitioner has a distinguished reputation as contemplated by the regulations. Furthermore, the record does not contain evidence that the beneficiary's prior employer, [REDACTED] has a distinguished reputation.

Thus, in this case, we concur with the director's determination that 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 eight categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 214.2(o)(3)(iii).

II. Conclusion

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 a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 101(a)(15)(O)(i) of the Act and the petition may not be approved.

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.