

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



D8.

DATE: **OCT 22 2012** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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), 8 U.S.C. 1101(a)(15)(O)(i), as an alien of *extraordinary ability*. *Specifically, the petitioner requested that the beneficiary be classified as an alien of extraordinary ability in the field of business, pursuant to the criteria at 8 C.F.R. § 214.2(o)(3)(iii).* The petitioner, a model talent agency, requests that the beneficiary be granted O-1 classification for a period of three years so that she may work as a model in the United States.

The director denied the petition, finding that the petitioner failed to meet the evidentiary criteria for classification of the beneficiary as an alien of extraordinary ability in business, 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 only satisfied two of the eight criteria, 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) and (B)(8). In addition, the director determined that the regulatory language precludes the consideration of comparable evidence under 8 C.F.R. § 214.2(o)(3)(iii)(C) in this case, as there is no indication that eligibility for O-1 classification in the beneficiary's occupation as a model cannot be established by submitting documentation relevant to at least three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). In fact, as indicated in the decision, the petitioner submitted evidence relating to five of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Regardless, the director found the testimonial evidence the petitioner submitted under 8 C.F.R. § 214.2(o)(3)(iii)(C) did not demonstrate that the beneficiary has earned sustained national or international acclaim and recognition for achievements in the field.

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. The issue on appeal is whether the petitioner established that the beneficiary qualifies for O-1 classification as an alien with extraordinary ability in business.

On appeal, counsel for the petitioner asserts on Form I-290B, Notice of Appeal or Motion:

The director abused her discretion as she incorrectly defined “national” or “international” acclaim.

Counsel does not identify specifically how the director’s decision incorrectly defined “national” or “international” acclaim.

Next, counsel asserts that the director was in error in finding that the petitioner failed to submit documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). The director found that although the evidence established that the beneficiary won at least one beauty competition, Miss Freshwater Beach, the petitioner failed to submit evidence to establish that the beneficiary was the recipient of any awards or prizes that are nationally or internationally recognized in modeling. In response to the director’s finding, counsel asserts on appeal:

. . . the Service only considered from 2009 to 2012 . . . Since the beneficiary won several beauty pageants some nationally . . . and some internationally . . . prior to 2009, even if they were minor awards, nonetheless in the aggregate helped launch the beneficiary's modeling career at a very young age.

Counsel's statement that the director only considered the period from 2009 to 2012 is incorrect, since the decision refers to the evidence that the beneficiary was a finalist for [REDACTED] 2007. Counsel's statement on appeal does not address the director's finding that the petitioner has not submitted evidence to establish that any award or prize won by the beneficiary is a nationally or internationally recognized prize or award in modeling.

Further, counsel asserts that the director was in error in finding that the petitioner failed to submit evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The director found that the petitioner has not submitted evidence that the beneficiary has served in a critical or essential role for any of the publications in which she has appeared, or that she has been employed by such publications. Also the director found, with regard to the beneficiary's previous employers, that the petitioner has not submitted sufficient evidence to establish that the beneficiary has served in a critical or essential role for these organizations or establishments, and that these organizations or establishments have distinguished reputations. In response to the director's finding, counsel asserts on appeal:

The Service erred and abused her discretion when she failed to recognize that the beneficiary is not employed by several magazines but . . . the owner of products being advertised in the magazine are the ones who employed the models such as the case here. The service failed to discern this subtle difference which makes models unique and does not squarely fit to the category.

On appeal, counsel's statement does not address the director's finding that the petitioner has not submitted evidence that the beneficiary has served in a critical or essential role for her previous employers and that these organizations or establishments have distinguished reputations. Nor has the petitioner submitted evidence in support of counsel's statement on appeal that the beneficiary was employed by "the owners of products being advertised in the magazine." 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 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.

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

On appeal, counsel for the petitioner 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.

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

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. As stated above, 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 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (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.