



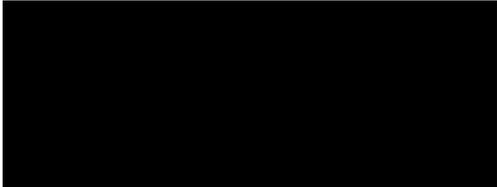
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U.S. Department of Justice

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: LIN-02-168-55515 Office: Nebraska Service Center Date: **AUG 22 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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a medical facility affiliated with the medical school of the University of Ohio. The beneficiary is a physician, neurologist, and researcher in the area of epilepsy. 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. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a physician at its epilepsy center, Neuroscience Center, Inc., at the Ohio State University Hospital. The record reflects two separate salary offers of \$55,020 and \$110,040.

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 for the petitioner submitted a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in science and that the evidence submitted is sufficient to establish that the beneficiary satisfies at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B).

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) 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 in this matter is described as a native and citizen of Syria. The record reflects that he received his medical degree in 1994 in Syria and entered the United States in 1997 in J-1 classification as an exchange visitor to complete a residency program in internal medicine and later to engage in a fellowship program. The petitioner did not submit a copy of the beneficiary's curriculum vitae.

After reviewing the evidence submitted in support of the petition, the center director found the beneficiary ineligible for O-1 classification based on finding the sum of the evidence insufficient to demonstrate that he is "at the very top" of his field of science pursuant to 8 C.F.R. 214.2(o)(3)(ii). The director acknowledged that the beneficiary was a published researcher, a member of professional societies, had received a Travel Fellowship award, and had completed a fellowship in research into the condition of epilepsy, but that such accomplishments were insufficient to satisfy the criteria of 8 C.F.R. 214.2(o)(3)(iii). The director concluded that the record failed to significantly distinguish the beneficiary from other physicians/researchers so that he was at the level necessary for O-1 classification.

In the brief on appeal, counsel again argued that the evidence presented is sufficient to satisfy at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii). Counsel argued, in part, that:

Although [the beneficiary] he has already revolutionized medical understanding of this dangerous condition. His work has already received the highest level of acclaim, beyond that accorded to his peers, which establishes him with the small percentage at the very top of his field.

Counsel largely bases the argument on the beneficiary's work performed during a medical fellowship at the University of Virginia

resulting in four publications. While complete citations of these publications were not provided, they appear to have been published in conjunction with the beneficiary's supervisor at the University of Virginia medical school, who was first author on the articles. As noted by the director, the Service does not question the importance of the beneficiary's work, however the achievements of a medical resident or post-graduate fellow do not usually rise to the level of extraordinary ability contemplated by the statute.

A determination of "extraordinary ability" for the purpose of this type of visa petition proceeding necessarily involves a degree of subjectivity. In making a determination, the Service must rely on the weight of the evidence as a whole and the sufficiency of the evidence in relation to the regulatory requirements.

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 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, publishing scholarly articles, joining professional associations, and engaging in research is the norm in the professions and is not, in and of itself, sufficient to establish the requisite recognition in the field of science necessary to sustain a claim of extraordinary ability as contemplated under this provision.

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.

In order to establish eligibility for O-1 classification, the petitioner also must establish that the beneficiary is "at the very top" of his or her field of endeavor. 8 C.F.R. 214.2(o)(3)(ii). In order to meet this criteria in the field of science, the alien must normally be shown to have a significant history of scholarly publications, have held senior positions at prestigious institutions, and hold regular seats on editorial boards of major publications in the field. The beneficiary's achievements have not yet risen to this level.

The denial of this petition is without prejudice to the petitioner pursuing classification of the beneficiary under alternate provisions of the Act.

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.