

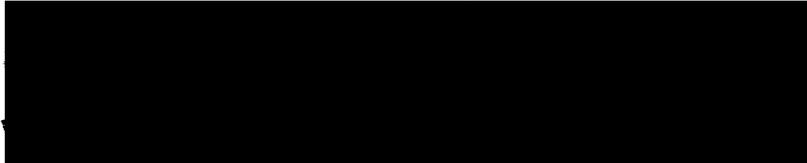


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: SRC-01-243-55200 Office: Texas Service Center Date: JUL 08 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: Self-represented

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. An appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reopen. The motion to reopen will be granted; the prior decision will be affirmed.

The petitioner is a hospital and medical research facility operated by the University of Mississippi at Jackson. 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 an Assistant Professor and Director of the Inflammatory Mediator Laboratory for a period of three years at a salary of \$100,000 per year.

The Form I-360 visa petition was filed on August 13, 2001. In a decision dated October 17, 2001, the center 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. The petitioner filed an appeal from the decision. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), dismissed the appeal finding that the petitioner had failed to overcome the grounds of ineligibility cited by the center director in the notice of decision.

The petitioner now files a motion to reopen the proceeding and submits additional documentation consisting of twenty-two exhibits predominately comprised of letters from colleagues attesting to knowledge of the beneficiary's abilities, the beneficiary's curriculum vitae, and one letter from an attorney.

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 appeal was dismissed by the AAO finding that the evidence submitted by the petitioner was insufficient to establish that the beneficiary qualified for classification as an alien with extraordinary ability in science as defined in these proceedings. Specifically, the beneficiary had not been shown to be recognized as one of the small percentage at the very top of the field of medical science pursuant to 8 C.F.R. 214.2(o)(3)(ii) and that he had not satisfied at least three of the evidentiary requirements of 8 C.F.R. 214.2(o)(3)(iii)(B).

The regulatory requirements were listed in the previous decision and need not be reprinted here. At issue is whether the beneficiary satisfies the regulatory standard as an alien with extraordinary ability in science.

The petitioner first requested oral argument. Oral argument is limited to cases in which cause is shown. A petitioner must show that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Therefore, the petitioner's request for oral argument must be denied.

The beneficiary in this matter is a native and citizen of India. The record reflects that the beneficiary has been admitted to the United States in J-1 classification as an exchange visitor. His Forms IAP-66 reflect that he was authorized as a first year clinical fellow in orthopedic surgery/hand surgery at the University of Mississippi Medical Center valid from August 1, 1999 to July 31, 2000. He was then authorized as a first year general surgery/microsurgery fellow at the same institution from August 1, 2000 to August 15, 2001. The visas are annotated that the beneficiary is subject to the two-year foreign residency requirement of section 212(e) of the Act.

The supporting material reflects that the beneficiary has specialized in research into injuries of the hand in general and the treatment of carpal tunnel syndrome in particular. The beneficiary's curriculum vitae dated May 1, 2002, reflects thirteen professional publications, three publications in press, and fourteen professional presentations. Letters were also submitted stating that the beneficiary is an invited member of the American Society for Reconstructive Microsurgery and the American Association for Hand Surgery.

The peer-group letters submitted unanimously support the visa petition for the beneficiary. Among the most notable are letters from [REDACTED] Distinguished Professor and Chief of Plastic Surgery at the University of Texas Medical Branch at Galveston, Dr. Susan Mackinnon, Shoenburg Professor and Chief of Reconstructive Surgery at the Washington University School of Medicine at St. Louis, together with letters from [REDACTED] and Dr. [REDACTED] of the University of Mississippi. The credentials of the affiants are impeccable. The evidence as a whole attests to the importance of the beneficiary's ongoing research into orthopedic surgery research and the petitioner's reliance on the beneficiary's leadership in its funded research program.

Classification as an alien with extraordinary ability in science is based on having achieved sustained national or international acclaim in the field of endeavor. Section 101(a)(15)(O)(i) of the

Act. Such acclaim must be demonstrated by extensive documentation. Id. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). The significance of the proposed appointment or the need or desire of an institution to employ a given individual has no bearing on eligibility for O-1 classification.

The testimonials submitted in support of the petition are not sufficient to satisfy the petitioner's burden of proof. Several of the authors of the supporting letters have extensive resumes reflecting years of professional publications, have authored text books on the relevant subject, and serve in senior positions at distinguished institutions in the field. Such high achievements are indicative of the level of recognition necessary for O-1 classification. The beneficiary, in contrast, has a relatively modest list of publications. By definition, any paper submitted to a peer-review journal must have an element of originality in order to qualify for publication. Publishing is the norm in the sciences and is not sufficient proof of extraordinary ability as contemplated in the statute. Here, the beneficiary has practiced medicine since 1990, completed post-graduate work in the United Kingdom from May 1994 to July 1999, and completed two years of fellowships at the University of Mississippi. While the beneficiary's achievements are laudable, the record is insufficient to demonstrate that he has achieved sustained national or international acclaim as contemplated in the Act.

The national or international acclaim required for this visa classification must be demonstrated by at least three of the kinds of evidence listed at 8 C.F.R. 214.2(o)(3)(iii)(B). It must be concluded that the beneficiary has not satisfied at least three of those criteria. The petitioner asserted that the beneficiary won two "best paper" awards in 2002, one from a national society and one from a state medical society. However, it has not been shown that these are nationally recognized awards or that only two such awards are sufficient to satisfy the intent of 8 C.F.R. 214.2(o)(3)(iii)(B)(1). The beneficiary is a member of two medical societies whose memberships are on an invitation-only basis. It was not established, however, that membership must be based on "outstanding achievements" as required by 8 C.F.R. 214.2(o)(3)(iii)(B)(2). The petitioner also stated that the beneficiary led a panel discussion at a medical society meeting. However, mere participation on a panel is not judging the work of fellow professionals as contemplated at 8 C.F.R. 214.2(o)(3)(iii)(B)(4). The issue of professional publications as set forth at 8 C.F.R. 214.2(o)(3)(iii)(B)(5) has been addressed above. As presently constituted, the record does not establish the beneficiary as one of the small percentage of physicians "at the very top" of the field of medical science research.

It is additionally noted that on the petition form the petitioner originally offered the beneficiary a starting salary of \$54,000. The previous decision found that such an offer did not satisfy the history of having commanded a "high salary" set forth at 8 C.F.R. 214.2(o)(3)(iii)(B)(8). In a letter dated December 13, 2001, the petitioner revised that offer to \$100,000. However, the terms of a visa petition cannot be amended. See Matter of Izumii, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998). Nevertheless, even the salary offer of \$100,000 has not been shown to constitute a high salary within the medical profession.

It must be concluded that the petitioner has not overcome the grounds for denial of the visa petition. As noted in the previous discussion, the denial of this petition is without prejudice to the petitioner's filing a new petition under alternate provisions of the Act. It must be noted, however, that the beneficiary is precluded by 8 C.F.R. 248.2(d) from a change of nonimmigrant status except for a change to either A or G nonimmigrant classification, and the beneficiary is precluded from classification as an employment-based nonimmigrant or from admission as an immigrant by section 212(e) of the Act, because he is subject to the two-year foreign residence requirement.

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 decision dated April 23, 2002 is affirmed; the petition is denied.