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U.S. Department of Justice  
Immigration and Naturalization Service

IN RE: [REDACTED]  
Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

[REDACTED]

28 JUN 2002

File: EAC-02-106-51530 Office: Vermont Service Center Date:

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

*Myra L. Rosenly*  
for 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 is a professional corporation providing anesthesiologists to hospitals. The beneficiary is a physician, an anesthesiologist. 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 anesthesiologist. The petitioner seeks to employ the beneficiary for a period of three years at a salary of \$150,000 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, counsel for the petitioner submitted a brief arguing that the director misapplied the controlling regulations and asserted that the record shows that at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B) have been satisfied.

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:

*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 is described as a native and citizen of India who was last admitted to the United States in J-1 classification as an exchange visitor. The petitioner summarized the beneficiary's experience as having completed medical school in India in 1977, then serving as chief resident in a hospital in India, and in 1983 being appointed as an assistant professor of anesthesiology at a medical college in India. The petitioner did not disclose the date and manner of the beneficiary's first entry into the United States. The record reflects that he was first granted J-1 classification on July 1, 1997, as a first year resident in anesthesiology, such status being extended until August 1, 2002. It was stated that the beneficiary has 28 publications in peer-reviewed journals in India and the United States, and has made at least 25 professional presentations.

The director found that the record did not establish that the beneficiary met the standard for O-1 classification which requires recognition as one of the few at the very top of the field of endeavor.

On appeal, counsel argued, in pertinent part, that the director failed to properly evaluate the evidence. Counsel asserted that the beneficiary has more than 50 publications and presentations, served for 15 years as an associate and assistant professor at a leading Indian medical college, has served as a consultant and supervisor at a hospital in Saudi Arabia, and submitted a letter of recommendation from the Chair of Anesthesiology at SUNY Downstate Medical Center.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objections.

The record reflects that the beneficiary is an experienced anesthesiologist and achieved a degree of acclaim in the field in India. The facts that the beneficiary was an instructor in anesthesiology and has published professional articles is noted. However, serving as faculty at a medical college or publishing professional articles does not establish that one is at the top of a field in the scientific professions. Contrary to counsel's argument, such achievements are more the norm than the exception.

The record in this case reflects that the beneficiary has successfully completed a U.S. residency program in anesthesiology from 1997 to 2002. This as well would appear to be the norm in the filed and not an achievement demonstrating extraordinary ability.

Clearly, 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). The petitioner did not submit evidence from a recognized authority in the United States confirming that serving at a Saudi medical facility is recognized as serving in a critical capacity at a facility with a distinguished reputation pursuant to number 7 above. Neither are the beneficiary's proposed salary, membership in professional associations, and past supervisory positions sufficient to satisfy any of the above criteria. The beneficiary's record of publications is sufficient to satisfy number 6 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." 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 must demonstrate the requisite extraordinary ability in science by showing that the alien is recognized as being one of a small percentage recognized as being at the top of the field of endeavor. In this case, the beneficiary is a staff anesthesiologist at a hospital. The record is not sufficient to establish that the beneficiary is recognized as being one of the few physicians recognized as being at the "very top" of the field of medicine. For these reasons, the director's decision will be affirmed.

It is further noted that the petitioner failed to submit a copy of its contract with the beneficiary as required by 8 C.F.R. 214.2(o)(2)(ii)(B).

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.

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

**ORDER:** The appeal is dismissed.