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U.S. Department of Justice

Immigration and Naturalization Service

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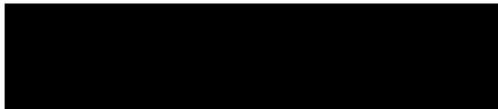


Office of Administrative Appeals
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: WAC 00 203 52512 Office: CALIFORNIA SERVICE CENTER

Date: FEB 05 2003

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)

IN BEHALF OF PETITIONER:



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 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a marketing company. The beneficiary is a businessman. 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 president and director of product and business management expansion.

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.

On appeal, counsel for the petitioner submitted a brief arguing that the beneficiary qualifies for O-1 classification.

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 business as defined by 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.

The beneficiary is a native and citizen of Mexico. He earned a bachelor of science degree in engineering and business from the Universidad Regiomontana of Monterrey, Nuevo Leon, Mexico in 1984. The beneficiary began his professional career with an international company headquartered in Mexico, called Vitro, a

manufacturer and distributor of specialty glassware for institutional use. Over the course of his fifteen-year career at Vitro Corporation, the beneficiary held various managerial and executive positions at two different subsidiaries, VitroCrisa and WorldCrisa. The beneficiary went to work for an affiliate of the petitioner in 1997 as a senior vice president of marketing and sales. The beneficiary became president of the petitioner, Pueblo Corporation, in 1998. In 1999, the petitioner launched a new marketing program targeting the Hispanic community. According to the petitioner, the beneficiary has been the "key catalyst" for this new marketing program, that aims to distribute "a unique affinity card offering preferred pricing for top quality products, services, events, an many other benefits to our country's Hispanic families." The petitioner asserts that this new marketing program will more fully integrate Hispanic families into the U.S. economy.

After reviewing the evidence submitted in support of the petition, the director found that the petitioner and the beneficiary had not established that the beneficiary had sustained sufficient national or international acclaim for his accomplishments as is 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 C.F.R. § 214.2(o)(3)(ii).

On appeal, counsel for the petitioner asserts that the director abused her discretion by failing to adequately analyze law with the case as presented and ignored documentation submitted.

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).

Counsel for the petitioner asserts that a business professional is not defined by the number of awards he receives, but rather, by his leadership that drives the company to achieve dominance in the industry or market. Counsel's argument is not persuasive. The petitioner failed to establish that the commercial success enjoyed by the petitioner while under the beneficiary's leadership 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.

The petitioner provided the Service with two company publications. A message from the company president (the beneficiary) is printed on the first page of one of the publications. The petitioner included excerpts from a business magazine that ranks the petitioner's parent corporation, Pueblo Holdings Corporation. The petitioner also submitted news articles that refer to the petitioner's marketing program, its

plans to build a soccer academy, or feature the petitioner's director general. Several untranslated news articles were also submitted. The published materials are not primarily about the beneficiary, and are not evidence that the beneficiary has sustained acclaim.

No evidence was submitted to satisfy criterion number four.

As evidence that the beneficiary meets criterion number five, the petitioner asserts that the beneficiary has made a contribution of major significance in his field by virtue of his leadership of the petitioner's newest marketing scheme. According to the evidence in the record, the success of the petitioner's newest marketing program has not yet been established. The petitioner has thus failed to establish that the beneficiary's contribution is significant relative to the work of others in the field.

No evidence was submitted to satisfy criterion number six.

In relation to criterion number seven, the petitioner provided the Service with a letter from a vice president of VitroCrisa, one of the beneficiary's former employers, that states that the beneficiary held key executive positions with Vitro Corporation and that while performing in the position of director of glassware business development for WorldCrisa, the beneficiary's leadership resulted in an increase in sales of over 200% in 1997. In the absence of corroborating evidence, the VitroCrisa vice president's assertions are given little weight.

The petitioner's director general states that the beneficiary has played a critical role for the petitioner. He writes: "while I am the founder of [the petitioner company], its ideas, business goals and market dominance could not have been established with out [sic] the extraordinary business genius of someone like [the beneficiary.]" The petitioner asserts that the petitioning company was ranked as the sixth largest Latino owned company in the United States. The petitioner provided the Service with a copy of a magazine article that shows the petitioning company's parent company, Pueblo Holding Company, received that ranking and not the petitioning company. The petitioner has established that the beneficiary has been employed in a critical position for the petitioning company, but failed to establish that it is an organization that has a distinguished reputation.

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 business executives with similar qualifications.

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 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.