

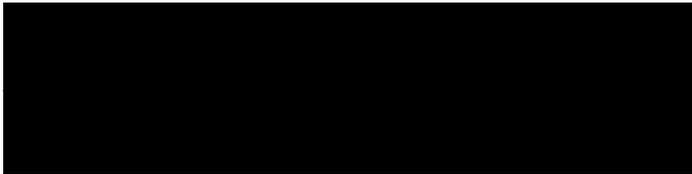
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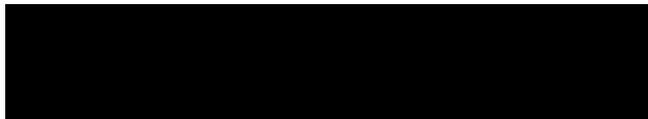
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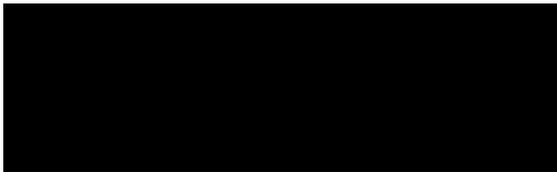
FILE: WAC 02 038 51106 Office: CALIFORNIA SERVICE CENTER Date: MAY 24 2005

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to 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.

Maif Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The California Service Center Director 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 is a cable TV accessory design and consulting company that was established in 2001. The petitioner seeks an extension of the validity of the petition granting O-1 classification to the beneficiary, under 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 as a broadcast engineer and businessman. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as its Chief Operating Officer.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained national or international acclaim in his field of endeavor.

The petitioner submitted a brief on 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.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have arisen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 214.12(o)(3)(iii). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The beneficiary in this matter is a 64-year old native and citizen of the United Kingdom. The record reflects that he received his advanced technical certificate in engineering from Croydon Technical College in 1960. He entered the field of broadcast engineering at the British Broadcasting Service (BBC) in 1960. He subsequently held managerial positions at Star TV, Hong Kong, American Sky Broadcasting, Arizona, Slingshot Networks, California, Snell & Wilcox, Inc., California, among others, over the last 40 years.

This petition seeks to classify the beneficiary as an alien with extraordinary ability in the broadcast engineering industry. The regulation at 8 C.F.R. § 214.2(o)(3)(iii) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien’s receipt of such an award, the regulation outlines eight criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, it claims, meets the following criteria.¹

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.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

For criterion number two, while the beneficiary was a founding member of the Asian Society of Television, Radio, and Communications (ASTRAC) and was made an Honorary Life Member in 1997, there is insufficient evidence that this was an association that required outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. According to the evidence on the record, ASTRAC is now defunct. The petitioner asserts that the beneficiary satisfies this criterion because he was made an Honorary Life Member due to his outstanding contributions to ASTRAC. The record does not establish that membership (honorary or otherwise) require outstanding *achievements* of their members, *as judged by recognized national or international experts* in the field of endeavor. (Emphasis added).

The beneficiary is an active member of the Society of Motion Picture and Television Engineers (SMPTE). The petitioner submitted to Citizenship and Immigration Services (CIS) a copy of SMPTE's bylaws, which outline membership requirements. According to the bylaws, membership is open to individuals who have performed, or been responsible for, engineering or scientific work in the motion picture, or television industries. The record does not establish that SMPTE requires outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. The beneficiary does not satisfy this criterion.

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

For criterion number five, the petitioner submitted testimonials. Declan Coleman, founder and technical director of Ideal Systems Asia-Pacific, wrote that the beneficiary "contributed . . . especially in the area of multi-lingual text systems." Former colleague Brian Redmond, senior project manager for broadcast engineering operations, Pinnacle Systems, suggested that the beneficiary and his team at Star TV developed the first digital multilingual system for Asia and that "this accomplishment was significant . . . because it provided a viable and reliable data solution to what would have been a costly and technically prohibitive barrier to the desired expansion of programs to be transmitted." David Ludder, Senior Director, Technology & Operations, iNDEMAND, wrote that the beneficiary played a lead role in the design, installation and commissioning process of a satellite broadcast facilities in Hong Kong and Los Angeles. James Sinclair, Strategic Operations Director, National Transcommunications Limited, wrote that the beneficiary's work resulted in the modification and improvement of International Standards.

The petitioner failed to demonstrate that the beneficiary's contributions are significant in relation to others in the field. The testimonials are insufficiently specific. All six testimonials were written by former employers, colleagues, friends, or persons employed at the petitioner's organization. While these testimonials speak highly of the beneficiary, letters written by those with professional ties to the beneficiary do not establish that the beneficiary is well known beyond his immediate circle of colleagues, as one might expect of a person who had made an original contribution of major significance in the field.

In review, the evidence fails to show that beneficiary has sustained national or international acclaim and recognition for major achievements in the field of endeavor. The beneficiary does not satisfy this criterion.

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

The petitioner asserts that the beneficiary has worked in key managerial and operational positions for distinguished organizations, to wit:

- Manager of the Research and Development Division of DigiStar Project at StarTV in Hong Kong.
- Quality Control Engineer for America Sky Broadcasting project in Arizona overseeing the "first in the world central broadcast operations center to carry in excess of 360 digital channels."
- Head of the engineering team overseeing the design, installation and operation of the Staples Center, "the most technically advanced High Definition broadcast facility in the world," in Los Angeles, California.
- Manager of the broadcast services business development division at Snell & Wilcox, Inc.

The director indicated that the beneficiary did not satisfy this criterion because he had not served as a chief operating officer for any of the organizations. This portion of the director's decision will be withdrawn. Although the AAO concurs with the director's determination that the beneficiary does not satisfy this criterion, we do not believe that the job title is necessarily determinative of whether an alien meets this criterion.

The terms critical and essential are synonymous with crucial and indispensable. Although the beneficiary's former employers valued his work, they do not state that he played a crucial or indispensable role. The record does not establish that the beneficiary has been employed in a critical or essential capacity for his former employers.

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.

The director determined that the beneficiary satisfied this criterion.

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 extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized. 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). The beneficiary's achievements have not yet risen to this level.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as

binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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.