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U.S. Department of Homeland Security
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

File: WAC 07 800 06444 Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2009

IN RE: Petitioner: [redacted]
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:

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).

John F. Grissom, Acting 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 pediatric general dentistry practice. He 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. The petitioner seeks to temporarily employ the beneficiary as a dental assistant for a period of two years.

The director denied the petition on July 3, 2007, 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.

On appeal, the petitioner submits a letter in which he requests reconsideration and further explains as follows:

> [Y]our denial for a non-immigrant visa, perhaps would lay with my misclassification of her talent. I regret if my choice of [the beneficiary's] talent classification based on USCIS "list of reasons" has caused a misunderstanding in your decision process. It is my duty to clarify [the beneficiary's] unique behavioral talent with this appeal.
>
> . . . [Neither] [the beneficiary] nor myself have any written proof to demonstrate [the beneficiary's] unique positive behavioral approach toward children. It is rather a personal observation last year during my first multi-day dental meeting in Tehran. While with pediatric patients [the beneficiary's] unique approach to assist with dental care of these children that prompted me to realize [the beneficiary] presents in my near future large dental practice would be very valuable. Please, note that by State law, [the beneficiary] must have a dental assistance certificate in order to be hired as a certified dental assistance [sic]. For that, I have accepted the responsibility to invest in [the beneficiary] to obtain education toward a dental assistance certification. . . . This may take up to a year of education to obtain such certification. It is all for [the beneficiary's] talent to be recognized and properly utilized.

The petitioner concludes that he is requesting a working visa to enable the beneficiary to "explore her talent" in his dental practice.

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. As noted in the director's decision.

The director denied the petition based on the petitioner's failure to submit evidence to meet any of the above-referenced criteria. The petitioner stated on Form I-129 that the beneficiary "possesses a unique talent in respect to children behaviors. Although [the beneficiary] is not trained by traditional schooling, her talent is a diamond in a rough!" The petition was submitted electronically without any supporting evidence. Accordingly, the director subsequently issued a request for evidence (RFE) on April 25, 2007 instructing the petitioner to submit documentation to satisfy the evidentiary requirements set forth at 8 C.F.R. § 214.2(o)(3)(iii).

In response to the RFE, the petitioner submitted a letter dated May 26, 2007, in which he stated that the beneficiary's "special pediatric behavioral technique is not discovered or widely recognized by any known organization rather a talent that was discovered inadvertent[ly] with my attendance in a Tehran's dental meeting." The petitioner also submitted a letter dated January 27, 2007 from the [redacted] which indicated that the beneficiary worked as "Tutorship" in the center from 1993 until 2007. Based on the evidence submitted, the director properly concluded that the beneficiary, who has not even been trained as a dental assistant much less earned sustained international recognition and acclaim in the field, does not qualify for this visa classification.

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. Rather, the petitioner concedes that he probably misclassified the beneficiary's "talent," and acknowledges that there is no "written proof" to demonstrate the beneficiary's innate abilities in working with children.

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.