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U.S. Citizenship  
and Immigration  
Services

Dg



FILE: WAC 07 800 11917 Office: CALIFORNIA SERVICE CENTER Date: **FEB 02 2009**

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:



**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, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition, 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), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in business. The petitioner, a mortgage bank, seeks to employ the beneficiary as a senior account manager.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has achieved sustained national or international acclaim and recognition for achievements in business, specifically in the field of mortgage account management or mortgage bank finance. The director further concluded that the petitioner had not established that the beneficiary "will perform in a leading or critical role for an organization or establishment with a distinguished reputation."

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 that the petitioner submitted evidence to establish at least three of the eight evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B) and therefore has shown that the beneficiary has achieved sustained national or international acclaim in his field. Counsel further contends that the director erred in requiring that the petitioner establish that the beneficiary is coming to the United States to work for an organization with a distinguished reputation.

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), in pertinent part, provides the following definition of "extraordinary ability":

*Extraordinary ability in the fields 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 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.

It is noted that the decision of U.S. Citizenship and Immigration Services (USCIS) in a given 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 satisfies the criteria and is eligible for O-1 classification. The evidence submitted must establish that the beneficiary qualifies as an alien of extraordinary ability. *See* 59 Fed. Reg. 41818-01, 41820.

The record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, an appeal and an appellate brief. The beneficiary in this case is a native and citizen of Venezuela, and a retired major general of the Venezuelan Air Force. The beneficiary has a bachelor's degree in aeronautical engineering from the Polytechnical University of the Army in Venezuela. He graduated from international officer school at the U.S. Air Force University at Maxwell Air Force Base in Alabama. Since 2000, the beneficiary has held the positions of [REDACTED]

[REDACTED]. The petitioner has offered the beneficiary the position of senior account manager.

In denying the petition, the director found that while the beneficiary has been shown to have an impressive and accomplished career in the Venezuelan military and "substantial education, training and experience in areas of finance related to mortgage account management," the evidence of record does not show that he has achieved the requisite national or international acclaim and recognition in the field of mortgage account management or mortgage bank finance. The director noted that the beneficiary's accomplishments are as a military leader and political liaison, and emphasized that the regulation at 8 C.F.R. § 214.2(o)(1)(ii)(A)(1) requires the petitioner to demonstrate that the beneficiary is coming to the United States to continue work in the area of extraordinary ability.

The director further determined that the petitioner failed to establish that the beneficiary "will perform in a leading or critical role for an organization or establishment with a distinguished

reputation." The AAO concurs with counsel that neither the statute nor the regulations require that a U.S. petitioner seeking to employ an O-1 beneficiary establish that it is an organization with a distinguished reputation. As the director's determination with respect to this issue is not supported by the statute or regulations, this basis for denial will be withdrawn.

On appeal, counsel for the petitioner asserts that the petitioner established that the beneficiary meets at least three of the eight evidentiary criteria for O-1 classification as outlined at 8 C.F.R. § 214.2(o)(3)(iii)(B), and submitted other comparable evidence establishing his eligibility. Counsel does not, however, address the director's determination that the petitioner did not establish that the beneficiary would be coming to work in the United States in the area of extraordinary ability.

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary qualifies as an alien with extraordinary ability in business.

As a preliminary matter, the AAO will address the position offered in the United States, as such discussion is critical to the issue of whether the alien would continue to work in his claimed area of extraordinary ability. The petitioner, through former counsel, filed the Form I-129 nonimmigrant petition electronically on July 26, 2007. The petitioner, a mortgage bank, stated that the beneficiary would be employed as a senior account manager. The petitioner described the beneficiary's proposed duties as follows: "Liaise with ambassadors, consulates and other members of the international and diplomatic community with respect to addressing their needs for necessary financing to purchase homes and/or other real estate transactions."

On September 12, 2007, the director issued a request for evidence (RFE), instructing the petitioner to provide a letter clarifying its need for the beneficiary's services, as well as initial evidence to satisfy the regulatory requirements at 8 C.F.R. § 214.2(o)(3)(iii).

In response, the petitioner submitted a letter dated October 3, 2007, in which it stated that the beneficiary's proposed position is that of a "Senior Financial Advisor/Hispanic Market" and will require him to perform the following duties:

- Provide expertise on the business/cultural traditions of Latin America as to bilateral negotiations
- Perform bilingual (Spanish/English) research and preparation of reports in the matters of investment policies as well as in negotiations between Latin American and U.S. businesses
- Provide guidance on financial/investment regulation activities and policies of Latin American countries, Venezuela specifically
- Inform current and prospective clients of our company's new emphasis and expertise
- Director organizational studies and evaluations
- Develop and increase business contacts with industry executives and international potential clients.

The petitioner indicated that it is a mortgage company "dedicated to servicing the financial needs of potential homeowners in the Virginia and Washington DC, metropolitan area." It noted that it is "seeking to develop and expand its client base to include the local Hispanic market, as well as aggressively seek investors from South America." The petitioner stated that based on these factors, it requires the services of "an international executive well-versed in Latin American financial and investment policies and regulations." The petitioner also stated that it requires five to seven years of experience in the financial field as a requirement for the position.

The petitioner has also submitted evidence with the petition related to an H-1B nonimmigrant petition previously filed on the beneficiary's behalf (EAC 04 255 51475). Although the H-1B petition was denied in March 2005 due to abandonment, the petitioner submitted evidence that it attempted to pursue the re-opening and approval of that petition as recently as February 2006.<sup>1</sup> The petitioner indicates that it retained former counsel to prepare its I-129 petition on the beneficiary's behalf in August 2004 and refers to former counsel's "inefficient handling of this case," but does not indicate that the position description and requirements as stated in the H-1B petition are no longer an accurate depiction of the position it seeks to offer to the beneficiary. If the H-1B petition was submitted for an entirely different position, it is unclear why the petitioner submitted copies of the petition and supporting evidence in connection with this petition.

The "job summary" for the position of Senior Loan Officer is as follows:

Through professional persistence, solicit and originate investment quality loans that are acceptable to the company's chosen investors and agencies. To be knowledgeable and articulate regarding all aspects of the loan products offered such as FHA/VA, FHLMC, FNMA, Jumbo and all other Area, City, State, County and National loan programs that the company offers. Develop and maintain strong client referral base by selling the firm's loan products and services to meet the needs of it's [sic] client base such as Realtors, builders, home buyers, CPA's, financial planners, and others.

The petitioner mentioned its need for a senior loan officer to "handle the special needs and concerns of high profile clients such as high ranking diplomatic officials, powerful corporate investors, military officers."

Overall, the record contains three different job titles and job descriptions for the same position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the

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<sup>1</sup> The AAO notes that the petitioner also submitted copies of documents related to an H-1B petition prepared on behalf of a different beneficiary who has the same name as the instant beneficiary and appears to be his son. It appears that the other beneficiary was also offered the position of "Senior Loan Officer." These documents include a copy of a Form I-129 petition and a DOL Form ETA 9035E, Labor Condition Application that was certified in November 2006.

petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on a review of the totality of the evidence submitted, the AAO agrees with the director's assessment that the field in which the beneficiary would be working in the United States is mortgage banking/finance or mortgage account management. On appeal, counsel does not object to this characterization of the beneficiary's area of extraordinary ability and even refers to the beneficiary's "strong mortgage financing background."

As noted above, the statute requires that the beneficiary come to the United States to continue working in his or her area of extraordinary ability. Therefore, the petitioner's evidence must support a finding that the beneficiary meets the standard for extraordinary ability in business, in the area of mortgage banking/account management.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award, such as the Nobel prize, 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. Here, the petitioner has not submitted evidence that the beneficiary has received a major, internationally recognized award, nor has the petitioner claimed that the beneficiary meets 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).

In order 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)(I).

The petitioner submitted an award conferred to the beneficiary by the Inter-American Defense Board on July 25, 2002, "in recognition for his excellent work performed during his permanence with the Inter-American Defense Board" as [REDACTED] Delegation and as Vice-President, between October 30, 2000 and July 25, 2002. According to the beneficiary's resume, his duties during this time included: representing the Inter-American Defense Board at the 2002 Humanitarian Allied Forces Exercise; preparing and presenting the new role of the board to the XLII Conference of American Air Forces Chiefs; contributing to the Inter-American Defense Board's modernization process; and developing and strengthening the organization of the Venezuelan delegation. According to a letter dated February 15, 2005 from [REDACTED] of the Venezuelan Delegation to the Inter-American Defense Board, the beneficiary, in addition to his regular military duties, also managed the budget for his delegation, was in charge of administration and accounting of financial resources, and supervising the finances of subordinated units.

Upon review, this evidence does not demonstrate that the beneficiary has received a nationally or internationally recognized award for excellence in the field of mortgage banking/finance or mortgage account management. While it appears that the beneficiary had some financial duties that were ancillary to his role as a military liaison, the AAO cannot equate this award to a national award in the financial field, much less a field related to mortgage banking/finance. The petitioner has not established that the beneficiary meets this criterion.

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), the petitioner must document 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 national or international experts in their disciplines or fields. Again, the petitioner does not claim that the beneficiary is a member of any such organization, and the record contains no evidence indicating that the beneficiary satisfies this criterion.

To meet the third criterion, the petitioner must submit 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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). The petitioner has not submitted evidence to satisfy this criterion.

To meet the fourth criterion, the petitioner must submit evidence of the beneficiary'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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4). The petitioner does not claim that the beneficiary meets this criterion.

The fifth criterion requires the petitioner to submit evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). The petitioner claims that the beneficiary satisfies this criterion, and in support of this claim, submits an advisory letter dated October 15, 2007 from [REDACTED] [REDACTED] for Panama and Venezuela, with the Inter-American Development Bank. [REDACTED] indicates that she reviewed the petition and supporting documentation and states the following:

The information establishes that [the beneficiary] is an individual of proven extraordinary ability in the fields of Financial Management and Latin American affairs. [The beneficiary] is a retired Major General of the Venezuela Air Force. He received a Bachelor's degree in Science at the Venezuelan Air Force Academy in 1986. Thereafter, he graduated from the U.S. Air Force University at Maxwell Air Force [Base] in Alabama. Complementing his military career, [the beneficiary] took extensive courses in Management and Development at the Instituto de Estudios Superiores (IESA)" in Caracas, Venezuela.

Having held the prestigious positions of Chief of Staff of the Venezuelan Air Force, and Vice-Chairman of the Inter-American Defense Board, among others, [the beneficiary] has acquired more than fifteen years of highly specialized executive/managerial experience.

Based upon the applicable statutory and regulatory requirements, [the beneficiary] meets the standards of distinction set forth in CFR section 214.2(o)(1).

Contrary to counsel's claims, [REDACTED] letter does not constitute evidence that the beneficiary has made an original scientific, scholarly or business-related contribution of major significance in the field. She merely provided a summary of his educational and professional background without mentioning any contribution in any business field. The AAO does not dispute that the beneficiary has had a successful military career, but it has not been established that he has been recognized for an original contribution of major significance in business.

The sixth criterion requires the petitioner to establish that the beneficiary has authored scholarly articles in the field, which appeared in professional or major trade publications or other major media. 8 C.F.R. § 214.2(o)(3)(iii)(B)(6). The petitioner does not claim that the beneficiary meets this criterion, nor has it submitted evidence that the beneficiary has authored scholarly articles in any field.

In order to meet the seventh criterion, the petitioner must submit evidence that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The petitioner indicates that the beneficiary meets this criterion. In support of this claim, the petitioner submits: (1) a letter dated March 12, 2002 from [REDACTED] of the Inter-American Defense Board, which confirms the beneficiary's role as a "strong leader and a hard working individual," in his assignment as Vice Chairman of the organization; (2) a letter dated March 14, 2002, from [REDACTED] also addressing the beneficiary's excellent work as Vice Chairman of the Venezuelan delegation before the Inter-American Defense Board; and (3) evidence confirming the beneficiary's role as Advisor at the Permanent Mission of Venezuela to the Organization of American States.

The AAO concurs that this evidence shows that the beneficiary has indeed served in an essential capacity for organizations with a distinguished reputation. However, the evidence does not satisfy the regulatory criterion because the employment referenced was not in the area of business, much less related to the field of mortgage banking or account management. The petitioner has not submitted evidence that the beneficiary has ever been employed in the field in which he would work in the United States.

The eighth criterion requires the petitioner to establish that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(8). The petitioner has not documented the beneficiary's previous or current salaries or remunerations, nor has it claimed that his offered annual

salary of \$70,000 should be considered a "high salary" for the position offered in the Washington, D.C. metropolitan area. The petitioner has not established that the beneficiary meets this criterion.

Finally, the regulations allow the petitioner to submit comparable evidence to establish the beneficiary's eligibility if the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) do not readily apply to the beneficiary's occupation. The petitioner has not established that the above-referenced criteria cannot readily apply to the beneficiary's occupation. Rather, the petitioner claims that the beneficiary can meet three of the eight criteria.

Nevertheless, the petitioner claims that it has submitted "other evidence" of the beneficiary's eligibility in the form of "affidavits of recognition of beneficiary's credentials and accomplishments." All affidavits and letters submitted have been discussed above. None of them mention any specific recognition or achievement received by the beneficiary in a business field, and more specifically, in the mortgage banking/finance field. Notably, the witnesses providing letters have not indicated that the beneficiary has achieved national or international recognition in the field of mortgage banking or finance, identified him as an individual of extraordinary ability in this field, or suggested that he has risen to the very top of this profession. Rather, they acknowledge his distinguished military career, which is not at issue.

The one exception is the advisory letter from [REDACTED], who indicates that the beneficiary is an alien of extraordinary ability in "financial management" and "Latin American affairs." She does not indicate how she reached such a conclusion based on her review of the O-1 petition and supporting documents. While the beneficiary undoubtedly has some background in financial management as a result of his senior-level military posts and work with the Venezuelan delegation of the Inter-American Defense Board, its applicability to the U.S. position has not been established. Regardless, the petitioner has not submitted evidence to establish that the beneficiary has achieved sustained national or international acclaim and recognition for achievements in financial management.

Whether one relies on the standard regulatory criteria or on comparable evidence, the petitioner must show that the beneficiary has earned sustained national or international acclaim at the very top of his field. Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(ii), (iii). None of the available documentary evidence submitted, including the witness letters, suggests that the beneficiary is an individual with sustained national or international acclaim in the field in which he would work in the United States. The petitioner has not provided any unsolicited materials reflecting his acclaim or recognition in business.

Finally, on appeal counsel asserts that "USCIS overlooked the substantial benefits that hiring a person of the caliber of [the beneficiary] would bring to petitioner." Counsel highlights the beneficiary's "connections and stature in Latin America" and notes that it is "not usual for service firms to employ prominent and renowned professionals that engage and attract potential clients." Counsel concludes by noting that the beneficiary's national and international accomplishments, and his network of connections and contacts, will make him "a focal point for petitioner's sales and marketing efforts." Counsel cites to no provisions in the statute or regulations which require USCIS

to consider how the petitioner will benefit from hiring the alien for the O-1 position. The AAO does not doubt that the beneficiary's reputation as a military leader and governmental liaison have earned him a certain degree of recognition that may draw clients. However, the O-1 classification was not designed to be granted to a person with a successful career in an unrelated field. The petitioner has failed to submit sufficient evidence to establish that the beneficiary is recognized as having a level of expertise in the mortgage banking/finance field such that he is considered as one of the small percentage who have arisen to the very top of that field of endeavor. As discussed above, there is no evidence that the beneficiary has any experience in the field in which the petitioner operates its business.

Upon review of the totality of the evidence submitted, the petitioner has not established that the beneficiary has extraordinary ability in business, which has been demonstrated by sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Nor has the petitioner satisfied that the alternative requirement set forth at 8 C.F.R. § 214.2(o)(3)(iii)(C) is applicable. Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition must be denied.

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). Despite the recommendations and endorsements submitted, which include evidence of a successful military career, the beneficiary's achievements in business have not reached this level. As noted by the director, the type of sustained national or international recognition of accomplishments necessary for O-1 classification has not been demonstrated.

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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.