

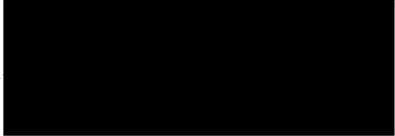


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC-01-105-50809 Office: California Service Center Date: **AUG 11 2002**

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

Petition: Petition for a 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 PETITIONER: [Redacted]

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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a two-member private medical practice. The beneficiary is a physician. 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 temporarily employ him in the United States as a physician for a period of four years at a salary of \$120,000 per year.

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 additional documentation.

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 science as defined in these proceedings.

8 C.F.R. 214.2(o)(3)(ii) states, 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 in this matter is a native and citizen of Pakistan. His resume reflects that he received his Bachelor of Medicine and Surgery (M.B.B.) in 1991 from the Dow Medical College in Karachi, Pakistan. He practiced medicine in Pakistan through 1994. The beneficiary entered the United States in 1994 to complete a one-year residency at St. Barnabus Hospital, Bronx, New York. He completed another residency at St. Francis Medical Center, Trenton, New Jersey from 1995 to 1998. The beneficiary then pursued a post-graduate fellowship in endocrinology at the University of South Carolina from 1998 to 2000. The petitioner declared that the beneficiary was last admitted to the United States on February 19, 2000, in J-1 classification.

The center director concluded that the evidence of record was insufficient to establish that the beneficiary met at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B) or that he had satisfied the definition of "extraordinary ability" for the purposes of this visa classification set forth at 8 C.F.R. 214.2(o)(3)(ii).

On appeal, the petitioner submitted a letter from the American Board of Hospital Physicians reflecting that "Doctor Ahmad" had been nominated as a "Diplomate" of that organization. Also submitted were various certificates verifying the beneficiary's work experience as reflected in his resume.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objections. In order to be eligible for O-1 classification, a petitioner must meet the pertinent regulatory standard. In this case, 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 has it been established that the beneficiary satisfied at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B). As noted by the director, there is no evidence that the beneficiary has any published research or has ever received any significant national or international recognition for his achievements. Nor does the record indicate that the beneficiary has commanded a high salary relative to others in his profession. The petitioner did not establish that being nominated as a Diplomate of the American Board of Hospital Physicians is sufficient to demonstrate that the recipient of that honor is recognized as one of the few at the very top of the field of medical research.

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 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.

Administrative notice is made that the beneficiary was admitted to the United States in J-1 classification. Documentation of that admission, such as the beneficiary's visa(s) and Forms IAP-66, was not submitted to the record. However, an alien admitted under section 101(a)(15)(J) of the Act who is subject to the two-year foreign residence requirement is ineligible to apply for an immigrant visa or for an employment-based nonimmigrant visa. Section 212(e) of the Act. In addition, an alien admitted in J-1 classification for the purpose of graduate medical education or training or who is subject to the two-year foreign residence requirement of section 212(e) is ineligible for a change of nonimmigrant classification, except to the A and G diplomatic classifications. Section 248 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.