

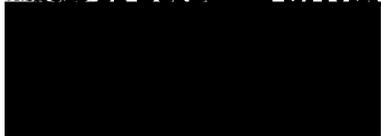


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U.S. Department of Justice

Immigration and Naturalization Service

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invasion of personal privacy**



Office of Administrative Appeals
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: SRC 02 020 57283 Office: TEXAS SERVICE CENTER

Date: **NOV 13 2002**

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a 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 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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is a pharmaceutical company. The beneficiary is a research scientist specializing in pharmaceutical science. 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 employ her in the United States for a period of three years as a research scientist at an annual salary of \$45,848.

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, the petitioner submitted a letter arguing that the beneficiary satisfies four of the eight criteria listed at 8 C.F.R. 214.2(o)(3)(iii)(B) and that she qualifies for the classification sought.

Section 101(a)(15)(O)(i) of 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 by the regulations.

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 is a native and citizen of the Philippines last admitted to the United States in student (F-1) status. She subsequently changed her status from student to a nonimmigrant temporary worker (H1B1). She extended her H1B1 visa twice and it expired on February 1, 2002. The record is silent as to the beneficiary's educational background.

The director concluded that although the beneficiary met two criteria, the petitioner had failed to establish that the beneficiary is one of the small percentage who have risen to the very top of her field.

On appeal, the petitioner asserts that the beneficiary satisfies four of the regulatory criteria reprinted above. The petitioner states that the beneficiary satisfies criterion number 5 (evidence of the alien's original scientific, scholarly, or business-related contributions of major significance to the field) and criterion number 6 (evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other media).

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. 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. 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.

There is no evidence that the beneficiary has received a major award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A).

For criterion number 1, there is no evidence that the beneficiary has been the recipient of a nationally or internationally recognized prize or award for excellence.

For criterion number 2, the beneficiary's membership in the American Association of Pharmaceutical Scientists does not meet the criteria of an alien's membership in an association that requires outstanding achievements of their members. The petitioner has not submitted any evidence describing the

membership requirements or indicating that membership is limited to those with outstanding achievements.

For criterion number 3, the record contains evidence that the beneficiary's patents were published by the World Intellectual Property Organization pursuant to the Patent Cooperation Treaty. Nonetheless, this does not constitute published material about the alien. The publication lists the beneficiary as one of five inventors of the patent, and describes the patent in detail. This is not evidence that the alien has established sustained national or international acclaim through professional or major trade publications or major media.

For criterion number 4, no evidence was submitted.

For criterion number 5, the petitioner provided testimonials that claim that the beneficiary's research is considered of "major significance" in the field. However, the record does not show that the beneficiary's research is of major significance in relation to other similar work being performed.

For criterion number 6, no evidence was submitted.

For criterion number 7, the director determined that the beneficiary had been employed in a critical or essential capacity for organizations that have a distinguished reputation. This part of the director's decision shall be withdrawn. In conjunction with her colleagues, the beneficiary has developed four or five patented drugs. The petitioner asserts that the beneficiary was the lead researcher on those patents. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

For criterion number 8, while there is no evidence of the beneficiary's salary history, the current offer of \$45,848 cannot be considered a "high salary" in the field of science in the absence of salary surveys of other similarly employed workers.

The proposed position in this matter is for a research scientist with a modest salary under the supervision of a senior scientist. Neither the job title nor the proposed wage indicates that the beneficiary has yet achieved recognition as having extraordinary ability in science.

The record does not 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 science as required by the pertinent regulation. Therefore, the appeal must be dismissed.

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.