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File: WAC 06 800 11555 Office: CALIFORNIA SERVICE CENTER Date: **FEB 02 2009**

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)

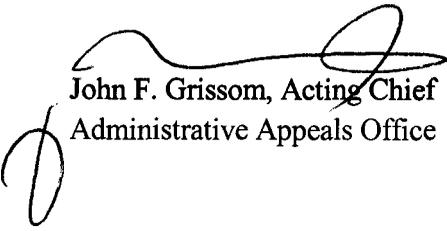
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 or reopen, 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 petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner is a nurse staffing agency and the beneficiary is a nurse. The petitioner filed the instant 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 the sciences. The petitioner seeks to temporarily employ the beneficiary as a registered nurse for a period of one year.

The director denied the petition on January 16, 2007, concluding that the petitioner failed to submit evidence of the beneficiary's sustained national or international recognition for accomplishments in his field. In denying the petition, the director observed that the petitioner failed to submit documentation that was specifically requested in a request for evidence, and otherwise neglected to address the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (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 the Form I-290B, Notice of Appeal to the AAO, the petitioner stated the following:

The person that I am petitioning still on the process of taking NCLEX RN Exam. Can I change his status instead of working as a BSN-RN here in USA, can he come and work as a nursing aid, a home health aid with pay rate of \$8.00/hour x 40 hours/wk?

On or about June 21, 2007, the petitioner supplemented the appeal with evidence that the beneficiary has passed the NCLEX RN examination and is now a registered nurse in the State of Vermont. The petitioner requests reconsideration of the denial in light of the new evidence.

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 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 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 director denied the petition based on the petitioner's failure to submit evidence to meet any of the above-referenced criteria. The petitioner stated on Form I-129 that hospitals have a shortage of registered nurses and that the beneficiary can perform the duties of the position. The petitioner's initial evidence consisted of a U.S. Department of Labor Form ETA 9035E, Labor Condition Application, a copy of the beneficiary's resume, the results of the beneficiary's Commission on Graduates of Foreign Nursing Schools (CGFNS) examination, the results of his International English Language Testing System examination, and copies of his educational and professional credentials. The evidence shows that the beneficiary has a bachelor's degree in nursing from the Philippines, five years of experience as a registered nurse and public health nurse, and that he has most recently worked as a sanitation inspector for the City Health Office in Davao City, Philippines, since August 2000.

Upon review of the initial evidence, the director issued a request for additional evidence (RFE) on October 12, 2006, instructing the petitioner to submit documentation to satisfy the evidentiary requirements set forth at 8 C.F.R. § 214.2(o)(3)(iii). The requirements for this visa classification were clearly set forth in the RFE.

In response to the RFE, the petitioner submitted a letter dated November 9, 2006, in which it stated that the beneficiary has passed the CGFNS, TOEFL and TSE examinations and that "these are the requirements needed to the visa screen, prior to coming to United States of America." The petitioner included an employment contract, and re-submitted evidence of the beneficiary's educational and professional qualifications. As noted above, the petitioner did not address any of the evidentiary requirements set forth at 8 C.F.R. § 214.2(o)(3)(iii). Accordingly, the director denied the petition.

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, the petitioner does not identify an erroneous statement of fact or conclusion of law on the part of the director, or even object to the grounds stated for denial of the petition. Rather, the petitioner initially requested to amend the petition in order to hire the beneficiary as a nursing aid or

home health aid, and more recently requested approval of the petition based on the beneficiary's licensure as a registered nurse in the United States. Despite the director's clear and detailed notice of denial, the petitioner appears to remain unaware of the evidentiary requirements for the O-1 visa classification and does not address the reasons for denial as stated in the director's decision. The record remains devoid of any evidence that the beneficiary has earned sustained national or international acclaim and recognition for achievements in the field of nursing. Accordingly, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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.