

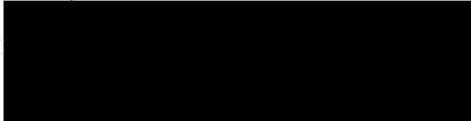


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U.S. Department of Justice  
Immigration and Naturalization Service

Personal liberty unwarranted  
invasion of personal  
privacy.

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



24 JUN 2002

FILE: EAC02 054 54172 Office: Vermont Service Center

Date:

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for Nonimmigrant Worker under 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is an information technology corporation. The beneficiary is a software engineer. The beneficiary was last admitted to the United States as an H-1B nonimmigrant in October 1996. The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C 1101(a)(15)(O)(i), as an alien with extraordinary ability in science, in order to employ her in the United States for a period of three years as a software engineer in its point of service (POS) systems at an annual salary of \$115,000.

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 qualifies for the classification and the Service misunderstands the facts or misapplies the law.

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 decision in each proceeding depends on the quality, as well as the quantity, of the petitioner's evidence and the number of criteria it purports to cover. Extraordinary ability in the field of science or education 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)(ii).

On appeal, counsel suggests that the beneficiary qualifies for O-1 classification by satisfying 8 C.F.R. 214.2(o)(3)(iii)(B)(2), (5), (7), and (8).

The director, in reviewing subsection (o)(2), noted that the beneficiary is a member of the Institute of Electrical and Electronics Engineers (IEEE) which has a multi-tiered membership structure. The director noted that the beneficiary is in the lower level of membership because she lacks the ten years of experience to become a Senior Member or Fellow. The grade of Member is limited to those who have received a baccalaureate degree or its equivalent in an IEEE-designated field and who have demonstrated professional competence in such a field. The record fails to show that the beneficiary is one of the small percentage of IEEE members who has arisen to the very top of the field.

The director, in reviewing subsection (o)(7), found that the record was insufficient to demonstrate that the beneficiary has been employed in a critical or essential capacity for the petitioner.

The fact that the beneficiary was offered employment at a prestigious corporation is proof that the beneficiary's abilities are recognized within the field of endeavor. At issue is whether that recognition has risen to the level necessary for O-1 classification.

The record reflects that the beneficiary is one of seven team leaders in the Software Solutions Project Office. As the Post Place lead, she is superior to approximately 15 employees.

On appeal, counsel states that the applicant's annual base salary has increased from \$62,799 to \$79,372 and her total compensation in the proffered position would be well over \$100,000.

Although the beneficiary holds one of the several critical roles in the present research project, such a role is the norm in the beneficiary's profession and, although the proposed wage as a team leader is higher than the non-supervisory salaries, it is not sufficient evidence of extraordinary ability as contemplated in subsection (o)(8).

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.

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 not from third-party observers who are familiar with her contributions due to their major significance to the field, but from professionals who are familiar with the beneficiary's work as a colleague. The record fails to establish that the beneficiary's own accomplishments reflect sustained national or international acclaim.

The record fails to 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 software engineering as required by the pertinent regulation.

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 evidence of "sustained" national or international acclaim and evidence 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 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.