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FILE: WAC 07 039 54191 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:



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).

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), as an alien with extraordinary ability in business. The petitioner operates a hair salon and seeks to employ the beneficiary as an expert colorist for a period of three years.

The director denied the petition, finding that the petitioner failed to establish through the submission of extensive documentation that the beneficiary has achieved sustained national or international acclaim as a hair stylist or colorist with extraordinary ability in her field of endeavor.

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 director's decision was contrary to the evidence represented. Counsel asserts that the evidence submitted is sufficient to establish that the beneficiary meets the regulatory criteria set forth at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (3), and (4), and to demonstrate that she is at the top of her profession.

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 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 particular 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 France who last entered the United States in E-2 nonimmigrant status on March 22, 2006. The record shows that the beneficiary has worked as a hair stylist and coloring specialist in France and the United States since 1998, specializing in a coloring technique known as "balayage." The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as an expert colorist.

In denying the petition, the director found that while the beneficiary has earned the respect of employers and clients and has demonstrated talent in her field of endeavor, the record was insufficient to establish that the beneficiary had achieved the type of sustained national or international recognition of accomplishments necessary for the O-1 classification. The director found that the evidence submitted met only one of the eight criteria set forth at 8 C.F.R. 214.2(o)(3)(iii)(B), and did not satisfy the criteria at either 8 C.F.R. § 214.2(o)(3)(iii)(A) or (C).

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 thus is qualified for the benefit sought. Counsel highlights the significance of previously submitted evidence and asserts that the service center director "did not consider the evidence presented in the correct fashion."

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

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award 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)(1). Counsel for the petitioner asserts that the beneficiary's editorial credits in major magazines for her hairstyling and coloring work are equivalent to what is required by this criterion. The record shows that the beneficiary was credited as a stylist and/or colorist for photo shoots that appeared in *British Vogue*, *French Vogue*, *Tatler* and *Liberation* magazines between 2004 and 2006. The petitioner supplements this evidence with a letter dated January 23, 2007 from [REDACTED]

who lists his considerable achievements as a photographer, and expresses his opinion that only the best hair care specialists are chosen for high-profile fashion shoots. Mr. [REDACTED] states: "If I see the name of a hair colorist listed in a fashion shoot credit in a major publication, I know that I am looking at the work of the best practitioners of the art. Such a person is [the beneficiary]."

Upon review, the petitioner has not established that the beneficiary meets this criterion. The appearance of the beneficiary's name as a credited stylist in major publications is undoubtedly a notable achievement that signifies her success in her field, and [REDACTED]'s opinion supports such a conclusion. However, [REDACTED] stops short of stating that the beneficiary is nationally or internationally recognized as a result of her work being credited in such publications, or even stating that he is personally familiar with her work or reputation in the field. The petitioner's argument that such achievements are tantamount to the receipt of a nationally or internationally recognized award for excellence in the field is not persuasive.

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. The petitioner has neither claimed nor submitted evidence to demonstrate that the beneficiary meets 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 asserts that the beneficiary's editorial credits in magazines such as *British Vogue*, *French Vogue* and *Tatler* demonstrate that she meets this criterion. The service center director acknowledged the captioned

photographs in these publications, which credit the beneficiary as the photo shoot hair stylist or colorist. However, the director emphasized that these credits cannot be considered published material *about* the beneficiary.

On appeal, counsel asserts that the director failed to properly consider the evidence. Counsel asserts that “balayage specialists are recognized when their work appears publicly under their name, as they are not covered in articles or reviews in the same manner as typical artists.” Counsel emphasizes that the attestation from [REDACTED] considered with the appearance of the beneficiary’s work in major publications, is sufficient to meet this criterion, and should be considered “endorsements by the hair industry itself.”

Counsel’s assertions are not persuasive. The AAO concurs with the director’s determination that the beneficiary’s editorial credits for her work in major publications, while impressive, cannot be considered published material about the beneficiary. With respect to counsel’s assertion that hair stylists and coloring specialists “are not covered in articles or reviews,” it is noted that the evidence of record belies this argument. The petitioner has submitted articles from publications such as *Marie Claire*, *Elle* and *Chic* magazines which discuss the work of [REDACTED], owner and founder of [REDACTED] salons, a prominent French hair salon at which the beneficiary was previously employed. Similar articles are submitted regarding the petitioner’s owner and his New York salon. Clearly, fashion industry and similar publications do in fact recognize and publish articles regarding the work of prominent hair styling professionals. The petitioner has not established that the beneficiary has been so recognized for her work in the field. As noted above, the beneficiary’s editorial credits in major publications are undoubtedly noteworthy, but such recognition does not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

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). To satisfy this criterion, the petitioner submitted a letter dated January 9, 2007 from [REDACTED] of Phyto Universe, a company involved in the development, manufacturing and distribution of a line of hair care products. Ms. [REDACTED] states that she regularly recruits the beneficiary to assist her with key accounts and events, and that she most recently utilized the beneficiary’s services as a “freelance educator” at a New York promotional event held to introduce a new product to hair colorists. She further stated that the beneficiary “was interactive with industry professionals and she demonstrated her knowledge and creative ability as an outstanding hair colorist.”

The director acknowledged the petitioner’s claim, but noted that the letter from [REDACTED] indicates that the beneficiary worked as an educator at a promotional event, not that she judged the work of others in her field of specialization. The director also acknowledged a letter dated July 5, 2006 from [REDACTED], currently the owner of [REDACTED] in Barcelona, Spain, who stated that he has asked the beneficiary to lead training sessions on her balayage technique. The AAO concurs with the director. While the beneficiary appears to be experienced in demonstrating and teaching the balayage coloring technique, the evidence of record does not show that she has ever

formally judged the work of others in the same field, as required by the regulations. The petitioner has not established that the beneficiary meets the 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 does not claim that the beneficiary meets this criterion. The petitioner has submitted highly complimentary letters from the beneficiary's former employers, regular clients, and industry professionals such as [REDACTED] and [REDACTED]. While all of them praise the beneficiary's talent and work as outstanding, none of the testimonials submitted indicate that the beneficiary has been recognized for an original contribution of major significance in her field of endeavor. The petitioner has not established that the beneficiary meets this criterion.

Similarly, the petitioner has not attempted to establish that the beneficiary has authored scholarly articles in the field in professional or major trade publications or other major media, or otherwise claimed that the beneficiary meets the sixth criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

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 record shows that the beneficiary has been employed by [REDACTED] salons in France, and by [REDACTED] salons in France and New York, and contains sufficient documentary evidence to establish that these establishments are prominent in the industry. During her tenure with [REDACTED] salons, the beneficiary's work has been credited in major publications such as *British Vogue*, *French Vogue* and *Tatler*, and the evidence shows that she has acquired a number of prominent persons among her loyal clientele. The AAO concurs with the director that the submitted evidence meets this criterion.

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 her offered annual salary of \$35,000 should be considered a "high salary" for a hair colorist. Accordingly, the petitioner has not met 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 four of the eight criteria.

Further, the AAO finds the remainder of evidence in the record, not already discussed above, insufficient to establish that the beneficiary has extraordinary ability in her field of endeavor as demonstrated by sustained national or international acclaim. The evidence includes five letters of recommendation from clients who utilize the beneficiary's services. While the individual clients highly

praise the beneficiary's skills and abilities, these letters do not establish that the beneficiary has achieved sustained national or international acclaim. The petitioner has also submitted letters from [REDACTED], founder and owner of [REDACTED] hair salons, and [REDACTED], owner and president of [REDACTED] by [REDACTED]. The letters confirm that the beneficiary was trained by [REDACTED], specializing in the balayage technique. Mr. [REDACTED] regards the beneficiary as a "great talent" and one of his most gifted students, and recommends her for employment for the petitioner in New York. Mr. [REDACTED] states that the beneficiary showed herself to be "outstanding in her work," and states that she is "in the top category of stylists," with a talent in balayage that makes her "quite unique."

As noted above, the regulation at 8 C.F.R. § 214.2(o)(2)(iii)(B) provides that 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. [REDACTED] and [REDACTED], while praising the beneficiary's abilities, fail to establish how her abilities are nationally or internationally recognized, nor do they identify her achievements in the field beyond successfully learning and practicing the balayage coloring technique.

On appeal, counsel emphasizes factors such as the sophistication of the balayage technique, the fact that the technique is little practiced in the United States, and the high fee the petitioner will charge for balayage services, as additional evidence of the beneficiary's qualifications as an alien of extraordinary ability. Counsel further states that the endorsements from [REDACTED] and [REDACTED] establish that the beneficiary is at the top of her profession.

The evidence shows that the beneficiary is a highly skilled and experienced practitioner, has a growing reputation in her profession, and possesses knowledge of a coloring technique that is increasingly sought after in the United States. However, 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 her 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 her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). Despite the recommendations and endorsements submitted from persons prominent in the field, the beneficiary's achievements have not yet risen to 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 presented.

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.