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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: EAC-01-066-50691 Office: Vermont Service Center Date: AUG 1 2001

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

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER: Self-represented

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 which 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 which 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 which 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
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner in this matter is the medical school of a university. The beneficiary is a medical doctor and a research scientist specializing in neurology. The petitioner seeks 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 science, in order to continue to employ him in the United States for a period of three years as an associate research scientist at an annual salary of \$43,094.

The director denied the petition finding that the petitioner failed to establish that the beneficiary met the regulatory standard necessary for classification as an alien with extraordinary ability in science.

On appeal, the petitioner submitted a letter from Dr. George Richerson, an Associate Professor of Neurology at the university and the beneficiary's direct supervisor. Dr. Richerson explained that the beneficiary has conducted groundbreaking research in an area of research related to Sudden Infant Death Syndrome (SIDS) and that he is essential to the ongoing work of the research project. It was further opined that the loss of the beneficiary could result in a delay in reaching a cure for SIDS.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (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 issue raised by the director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in the sciences as defined in these proceedings.

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 the People's Republic of China last admitted to the United States in J-1 classification as an exchange visitor to participate in post-doctoral medical research programs. He was later granted a change of status to H-1B classification to continue employment with the petitioner valid through March 31, 2001.

In reaching a determination for O-1 classification, the Service must take into account the evidence of record as a whole. The beneficiary's resume reflects that he was awarded an M.D. in China, but the date and the university were not identified. It further indicates that he has been employed as a post-doctoral research fellow/associate from 1991 to 1994 by the Dartmouth University School of Medicine and since 1995 by the Yale University School of Medicine. His current employment is in a highly specialized field of neurological research funded by the National Institutes of Health. The record shows that the beneficiary has numerous professional publications, at least six of which were as first author, and is employed by an institution with a prestigious reputation. The petitioner submitted numerous letters of recommendation from prominent persons in the field of neurology.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for extraordinary ability, the statute requires proof of "sustained" national or international acclaim and proof 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 fact that an alien may be involved in a highly specialized area of research within a field of endeavor or that he may be critical to a particular research project is not sufficient to establish eligibility for O-1 classification. Sustained recognition of achievements in a field of science is the standard that must be satisfied. The letters of recommendation submitted on behalf of the beneficiary were from professionals who are chairs of university departments, editors of professional journals, or authors of textbooks. These are factors that would be favorable to

a determination of the requisite acclaim necessary to establish extraordinary ability under this visa provision.

The beneficiary's publications and recommendations are clearly impressive, but they are the norm in the academic professions and are not sufficient proof of extraordinary ability as contemplated in the statute. The beneficiary has been employed since November 1991 as a post-doctoral fellow or research associate. The proposed position in this matter is for a research associate with a modest salary under the supervision of a faculty member of the department. Neither the job title nor the proposed wage indicate that the beneficiary has yet achieved recognition as having extraordinary ability in science. The record does not establish that the alien is considered to be one of the small percentage of individuals who have risen to the very top of the field of neuroscience as required by the pertinent regulation. Therefore, the appeal must be dismissed.

The denial of this petition is without prejudice to the petitioner pursuing any other immigration benefit for which the beneficiary may be eligible.

The burden of proof in these proceedings rests solely with the petitioner. § 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.