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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN 02 222 50667 Office: NEBRASKA SERVICE CENTER Date: FEB 28 2003

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
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 is a non-profit cross-cultural mental health organization. The petitioner is seeking O-1 classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in yoga. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a yoga master at an annual salary of $24,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being one among a small percentage at the very top of the field of endeavor.

On appeal, counsel for the petitioner submits a brief asserting that the record contains substantial evidence that the beneficiary is an alien with extraordinary ability in his field of endeavor.

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, an appeal, and brief.

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 sole issue in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in yoga as defined by the statute and the regulations.

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.

8 C.F.R. §214.2(o)(3)(iii) states, in pertinent part, that:

> *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.

8 C.F.R. §214.2(o)(5)(i)(A) requires, 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.

The beneficiary in this matter is a native and citizen of Nepal. The record reflects that he received a bachelor's degree in civil engineering at Utah State University, Logan, Utah in 1965 and a master's degree in hydrology at the University of Roorkee, India in 1978. In 1986, he completed teachers' training in yoga at the Bihar School of Yoga in Munger, India. He began teaching yoga in 1975. According to his resume, he has worked for the government of Nepal as a hydrologist since 1966. The beneficiary founded a Yogic Center in 1998. In the years 1987-89 and 1991-1992, the beneficiary hosted a weekly television program called "Yoga" in Nepal. The beneficiary was appointed chairperson of the Nepal Ministry of Education's Yoga Education Subject Committee. He was also a member of the Yoga Education Committee of the Mahendra Sanskrit University in Kathmandu, Nepal. The beneficiary served as an adviser to the Institute of Natural Medicine, the Himalayan International University for Yoga, the Nature Cure and Holistic Sciences Center and the Second World Congress on Yoga and Naturopathy. Since 2001, the beneficiary has been employed by the petitioning organization as a yoga master. The record reflects that he was last admitted to the United States on January 12, 2001 in J-1 classification as an exchange visitor.

After reviewing the evidence submitted in support of the petition, the director found the beneficiary ineligible for O-1 classification based on finding the sum of the evidence insufficient to demonstrate that he is "at the very top" of his field of endeavor pursuant to 8 C.F.R. §214.2(o)(3)(ii).

On appeal, counsel for the petitioner asserts that the director erred in finding the evidence insufficient to find that the beneficiary is an alien of extraordinary ability.

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Neither is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The petitioner states that the above criteria are not readily applicable to the beneficiary, so it offers comparable evidence. The petitioner, however, has submitted evidence that it claims meet the criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(B). The criteria are readily applicable to the beneficiary's work in this case. Thus, the petitioner may not submit comparable evidence in order to establish the beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(C).

For criterion number one, the petitioner initially indicated that the beneficiary received the Gorkha Dakshin Bahu IV medal from his Majesty's government of Nepal in 1998.[1] The petitioner failed to provide corroborating evidence and to mention this medal on appeal. Counsel for the petitioner asserts that the beneficiary's selection to serve as the chairperson of the Yoga Education Subject Committee under the Ministry of Education is a nationally or internationally recognized prize or award for excellence in the field of endeavor. The director noted that the criteria for this appointment were not discussed and it was not demonstrated that all those within the field were eligible or considered for the appointment. The director also noted that it appears that those considered were limited to only those individuals in Nepal, therefore the appointment does not demonstrate the beneficiary's standing of all those within the field. On appeal, counsel for the petitioner argues that there is no requirement that the award be an international one. Counsel is correct. The award may be nationally or internationally recognized. The petitioner provided the Service with testimonials that state that the petitioner was selected as chairperson on the basis of his fame and popularity in yoga. Nonetheless, the petitioner has failed to demonstrate that these were awards for excellence in the field of endeavor. The beneficiary does not satisfy this criterion.

For criterion number two, the petitioner asserts that the beneficiary satisfies this criterion because he was selected to serve on two committees: the Yoga Education Subject Committee under the Ministry of Education and the Yoga Education Committee at the Mahendra Sanskrit University in Kathmandu. The petitioner failed to establish that these are associations which require outstanding achievements of their members, as judged by recognized national or international experts in the field.

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[1] See beneficiary's resume in the record of proceeding.

For criterion number three, no evidence was submitted.

For criterion number four, the petitioner asserts that as a high-level yoga instructor, the beneficiary reviewed and judged the skills of many students over his thirty-year career. Judging the work of yoga students is part of the beneficiary's job as an educator, and does not reflect any greater degree of acclaim than other yoga masters enjoy. The petitioner failed to establish that the beneficiary satisfies this criterion.

For criterion number five, the petitioner asserts that the beneficiary made a major contribution by popularizing yoga in Nepal with his television program. As documentation for this assertion, the petitioner provided the Service with several testimonials. Even if this assertion were fully substantiated with objective evidence, the petitioner failed to establish that the beneficiary has sustained acclaim by virtue of this contribution, as required by section 101(a)(15)(O)(i) of the Act. The petitioner hosted the program in the years 1987-89 and 1991-1992, more than a decade ago. The petitioner also asserted that the beneficiary made an original contribution of major significance in his field by achieving the title of Swami. The petitioner failed to establish how the beneficiary made a contribution of major significance by virtue of achieving this title. On appeal, counsel for the petitioner argues that the director used an incorrect standard when he said, "the evidence submitted significantly addresses the beneficiary's work and status within Nepal but for the classification the beneficiary must be evaluated on a much larger scale." Counsel's argument is not persuasive. The director took into account the beneficiary's national acclaim but found that the record does not show that the beneficiary is one among a small percentage at the very top of the field of endeavor. The beneficiary does not satisfy this criterion.

For criterion number six, the beneficiary has authored twelve articles. At least two of his articles were published in *Nepal Vision*, a publication of Nepal Vision Treks & Expedition, Ltd., a tourist agency in 1983, and in 1991. A third article was published in *Arts of Asia* in 1984. Others were published in *Dharma Sandesh*[2] in 1987, and 1990. The petitioner failed to establish that these publications are major media. The petitioner asserts that an article written by the beneficiary was published in *The Rising Nepal*, a daily national newspaper. The petitioner failed to provide the date of publication, so it cannot be considered. The beneficiary authored several papers, which he presented at Himalayan Herbs Private Limited, aka the Nepal Traditional Himalayan Herbs Institute. The petitioner failed to

[2] The Annual Magazine of Sanatan Dharma Sewa Samiti, Kathmandu, Nepal.

indicate how these papers may be considered scholarly articles published in professional journals or other major media. The beneficiary authored a book entitled *Introduction to World Religions* commissioned by the Nepal National Commission for the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1969. This publication might conceivably satisfy the criterion but it is only one publication and fails to demonstrate that the beneficiary has sustained national or international acclaim in his field.

For criterion number seven, no evidence was submitted.

For criterion number eight, no evidence of the beneficiary's salary history was provided, nor were salary surveys supplied to the Service so that the current annual salary offer of $24,000 could be evaluated.

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."

In order to establish eligibility for O-1 classification, the petitioner also must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii).

In review, the evidence fails to show that the beneficiary has sustained national or international acclaim and recognition for major achievements in the field of yoga.

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.