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U.S. Department of Justice

Immigration and Naturalization Service

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Office of Administrative Appeals
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: SRC 02 227 53460 Office: TEXAS SERVICE CENTER Date: **JAN 06 2003**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

IN BEHALF OF PETITIONER:
[Redacted]

PUBLIC COPY

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 CFR 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 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a bank. The beneficiary is a banker and consultant. The petitioner seeks O-1 classification of 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), as an alien with extraordinary ability in business, in order to employ him in the United States for a period of three years as a senior advisor and trust consultant.

The director denied the petition, in part, because the petitioner failed to establish that the beneficiary is at the very top of his field of endeavor, and the petitioner failed to establish that the beneficiary is coming to the United States to participate in a specific event or events. The director also denied the petition on the basis that the petitioner failed to establish that the proffered position requires a person of extraordinary ability.

On appeal, counsel for the petitioner submitted a brief arguing that the beneficiary qualifies for O-1 classification, and is entering the United States to perform services relating to an event. Counsel also asserts that there is no requirement that the petitioner establish that the proffered position require the services of an alien of extraordinary ability.

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 first issue raised in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in business as defined by the regulations.

8 CFR 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 CFR 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.

The beneficiary is a native and citizen of South Africa. He completed a bachelor's degree in commerce at the University of South Africa, Johannesburg in 1969. The beneficiary began his professional career with the United Building Society in South Africa. He rose in the ranks to become the Managing Director during his 37-year tenure at United Building Society. The beneficiary was instrumental in negotiating a merger of his company with the Trust Bank. He was appointed Deputy Chief Executive of the newly created bank, Amalgamated Banks of South Africa (ABSA) when it had 45,000 employees and assets in excess of 50 billion U.S. dollars. He is currently Chairman of Buk Wonings (PTY), Ltd., a property owning company in South Africa.

After reviewing the evidence submitted in support of the petition, the director found that, although the beneficiary was a highly intelligent, innovative businessman who has focused on specific financial goals for South African banks, he had not demonstrated the type of sustained national or international recognition of his accomplishments necessary for O-1 classification. The director concluded that the record was insufficient to demonstrate that the beneficiary was recognized as one of the small percentage recognized as being at the very top of the field of business pursuant to 8 CFR 214.2(o)(3)(ii).

On appeal, counsel for the petitioner asserts that the director ascribed too little weight to the honors and awards received by the beneficiary.

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 CFR 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 CFR 214.2(o)(3)(iii)(B).

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

Counsel for the petitioner asserts that the beneficiary has received several nationally or internationally recognized prizes or awards for excellence in the field of endeavor, including the Institute of Bankers Award in 1990. The director determined that the prestige attached to this award is nominal because 20% (40) of the 200 applicants received the award. Counsel for the petitioner argues that the regulations do not specify any requisite level of acclaim or prestige, therefore, the director erred in discounting the prestige associated with the Institute of Bankers Award.

In review, counsel's argument is not persuasive. Although the evidentiary criteria for O-1 classification do not state that the alien must have been the sole recipient of an award for excellence in any given contest, the regulations do say that extraordinary

ability 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 CFR 214.2(o)(3)(ii). Even if the Service conceded that only those individuals who have established themselves as being at the pinnacle of the field of banking in South Africa are eligible for consideration, the petitioner has failed to demonstrate that the beneficiary has risen to the very top of his field.

The record also contains a letter from the Executive Director of the Banking Council of South Africa indicating that its Board passed a resolution granting the beneficiary special recognition for the contribution he made to the banking industry in South Africa. The petitioner failed to establish that this award is a nationally or internationally recognized prize or award for excellence in the field of endeavor. The petitioner has failed to establish that the beneficiary satisfies criterion number one.

No evidence was submitted to satisfy criterion number two.

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.

The petitioner provided the Service with five or six articles about the alien, relating to the alien's work in his field of endeavor. At least two articles lack the date and title of the publication, therefore, they cannot be considered. The remaining articles were provided with the title and date of publication, but the petitioner failed to establish that these articles were published in major media. Moreover, the petitioner has not provided any information regarding the circulation or reputation of these publications. The articles were published in 1985, 1988, and 1992. The petitioner has failed to demonstrate that the beneficiary has sustained acclaim to the present date.

No evidence was submitted to satisfy criterion number four.

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

The beneficiary has made several business related contributions of major significance in his field. He was responsible for the introduction of automatic teller machines in South Africa. He instigated the development of Multinet, the first switch for ATM transactions in South Africa. Finally, he launched the Council for South African Bankers as the only body representing the banking industry in South Africa. The petitioner established that the beneficiary satisfies criterion number five.

No evidence was submitted to satisfy criterion number six.

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

The petitioner provided the Service with evidence that the beneficiary has been employed in an essential capacity for several organizations that have a distinguished reputation. He was made Deputy Chief Executive of a leading South African bank. He served as president of the Association of Building Societies, the Association of Mortgage Lenders and the International Union of Housing Finance Institutions. The petitioner established that the beneficiary satisfies criterion number seven.

Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services

No evidence was submitted of the beneficiary's salary history. In the absence of relevant salary data, the petitioner failed to establish that the beneficiary's wages are high in comparison to the wages of senior bank advisors and trust consultants with similar qualifications.

The director denied the petition, in part, because she determined that the petitioner had failed to establish that the beneficiary was coming to the United States to participate in a specific event or events. In review, the petitioner has established that the beneficiary is coming to the United States for a business project of three years duration to perform in an event as defined at 8 CFR 214.2(o)(3)(ii). The petitioner has overcome this objection of the director. The three-year period begins with the approval of the visa petition.

Another issue in this proceeding relates to whether the petitioner established that the proffered position requires an alien of extraordinary ability. The director denied the petition, in part, because the petitioner failed to establish that the proffered position requires an alien of O-1 caliber. On appeal, counsel for the petitioner asserts that there is no such requirement in the regulations or statute. In review, the AAO affirms that there is no such requirement.

Finally, the petitioner provided the Service with a consultation as required by 8 CFR 214.2(o)(5).

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.

The petitioner has established that the beneficiary satisfies two of the regulatory criteria. In order to establish extraordinary

ability in the field, however, the alien must satisfy at least three of the criteria listed at 8 CFR 214.2(o)(iii)(B).

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.