

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

b8

[REDACTED]

Date: **OCT 15 2012** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

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:

[REDACTED]

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and it is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily 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), as an alien with extraordinary ability in athletics. The petitioner, a tennis academy, seeks to employ the beneficiary as a tennis coach for a period of three years.

The director denied the petition on February 6, 2012, finding that the petitioner failed to meet the evidentiary criteria for classification of the beneficiary as an alien of extraordinary ability in athletics, set forth at 8 C.F.R. § 214.2(o)(3)(iii). Specifically, director found that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A), and submitted evidence which failed to satisfy any of the eight criteria 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 for review. On appeal, counsel for the petitioner provides the following statement on Form I-290B, Notice of Appeal or Motion:

Petitioner clearly established that the beneficiary is a tennis coach of extraordinary abilities. Proof was presented that beneficiary achieved the very top of his profession – his pupil (sic) are ranked 48 in [REDACTED] world rankings – [REDACTED] – 300 in the world on men’s professional tour. At least 3 categories from 8 CFR § 214.2(o)(3)(iii) were satisfied – membership in associations, awards, and materials in media. Also, there’s an employment agreement in place between petitioner and beneficiary. Brief and attachments will follow.

Counsel for the petitioner stated on Form I-290B, Notice of Appeal to the AAO, that additional documentation evidencing the beneficiary’s qualifications would be provided within 30 days. Counsel has not filed a brief or 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 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 evidentiary criteria for aliens seeking classification as O-1 aliens with extraordinary ability in the fields of science, education, business or athletics are set forth at 8 C.F.R. § 214.2(o)(3)(iii). Specifically, the petitioner must establish that the beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(A), or three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). If the criteria do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. 8 C.F.R. § 214.2(o)(3)(iii)(C). The evidence submitted must demonstrate that the beneficiary has earned sustained national or international acclaim and recognition for achievements in the field.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

The issue on appeal is whether the petitioner established that the beneficiary qualifies for O-1 classification as an alien with extraordinary ability in athletics. The director determined that the petitioner failed to meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A), and likewise failed to meet three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

Accordingly, on September 8, 2011, the director issued a request for evidence (RFE), requesting that the petitioner submit evidence to demonstrate that the beneficiary has earned sustained national or international acclaim and recognition for achievements in the field. In response to the RFE, the petitioner did not submit other evidence establishing the beneficiary's eligibility for the O-1 classification.¹ Accordingly, on February 6, 2012, the director denied the petition, finding the petitioner's evidence failed to satisfy any of the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A), (B), or (C).²

On appeal, counsel for the petitioner simply asserts that the beneficiary is qualified for O-1 classification, without addressing how the submitted evidence demonstrates the beneficiary's eligibility under the relevant regulatory evidentiary criteria. Neither the petitioner nor counsel have submitted any statement, either with the initial petition, in response to the RFE, or on appeal, addressing the evidentiary criteria, although the director specifically advised the petitioner in the RFE that it must explain the significance of the submitted documentary evidence.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

¹ The RFE also advised the petitioner that it must submit a consultation from the national office of an appropriate labor union or a consultation from an appropriate U.S. peer group. The director found that in response to the RFE the petitioner submitted an acceptable consultation from a peer group.

² The AAO notes that the director's decision contains an error near the bottom of page four: after listing the eight criteria required for this classification, the director erroneously stated that six criteria were required. This portion of the director's decision is withdrawn.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the petition. On appeal, counsel for the petitioner does not identify specifically an erroneous statement of fact or conclusion of law on the part of the director. Counsel's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, do not address the grounds stated for denial of the petition, nor has the petitioner presented additional evidence relevant to the grounds for denial. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Accordingly, the appeal will be summarily dismissed.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.