



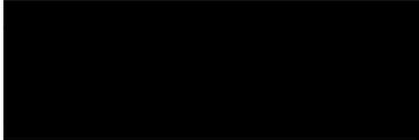
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**U.S. Department of Justice**

**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 01 122 53804

Office: California Service Center

Date: **AUG 29 2002**

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

Self-represented

**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 employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

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 risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). 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 Service regulation at 8 C.F.R. 204.5(h)(3). 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 petitioner is a university-affiliated children's hospital that employs the beneficiary as a clinical fellow in pediatric neurosurgery. The petitioner describes the beneficiary as a "physician, surgeon, researcher [and] educator." Dr. S. David Moss, pediatric neurosurgeon at the petitioning hospital, states:

[The beneficiary] currently is serving a fellowship position in pediatric neurosurgery at the University of Arizona in Tucson, Arizona, and participating on the clinical service of [the petitioning hospital]. He has responsibility for care of pediatric patients with neurosurgical and neurologic problems. He is one of two pediatric neurosurgeons serving the greater Phoenix and Arizona area.

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten 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's initial submission was intended to meet the following criteria.

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

Dr. Moss states that the petitioner "has received nationally recognized awards and distinctions at Tohoku University in Japan in July of 1991." The only documentation in the initial submission which approaches this description is a certificate from the Tohoku Medical Society, which reads "[i]n memory of the valuable contribution you have made to the TOHOKU MEDICAL SOCIETY, we offer you the accompanying token decided upon by the Society to express our heartfelt gratitude." Nothing in the record identifies "the accompanying token." The beneficiary's name has been typed onto a pre-printed form, which does not specify the nature of "the valuable contribution."

The record does not contain sufficient information and evidence to support the claim that the above testimonial constitutes a nationally or internationally recognized award.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

Dr. Moss states that the beneficiary "has served . . . as a monitor and judge of fellow neurosurgeons in their performances." Dr. Moss does not elaborate, and the initial submission contains no evidence of the beneficiary's work as a judge.

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

The record contains an "Invention/Copyrightable Work Disclosure" form from the University of Arizona's Office of Technology Transfer, identifying the beneficiary as one of three inventors of a "universal system for illumination via surgical instruments." The form indicates that, as of June 29, 1999, the system described on the form had not been disclosed or published, nor was such publication or disclosure planned for the remainder of 1999. The record does not establish when, if ever, the system was disclosed, published, or implemented at anything approaching a national level. The record contains no independent evidence to show that the petitioner's contribution has been widely viewed as having major significance.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The record shows that the beneficiary had co-written a textbook chapter (not yet published as of October 2000) and several conference presentations with accompanying abstracts. The beneficiary's resume lists two published articles, neither of which are contained in the record. The petitioner has submitted evidence of the existence of one of the articles in the form of an abstract and publishing data. The record does not establish that it is a rare achievement for a university-affiliated surgeon to publish articles or case studies.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

Dr. Moss states:

[The beneficiary] has evidenced service in a leading and critical role for distinguished organizations, including the American Medical Association, the Royal College of Physicians and Surgeons in Glasgow, General Medical Council [sic], United Kingdom (GMC), Tohoku Medical Society, Japan, College of Physicians and Surgeons of Pakistan, Pakistan Medical and Dental Council [sic] (PMDC), and the Society of Neurosurgeons of Pakistan.

The record establishes the beneficiary's membership in, or registration with, the above organizations. The record does not, however, show that the beneficiary has served as a top official or otherwise played a leading or critical role for any of these organizations. Evidence of membership is not presumptive evidence of a leading or critical role.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

Dr. Moss asserts that the beneficiary "has been compensated highly in comparison to . . . his fellow colleagues," but the record does not include evidence of the beneficiary's remuneration, nor any evidence of the compensation of other neurosurgeons against which to make a comparison. On the I-140 petition form, the petitioner indicates that the beneficiary earns \$40,500 per year. The Department of Labor's *Occupational Outlook Handbook*, ("Handbook") 2002-2003 edition, page 264, states that the median net income (after expenses) for all surgeons was \$240,000 in 1998. The beneficiary's stated salary of \$40,500 is barely one-sixth of that amount, and therefore we cannot conclude that the beneficiary is among the highest-paid neurosurgeons in the United States. If we consider the beneficiary to be university faculty rather than a neurosurgeon, his salary still falls short. Page 199 of the *Handbook* states that full time university faculty earned an average salary of \$58,400 per year in 1999-2000; full professors earned an average salary of \$76,200. The *Handbook* adds "[m]ost faculty members have significant earnings in addition to their base salary," indicating that total average remuneration is higher than the above figures.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, Billie Morgan

(whose position is unidentified, but who writes under the petitioner's letterhead) submits additional evidence and claims to have satisfied even more of the regulatory criteria.

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

██████████ asserts that the beneficiary's fellowships in the Royal College of Physicians and Surgeons, Glasgow, and in the College of Physicians and Surgeons, Pakistan, qualify as prizes or awards, along with the beneficiary's medical degree and various academic honors that the petitioner earned in secondary school. The secondary school honors predate the beginning of the beneficiary's medical education and thus cannot realistically be called awards for excellence in the field of endeavor. The beneficiary's medical degree is not a prize for excellence, but rather the expected result of competent study at a medical school. The petitioner has submitted no evidence to show that admission as a fellow to a College of Physicians and Surgeons constitutes a prize or award, rather than merely a professional qualification or credential.

*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.*

Having previously identified the many professional organizations to which the beneficiary belongs, the petitioner asserts in response to the director's notice that these memberships satisfy this criterion. In order to satisfy the criterion, the petitioner must present evidence showing that the organizations and associations require outstanding achievements of their members. The record contains no such evidence, and ██████████ states only that the associations require each prospective member to be a "fully qualified and registered physician." Being a qualified physician is not an outstanding achievement among physicians, and therefore these memberships do not elevate members above all others in the field of medicine.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

Ms. Morgan explains why the petitioner claims the beneficiary has judged the work of others. She states that the beneficiary is a "[f]acilitator of the quality review process for Neurosurgery which needs [the] highest level of expertise to identify and review the charts and imaging of the patients treated by the other Neurosurgeons and developed some problems related to neurosurgical treatment during their hospital stay." Ms. Morgan asserts that the beneficiary is also a "[p]eer reviewer of Staff Neurosurgeons of University of Arizona."

Laura Davis, manager of Quality Resource Management at the petitioning hospital, states:

[The beneficiary] is facilitating the quality review process for the Neurosurgery Section Committee. He has been involved with this quality review process for the past two

years and continues to present cases for review at the quarterly Neurosurgery Section Committee meetings. In preparation for Mortality and Morbidity case presentations, [the beneficiary] reviews all pertinent patient information from the medical record and imaging studies in order to identify opportunities to improve patient care processes. In addition, [the petitioner] presents relevant literature to the department for discussion and education.

Much of what is described above does not amount to judging the work of others in any discernible sense. Other duties involve evaluating the work of others to some extent, but it is not clear to what extent quality review duties are within the routine tasks of a hospital staff member (such as participation in mortality and morbidity case presentations). [REDACTED] letter contains no indication that the beneficiary has acted as a judge at a national or international level.

The petitioner submits copies of "Evaluation of Attendings' Clinical Teaching" forms. These forms appear to be routine teacher evaluation forms, of the type commonly encountered in classrooms and other instructional settings. The very fact that pre-printed (and in some cases computer-scanned) forms are used demonstrates the routine nature of such evaluation. The beneficiary's use of such forms is not in any way unusual, and it cannot set him apart from the vast majority of workers in his field or place him at the very top of that field.

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

Ms. Morgan lists the following achievements:

- i) Positron Emission Tomography (PET Scan) for language localization to avoid the damage of these areas during surgery, which will replace all invasive tests in future.
- ii) Positron Emission Tomography (PET Scan) for Brain Tumors grading. It will also replace the invasive procedures in future.
- iii) Direct delivery of light into Surgical field, which will improve illumination during surgical procedures.
- iv) Real time ultrasonography by using microprobes, which will help to in accurate brain lesions, tumors, cysts, ventricles localization during surgery.
- v) Plagiocephaly. Asymmetry of head in infants and the best treatment option which is repositioning of the head. Surgeons used to do extensive cranial reconstruction for this condition.

Dr. S. David Moss, in his second letter on the beneficiary's behalf, states that the beneficiary's "main contribution is his original research work . . . [which] will change the practice of Neurosurgery in the future from invasive 'WADA test' to non-invasive 'PET scan' for language localization." To establish that the beneficiary's methods "will change the practice of neurosurgery," the petitioner must submit evidence to establish the extent to which the field, at a national or international level, has adopted and recognized the beneficiary's innovations.

Dr. Michael A. Lawson, medical director of the Samaritan PET Center at Good Samaritan Regional Medical Center, Phoenix, Arizona, asserts that he has “been working with [the beneficiary] on a project of retrospective review of positron emission tomography (PET) in the evaluation of pediatric brain tumors.” Dr. Lawson states that the beneficiary “has sustained National and International recognition for his work in the field of Pediatric Neurosurgery,” but Dr. Lawson’s personal statement does not constitute direct evidence of such recognition. It remains that Dr. Lawson is one of the beneficiary’s collaborators, based (like the beneficiary) in Phoenix. The record does not show that the beneficiary’s innovations have had significant impact, or seen widespread implementation, outside of the Phoenix area, or that neurologists throughout the nation refer special cases to the beneficiary, which would also suggest a national reputation.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submits an updated list of the beneficiary’s articles and presentations, with nothing to establish the impact of the beneficiary’s published work or distinguish it from the published work of others in the field.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The petitioner lists several of the beneficiary’s poster presentations under this criterion. Scientific conferences are not artistic exhibitions or showcases; presentations of this kind are more akin to publication of scholarly articles, in that they represent the dissemination of highly technical research information to a specialized audience.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

Ms. Morgan states that the beneficiary has fulfilled such a role for the petitioning entity, through “[i]ndependent organization of research work.” The record does not establish that the beneficiary’s organizational duties constitute a leading or critical role for the petitioner or its parent university. The beneficiary appears to be an advanced trainee occupying a relatively low position in the academic/research hierarchy, in comparison with tenured professors, department heads, and top university officials. A prominent role within a specific project cannot suffice except in the presence of evidence that the project itself enjoys distinction at the national or international level.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

Ms. Morgan asserts that the beneficiary “is highly remunerated for his research presentations in National and International meetings,” but this claim is entirely unsubstantiated. The record contains no evidence that the beneficiary receives compensation especially for his conference presentations, or that such compensation is significantly high in relation to others in the field.

To establish the beneficiary's compensation, the petitioner submits copies of tax documents showing that the beneficiary earned \$39,996.00 in 2000. \$39,399.37 of this amount is reflected on a 2000 Form W-2 from the petitioner's parent university, leaving less than \$600.00 unaccounted for. It does not appear, therefore, that the beneficiary's presentations represented a significant source of supplemental income for the beneficiary.

Accompanying the petitioner's submission in response to the director's notice is an unattributed "critical analysis" of the regulations governing the immigrant classification sought. This document repeatedly stresses the importance of showing that a given piece of evidence elevates the alien above the vast majority of others in the field. For instance, the analysis reads "if all (or most) researchers are expected to publish their findings, does this mean all researchers are of [extraordinary] calibre? Don't think so." While the petitioner has submitted this document, there has been no indication that the petitioner has attempted to follow it, and indeed the document contains arguments that undermine many of the petitioner's key claims.

The director denied the petition, providing a detailed analysis of the petitioner's evidence and concluding that "[t]he petitioner has failed to provide compelling evidence that [the beneficiary] has sustained national or international acclaim and recognition in the field." The director found that routine administrative duties, student awards, and other factors in the record do not place the beneficiary at the very top of his field.

On appeal, I [REDACTED] argues on behalf of the petitioner that "[t]he California Service Center has admitted that the beneficiary has extraordinary ability: 1) by giving him the O-1 Visa [and] 2) by using the terms that the 'beneficiary is a talented and extraordinary physician.'" Regarding the first point, this office is not in possession of the record of proceeding relating to the beneficiary's nonimmigrant visa, and therefore we cannot determine how, if at all, it differs from the record before us, or whether that petition was approved in error. If approval of an O-1 nonimmigrant visa were *prima facie* evidence of eligibility for immigrant classification as an alien of extraordinary ability, the regulations would have reflected that point, if only to greatly reduce adjudicative resources expended on O-1 aliens who later seek immigrant classification as extraordinary. It remains that the evidence before us in the present record of proceeding simply does not support a claim of extraordinary ability. The beneficiary's O-1 visa does not, itself, demonstrate direct evidence of sustained acclaim, nor does it create an irrebuttable presumption of such acclaim.

Regarding the second point, while the director did use complimentary terms to refer to the beneficiary, the director also repeatedly explained that the petitioner has failed to meet the necessary evidentiary criteria. The director also specifically observed that some usages of the term "extraordinary" are more general than others. The director did not contradict herself by noting the beneficiary's accomplishments while at the same time finding that the beneficiary does not qualify for the highly restrictive classification sought.

The petitioner has submitted supplementary documentation, consisting primarily of copies of previously submitted materials, as well as additional commentary by Billie Morgan. Ms. Morgan states that the director "applied the law incorrectly in this case" because the decision rested, in

part, on a discussion of the one-time major international award clause. While it is true that the petitioner had not claimed that the beneficiary had won such an award, the director's discussion of that clause does not demonstrate adjudicative error. The director observed that the beneficiary's awards are academic in nature, and reflect recognition limited to a given institution rather than at the national or international scale. This observation holds regardless of whether the director then went on to discuss the major award clause.

Many of [REDACTED] assertions on appeal are unsupported. For instance, she states that "every one in the field of Neurosurgery knows that only a few Neurosurgeons . . . are able to present their work" at specific conferences where the beneficiary has presented his work. The record contains nothing from officials of the entities sponsoring the conferences to support or expand upon this assertion. Similarly, [REDACTED] offers a detailed discussion of the beneficiary's award from Tohoku Medical Society, but the record contains nothing from that society to corroborate her statements or to show that [REDACTED] is qualified or authorized to speak on behalf of that society, her assertions carry no weight. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Other observations are not relevant to the issue at hand. [REDACTED] asserts "[t]here are more than 10,000 Neurosurgeons in USA and more than 100,000 in the world and only 2,405 are active member[s] of CNS," the College of Neurosurgeons. It does not follow from this that CNS' members represent the 2,405 best neurosurgeons in the world. Similarly, [REDACTED] contends that very few of the world's neurosurgeons are members of the same combination of professional associations as the petitioner, but there is no evidence that any of those associations require anything more of their members than professional qualifications as a physician or surgeon. The combination of associations appears to have more to do with the beneficiary's work in several different countries than with recognition as an extraordinary surgeon.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the beneficiary has distinguished himself as a neurosurgeon, researcher, or educator to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.