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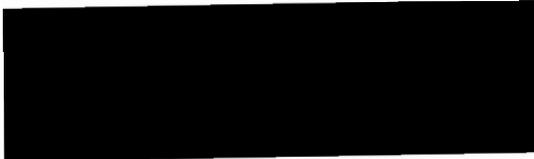
FILE: LIN 06 103 50190 Office: NEBRASKA SERVICE CENTER Date:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, [REDACTED], is a wellness center. The petitioner seeks O-1 nonimmigrant classification of the beneficiary, as an alien with extraordinary ability under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ her in the United States as the director of the petitioner's institute for a period of six years<sup>1</sup> at an annual salary of \$60,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has received sustained national or international acclaim and is one of a small percentage who has risen to the very top of her field of endeavor.

On appeal, the petitioner submits a brief and additional evidence. On appeal, counsel argues that the director improperly applied the criteria related to an alien with extraordinary ability in the sciences and that the petitioner should have been considered under the criterion related to an alien with extraordinary ability in the arts as the petition "repeatedly emphasizes the spiritual and intangible nature of the teaching of [REDACTED] as opposed to the categorization of those teachings as a 'science.'" We are not persuaded by counsel's argument. The regulation at 8 C.F.R. 214.2(o)(3)(i)(ii) defines the term "art" as:

[A]ny field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

As indicated by the petitioner, the position in which the petitioner seeks to employ the beneficiary is the director or "startup coordinator" of a wellness institute. Contrary to the types of positions listed above which are related to the arts, the position description provided by the petitioner indicates that the beneficiary will "establish and operate" a wellness center and that her duties include the following:

- 1) Site location and selection
- 2) Establish client base
- 3) Create business framework for the institute
- 4) Prepare spiritual program in the tradition of [REDACTED]
- 5) Create a website
- 6) Prepare promotional materials
- 7) Establish a teaching and tutorial program for spiritual and professional growth
- 8) Establish and teach courses in the tradition of [REDACTED] . . .

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<sup>1</sup> The regulation at 8 C.F.R. § 214.2(o)(6)(1)(iii)(A) indicates that a petition will be valid for a period, not to exceed 3 years.

- 9) Instruct employees in the tradition of [REDACTED]
- 10) Identify mountain locations for outreach programs, seminars, and retreats
- 11) Provide energetic feng shui consultation
- 12) Identify other locations in Colorado to establish satellite wellness centers . . .
- 13) Using . . . knowledge of German, to keep up with the writings of [REDACTED] and all publications published by his institute in Europe, virtually all of which are published only in the German language
- 14) Performing tasks associated with and/or necessary to implement the above job duties.

As described by the petitioner, both the job title and the duties of the beneficiary's position do not contain any indication that the beneficiary's position as a director involve fine arts, visual arts, culinary arts, or performing arts. While the services offered by the petitioning center may involve "spiritual" teachings, the beneficiary's position and duties are business related. Accordingly, the director properly considered the beneficiary under the criterion related to an alien of extraordinary ability in business.

Counsel's second argument, that the criterion do not readily apply to the beneficiary's occupation and that other comparable evidence should have been considered, is equally unpersuasive. The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) allows for the submission of comparable evidence, but only if the eight criteria "do not readily apply to the beneficiary's occupation." Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to the beneficiary's position as a director. Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Counsel has failed to present any argument or evidence which demonstrates that the regulatory criteria are not applicable to the beneficiary's position as the director of a wellness center.

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 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 national 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 the 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.

In addition, the regulation at 8 C.F.R. § 214.2(o)(5)(i)(A) states, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

As will be discussed under the relevant criteria, the petitioner has failed to establish that the beneficiary meets any of the evidentiary criteria for O-1 classification. There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A) or that the beneficiary meets at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

*Major, internationally recognized award.*

Counsel claims that the petitioner's award of "spiritual teacher" is an "award of excellence" and should be considered as comparable evidence of an award equivalent to the Nobel Prize. As previously discussed, however, counsel has failed to establish that the regulatory criteria are not applicable to business related fields, such that comparable evidence should be considered. Regardless, the beneficiary's *certification* as a teacher is not evidence of receiving an *award*. The fact that the beneficiary was certified or awarded a degree means only that she completed predetermined requirements, not that she was chosen for an award because of her contributions or accomplishments in her field of endeavor. Accordingly, the petitioner has failed to establish that the beneficiary has received a major, internationally recognized award.

*Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

As discussed above, the beneficiary's certification as a "spiritual teacher" is not considered to be a prize or an award. The petitioner has not submitted any further evidence of the beneficiary's receipt of a nationally or internationally recognized award for excellence in her field of endeavor. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

*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 national or international experts in their disciplines or fields.*

Counsel states that the association to which the beneficiary belongs is that "small circle of people upon whom the award of 'spiritual teacher' has been conferred" and that "continued membership" requires participation in annual seminars, the presentation of oral lectures, and authorship of publications. We do not agree that the petitioner has demonstrated the beneficiary's membership in an association. The record contains no evidence of the membership bylaws for the claimed association. More importantly, the petitioner has failed to establish that admission to membership in this claimed association requires outstanding achievement and that the beneficiary was evaluated by national or international experts in consideration of her admission to membership. While the group does share a common certification as "spiritual teachers," there does not appear to be any formal structure or standardized eligibility requirements to become a "member" of the association beyond the completion of basic educational and training requirements. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

*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.*

As evidence to establish that the beneficiary meets this criterion, counsel references the publication of an article written by the beneficiary in the October 2006 issue of *Amritabha Magazine*, the “official magazine of [REDACTED] institute at Chateau Amritabha [that] is only published twice a year.” The plain language of this criterion, however, requires *published material about the alien*. The petitioner’s authorship of this article is more relevant to the published materials criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6) and will, therefore, be discussed in relation to that criterion. The record contains no evidence of published material in professional or major publications or media about the beneficiary relating to her field of endeavor. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

*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.*

Counsel contends that although the beneficiary did not judge the work of others in her field of endeavor, she did judge the work of others, “in an allied field, physical therapy.” In support of this claim, the petitioner submitted a letter from [REDACTED] Headmaster of a physical therapy school in Switzerland. In his letter, [REDACTED] indicates that in the beneficiary’s position as “student supervisor” the beneficiary supervised five students per term, conducted personal observation, weekly training and examination of the students, and issue final reports at the end of the term. We do not find this evidence sufficient to establish that the beneficiary meets this criterion. First, we do not find that physical therapy is considered an “allied field of specialization” to the beneficiary’s field of endeavor in business as a director of a wellness center. More importantly, however, the beneficiary’s evaluation of a student’s academic progress is not indicative of sustained national or international acclaim. In an occupation such as teaching where “judging” the work of others is an inherent duty of the occupation, simply performing one’s job related duties demonstrates competency, and is not evidence of national or international acclaim. The record contains no evidence that the beneficiary has participated on a panel, or individually as a judge of the work of others in a business-related field. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

*Evidence of the alien’s original scientific, scholarly, or business-related contributions of major significance in the field.*

The petitioner submitted letters regarding the beneficiary’s certifications, training, and work with individuals. However, the letters do not establish how the beneficiary’s work is considered original and how her work is considered a contribution of major significance in the field. For instance, although [REDACTED] states that the beneficiary’s article and her course on “[t]he creative power of the 5 elements” is the “unique knowledge” of the beneficiary and that she is the only one who can teach this seminar, he does not explain the significance of the material in the article or the seminar, the impact the beneficiary’s teaching the seminar, or any other information which demonstrates that the beneficiary’s teachings or article are original contributions that have had a major significance. Further, it does not appear that the beneficiary had even taught this seminar at the time of filing. Rather, the letters in the record from [REDACTED] and [REDACTED] indicate that the beneficiary’s lectures took place on August 3, 2006 and August 23, 2006, respectively, six months after the filing of the petition. As previously noted, the petitioner must establish the beneficiary’s eligibility at the time of filing. Eligibility cannot be established based upon occurrences which take place

after the filing of a petition. *Id.* While the petitioner also submitted several letters from individuals who have been treated by the petitioner, we find no evidence that the beneficiary's treatment of these individuals was involved new processes or techniques or and that the treatments are considered a contribution of major significance. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.*

To establish that the beneficiary meets this criterion, counsel refers to an article purportedly written by the beneficiary for publication in the *Amritabha Magazine*. In addition to noting that the article's publication was to take place *after* the filing of the petition, the director found that the petitioner failed to establish that this magazine is considered to be a "professional journal" or "other major media." On appeal, the petitioner submits a letter from J.R. Bornhorst, chief editor and publisher of *Amritabha*, who states that the magazine is a "professional and major trade publication in the field of holistic magazines." This evidence is not sufficient to establish that the beneficiary meets this criterion. First, the sole evidence of the nature of the journal is from the editor and publisher of the journal itself. The record does not contain independent evidence that the *Amritabha Magazine* is considered major media or a professional journal "in the field of holistic magazines." More importantly, we again note that the beneficiary's position is the director of a wellness center and that her field of endeavor is business. As such, the publication of an article unrelated to her position as a director is not evidence of her authorship of a scholarly article in her field. Regardless, the record contains no evidence of the actual publication of this article much less that it had been published at the time of filing. The record includes no contemporaneous evidence showing that, as of the filing date of this petition, the petitioner had published any material in professional or major trade publications relating to the beneficiary's field of endeavor. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Subsequent developments in the petitioner's career cannot retroactively establish that she was eligible for the classification sought as of the filing date. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

*Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.*

In order to establish that the beneficiary performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's employment as well as the reputation of the organization.

With the initial filing, the petitioner submitted a copy of the beneficiary's employment contract as "evidence that alien will perform as lead director for meditation and education." While we do not dispute that the director of the petitioning center is considered to be a critical or essential employee, the petitioner has failed to establish its distinguished reputation. While not meant to disparage the petitioning center, given that the business is just being developed, it does not appear to have any established reputation.

As it relates to the petitioner's prior employment, the petitioner submits evidence related to the beneficiary's employment at "The Orange House" in [REDACTED] of "The Orange House," indicates

that the petitioner helped her find the "ideal place and building," that she "accompanied [her] when looking for furniture and installing it," and worked on the website. While [REDACTED] indicates that the beneficiary "was employed in a physiotherapy centre until she started her own practice for Physiotherapy and Acupuncture in The Orange House," [REDACTED] does not specify the beneficiary's actual position or provide any other information to establish that her employment with the Orange House was critical or essential. We do not find that the beneficiary's assistance in performing duties such as furniture shopping or working on a website qualifies as critical or essential. While counsel also refers to work done by the beneficiary at the [REDACTED] in Steinebrunn, Switzerland, neither the brochure nor the attached translations referred to by counsel contains any mention of the beneficiary's name. In addition to failing to establish that the beneficiary's employment at these two centers was considered as critical or essential, the petitioner also failed to establish that the centers have distinguished reputations.

On appeal, while the petitioner submitted letters from individuals who state that the centers are "well established" and "known for their excellent work," neither letter establishes the distinguished reputation of either of these establishments. Moreover, no further evidence was submitted to establish the nature of the beneficiary's employment so as to make a determination that the employment can be considered critical or essential. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

*Evidence that the 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.*

On the Form I-129, the petitioner indicated that the beneficiary would earn \$60,000 per year and submitted a copy of the beneficiary's employment contract. In response to the director's request for evidence (RFE), counsel claimed that the beneficiary commanded a high salary in Europe. To support the claim regarding the beneficiary's high salary in Europe, the petitioner submitted a typewritten document from the beneficiary describing her work in a clinic and as a spiritual teacher and a statement regarding the beneficiary's earnings. The petitioner, however, failed to submit any documentary evidence to establish the beneficiary's claimed earnings. Moreover, the petitioner has failed to establish that these claimed earnings were high in comparison to others in positions similar to that of the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, as evidence to support the assertion that the beneficiary's proffered salary of \$60,000 at the petitioner's wellness center would command a high salary in comparison to other such directors, the petitioner submits a letter from [REDACTED] headmaster of the [REDACTED]. We do not find this single letter sufficient to establish the beneficiary's high salary. First, although the letter establishes that the beneficiary's salary is greater than the entire annual income for the [REDACTED] the basis for comparing the [REDACTED] and the petitioning center is unclear. There is no evidence that the [REDACTED] offers similar services or caters to the same number of people as the petitioning center. Regardless, the fact that the beneficiary may earn more money than a single center that conducts business outside of the United States is not sufficient to establish that the beneficiary's salary is considered high. We find it significant to note that despite the submission of several letters from [REDACTED], the petitioner does not submit evidence regarding the salary of the director of [REDACTED]. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

The record does not establish that the beneficiary has extraordinary ability in business, which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner failed to establish that the beneficiary has received a major, internationally recognized award or that she satisfies any of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). 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 burden of proof in these proceedings rests solely 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.