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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File: LIN-02-015-53361

Office: Nebraska Service Center

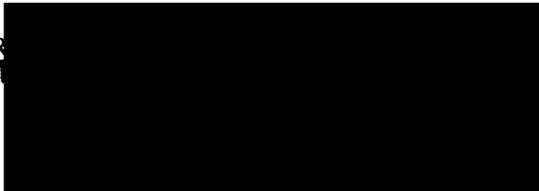
Date: JUL 15 2002

IN RE: Petitioner:
Beneficiary:



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



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

Myra L. Rose
for 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 sustained.

The petitioner is a university. The beneficiary is a physician and medical researcher. 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 an assistant professor and researcher specializing in pediatric cardiology at a salary of \$97,500 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, counsel for the petitioner submitted a brief arguing, in pertinent part, that the director failed to properly consider and interpret the evidence presented. Additional documentation was presented.

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 Greece. Her current immigration status was not disclosed at the space provided on the petition form. The beneficiary's resume reflects that she graduated from the University of Athens Medical School in 1992 and worked as a physician in Greece until June 1994. The beneficiary completed a residency in pediatrics at SUNY University Hospital, Stoney Brook, New York from 1994 to 1997, won a fellowship in neonatology at Magee Women's Hospital, Pittsburgh, Pennsylvania from 1997 to 1998, and won a fellowship in pediatric cardiology at St. Louis Children's Hospital, St. Louis, Missouri from 1999 to present. The beneficiary won the European Community Erasmus Scholarship in internal medicine in 1992, has published five major articles in peer reviewed publications, has published nine abstracts, and has made eight presentations at professional meetings.

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 she is "at the very top" of her field of science pursuant to 8 C.F.R. 214.2(o)(3)(ii). The director stated that "less weight" was accorded to statements submitted from direct colleagues of the beneficiary, but failed to address the statements from other leading researchers in the field.

In the brief on appeal, counsel argued that the director failed to adequately consider evidence in the form of testimonials from several of the leading pediatric cardiologists in the United States. Counsel also argued that the proposed research position with the petitioner is supported by foundation grants in excess of \$3 million and that the funding may be in jeopardy without the beneficiary's participation.

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.

First, it must be noted that the center director failed to address all the statements from experts in the field opining on the beneficiary's stature in the field. Such testimony is accorded evidentiary weight in this type of visa proceeding. Second, the

importance of the fact that the beneficiary is involved in research dependent on financial support from foundations for medical research is recognized, but it cannot be considered a factor in a visa proceeding. The fact that the funding is contingent, in part, on the beneficiary's participation is an indicator of recognition of the beneficiary's achievements in the field of science and can be considered.

After careful review of the record, it may be concluded that the petitioner has 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). However, it may be concluded 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. However, the testimony of directors of pediatrics from no fewer than nine of the nation's leading research universities who universally characterize the beneficiary's research as "ground-breaking" is sufficient to satisfy numbers 5 and 6 above. Similar testimony as to the status of the Erasmus Scholarship may be considered to satisfy number 1 above. The fact that the beneficiary's original research is widely cited in other publications with a distinguished reputation is sufficient to satisfy number 3 above. The claim that the beneficiary serves as a reviewer for a major professional journal can be considered to satisfy number 4 above.

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." Here, the petitioner has 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). A post-doctoral fellow working as a research assistant under the supervision of a lead scientist does not normally meet this criteria in the field of science. In this case, however, the record reflects that the beneficiary has been the lead researcher in projects at institutions with a distinguished reputation and the results of that research are widely recognized as having major significance. The fact that private foundation support of a significant research project is contingent on the beneficiary's

specific participation in that project is clear evidence of having been recognized as "one of the small percentage who have arisen to the very top" of the scientific discipline. The fact that the beneficiary has been offered a position as an associate professor with a prestigious institution such as the petitioner is in itself an indicator of the degree of recognition of the beneficiary's achievements. Based on the evidence of record as a whole, it may be concluded that the petitioner has established that the beneficiary is an alien with extraordinary ability in science.

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 met that burden.

ORDER: The appeal is sustained.