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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D8

[redacted]

File: WAC 09 118 51014 Office: CALIFORNIA SERVICE CENTER Date: NOV 30 2009

IN RE: Petitioner:
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:

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).

Perry Rhew
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 operates a medical insurance billing business. It 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 business. The petitioner seeks to temporarily employ the beneficiary as medical insurance administrator for a period of three years.

The director denied the petition on May 5, 2009, concluding that the minimal evidence submitted does not support a claim of extraordinary ability, nor does it demonstrate that the beneficiary has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor. Further, the director denied the petition based on the petitioner's failure to submit a consultation from an appropriate peer group or labor organization as required by 8 C.F.R. § 214.2(o)(5). The director noted that, despite the issuance of a detailed request for additional evidence on April 8, 2009, which referred specifically to the evidentiary requirements and criteria for the O-1 visa classification, the only evidence provided in support of the petition consisted of a contract between the petitioner and the beneficiary, and a copy of the beneficiary's Bachelor of Science in nursing diploma.

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, the petitioner offers "two justifications" for reconsideration of the decision, as follows:

> First, [the beneficiary] has a most impressive portfolio that includes nursing credentials and a Bachelor of Science Degree in the health care industry. These are exactly the type of skill sets, not only the US needs desperately, but a set of skills that I need in my small business enterprise. My business is but 3 years in operation and I need to expand my operations but I am hesitant to hire from local sources and expose my business to greater risks, she would be invaluable. Finally, the U.S. has been and is likely to continue, in great need for qualified and certified nurses.
>
> Second, [the beneficiary] is a very close family member who has had the dream of immigrating to the United States for most of her life. My extended family here in the U.S. long for the day when our family can be reunited. There are a host of family support features to help ease her transition to the U.S., including financial assistance, housing, employment, etc.

The petitioner re-submits a copy of the beneficiary's university diploma 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 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), 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 petition was submitted with minimal supporting evidence which consisted of a copy of the beneficiary's contract with the petitioner, and a copy of her Bachelor of Science degree. Accordingly, the director subsequently issued a request for evidence (RFE) on April 8, 2009 instructing the petitioner to submit documentation to satisfy the evidentiary requirements set forth at 8 C.F.R. § 214.2(o)(3)(iii). The director also instructed the petitioner to provide a consultation for an appropriate U.S. peer group or labor union.

In response to the RFE, the petitioner re-submitted a copy of its contract with the beneficiary, with no additional evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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 otherwise address the stated grounds for denial. Rather, the petitioner speaks generally of the her need for the beneficiary's skills and the shortage of qualified workers in the health care field, and notes her personal desire to assist the beneficiary, a family member, with the immigration process. Neither of these arguments relates to the statutory and regulatory requirements for the O-1 visa classification. The petitioner's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded conclusions the director reached based on the deficiencies in the evidence submitted by the petitioner. The record remains devoid of the required consultation from an appropriate peer group or labor consultation and contains no documentary evidence pertaining to the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

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.