



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **AUG 06 2013** Office: VERMONT SERVICE CENTER [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:

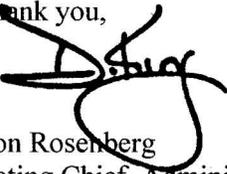
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa 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 of extraordinary ability in business. The petitioner, a self-described art dealer, seeks to employ the beneficiary in the position of Advertising Director for a period of three years.

The director denied the petition on January 17, 2013, concluding that the petitioner failed to meet the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(A), and three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B), and therefore did not demonstrate that the beneficiary is one of the small percentage of people who has risen to the very top of his field of endeavor.¹

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: "My brief and/or additional evidence will be submitted to the AAO within thirty (30) days." Counsel filed the appeal on February 19, 2013, and has not yet submitted a brief or additional evidence in support of the appeal. Accordingly, the record will be considered complete.

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

¹ We further note for the record that while the petitioner sought to classify the beneficiary as an alien of extraordinary ability in the field of business, the petitioner simultaneously claimed that the beneficiary meets the evidentiary criteria for aliens of extraordinary ability in the arts, as set forth at 8 C.F.R. § 214.2(o)(3)(iv), although it never specifically cited to this section of the regulations. For example, the petitioner's counsel indicated that it was submitting evidence that the beneficiary has or will "perform the lead in an event which has a distinguished reputation," has "achieved national or international recognition for achievements," and has "received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged." *See* 8 C.F.R. §§ 214.2(o)(3)(iv)(B)(1), (2) and (5).

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 director conducted a thorough review of the record of proceeding and clearly explained why the petitioner's evidence failed to satisfy the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B).

The 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.

On appeal, petitioner's counsel does not identify an erroneous statement of fact or conclusion of law on the part of the director. Petitioner's counsel does not specifically object to the denial of the petition on the grounds stated or otherwise state the basis for the appeal. Accordingly, the appeal will be summarily dismissed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.