



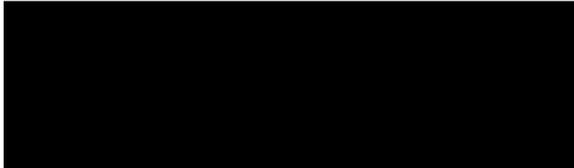
D8

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: LIN01 182 52781 Office: Nebraska Service Center

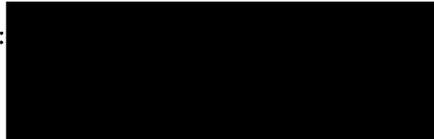
Date: 11 APR 2002

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF APPLICANT:



Public Copy

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, Director
Administrative Appeals Office

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

The petitioner in this matter is a state health department which seeks the services of the beneficiary as a research consultant in health care. The beneficiary has an undergraduate degree in applied mathematics, masters degrees in sociology, anthropology and statistics and a Ph.D. in sociology. He is a scientist specializing in information systems, statistical analyses and demographic health systems research. 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 employ him in the United States for a period of three years as a research associate at an annual salary of \$42,577.

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, counsel states that the beneficiary has risen to the top of his field of endeavor, has just received word of a new Grant approval for his continued work, which will continue to affect health care nationwide. Counsel states that the beneficiary is considered a pioneer in his area, as he is truly at the forefront of his field.

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 Pakistan who was awarded a Masters degree in social science in 1990 and a Ph.D. degree in sociology in 1995 from Utah State University.

The director concluded that, despite the highly impressive credentials of the beneficiary, as a relatively young research scientist he had not demonstrated the type of sustained national and international recognition of his accomplishments necessary for O-1 classification.

On appeal, counsel states that the Service abused its discretion in denying the petition and relies on documentation already in the record. Counsel asserts that the beneficiary's abilities have been demonstrated by sustained national or international acclaim.

The director found that the record was insufficient to demonstrate that the beneficiary is recognized as one of the small percentage recognized as being at the very top of the field of health research pursuant to 8 C.F.R. 214.2(o)(3)(ii). The director specifically noted that, although the letter from Dr. William Stinner placed the beneficiary at the top of his chosen field of public health and he had been receiving widespread recognition for his work, the letter did not distinguish the beneficiary from his peers who were also performing at the top level.

The director noted the letter of [REDACTED] who stated that the beneficiary was at the very top of his field but expanded that statement with the assertion that the beneficiary is an active participant and contributor to a monthly book/journal discussion group of health care professionals. The director concluded that this statement clearly identified the beneficiary as a strong asset in the field of public health but fails to clearly place him at the top of his field.

In reaching a determination for O-1 classification, the Service must take into account the evidence of record as a whole and the standards of the field of endeavor in which the beneficiary is engaged. The evidentiary criteria listed at 8 C.F.R. 214.2(o)(3)(iii)(B) are minimum documentary requirements and merely addressing them does not establish eligibility for classification as an alien with extraordinary ability in science.

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 the beneficiary has published articles in professional journals is considered, but is not dispositive. Publishing is the norm in the professions and is not sufficient proof of extraordinary ability as contemplated in the statute. The vast majority of the beneficiary's publications contain the names of one or more associates. The record fails to distinguish between the abilities of these associates and the beneficiary to show whether he is their equal or whether he stands far above them in his research abilities. The record contains only two items that the beneficiary has prepared individually since receiving his Ph.D. in 1995; a publication on the worldwide web in 1999 and a paper presented in 1999. The proposed position in this matter is for a research consultant with a modest salary. Neither the job title nor the proposed wage indicate that the beneficiary has yet achieved recognition as having extraordinary ability in science.

Sustained national or international acclaim 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 own accomplishments have not yet risen to that level.

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 research consultant in health care as required by the pertinent regulation. Therefore, the appeal must be dismissed.

The denial of this petition is without prejudice to the petitioner pursuing an employment-based visa classification for the beneficiary under alternate provisions of the Act.

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.