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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

[Redacted]

AUG 3 2001

File: EAC-01-063-51570 Office: Vermont Service Center Date:

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:
[Redacted]

Public Copy

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
Robert P. Wiemann, Acting Director
Administrative Appeals Unit

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 described as a commercial research and development firm involved in developing sensors to detect trace chemicals in water and air. The beneficiary is a chemist. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in science in order to employ him in the United States for a period of three years.

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

On appeal, counsel for the petitioner argued that the director failed to properly evaluate the evidence presented. Counsel argued that the beneficiary has the requisite national and international acclaim to qualify for the benefit sought. Counsel further stated that the Vermont Service Center approved a petition for O-1 classification for another member of the petitioner's research team and argued that it is incongruous to deny the instant petition.

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 of extraordinary ability.

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 is a native and citizen of the People's Republic of China who was awarded a Ph.D. in chemistry in 1996 and was last admitted to the United States in J-1 classification to pursue additional studies at Mississippi State University.

The director extensively reviewed the beneficiary's credentials in the decision. The director found the beneficiary ineligible for O-1 classification based on finding insufficient documentation to show that he is "at the very top" of his field pursuant to 8 C.F.R. 214.2(o)(3)(ii) or that he has had the requisite "sustained acclaim" in the field of chemistry required by the statute.

Counsel argued on appeal that the director did not evaluate the evidence fully. Counsel asserted that the beneficiary has thirty professional publications, of which he was first author on nineteen, and that his work has been cited by other researchers in the field. Counsel also argued that the beneficiary developed new techniques in atomic spectrometry that are needed in the proposed position.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objections. There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B). It must be noted that these provisions are only documentary requirements and merely addressing them does not establish eligibility for the benefit sought.

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 a demonstration 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 the beneficiary has published thirty professional research articles shows neither that national and international recognition of the beneficiary's achievements has been sustained nor that it is extensively documented.

The regulations specifically state that O-1 classification is available only to a "small percentage" of scientists who have arisen to the "very top" of their field of endeavor. The record shows that the beneficiary is an accomplished chemist and

researcher with published work. However, the petitioner failed to submit any evidence that the beneficiary's work has been recognized as being at the very top of the field of chemistry relative to other corporate and academic researchers in chemistry. The accomplishments noted by counsel are the norm in the professions and are not sufficient proof of extraordinary ability. The petitioner did not submit any evidence that the beneficiary is recognized within his field as being one of a small percentage at the very top.

Counsel's additional reliance on the beneficiary's specialization is not persuasive. Sustained recognition of achievements in a field of science is the standard that must be satisfied. Scarcity of a skill or work in an area of specialization within a field of endeavor does not in and of itself establish the requisite extraordinary ability.

Counsel also argued that the decision should be reconsidered because the Service had approved a petition for O-1 classification to another member of the research team. The argument is not persuasive. First, the record of that proceeding is not available to determine if the facts of the proceedings are analogous. Second, unpublished decisions carry no precedential value. 8 C.F.R. 103.3(c). Third, the Service is not bound by prior decisions which may have been issued in error. See Chief Probation Officers of Cal. v. Shalala, 118 F.3d 1327 (9th Cir. 1997); Thomas Jefferson Univ. v. Shalala, 512 U.S. 504, 517-518 (1994); Sussex Engineering, Ltd. v. Montgomery, 825 F.2d 1084 (6th Cir. 1987).

It must be concluded that the petitioner failed to overcome the grounds for denial of the petition. It has not been established that the beneficiary has extraordinary ability in the sciences within the meaning of section 101(a)(15)(O) of the Act or that he seeks entry to the United States in order to continue work in the area of extraordinary ability.

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