



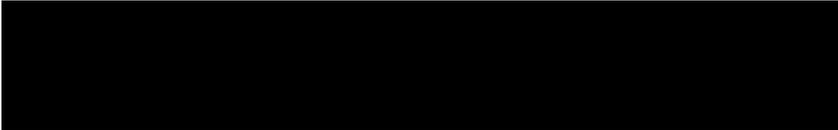
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U.S. Department of Justice

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 02 148 51267 Office: TEXAS SERVICE CENTER Date: NOV 18 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:

DUPLICATE COPY

SELF-REPRESENTED

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. Wilmann, 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 is a medical college. 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. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as an assistant professor of neurology at a salary of \$110,000 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 submits a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in science and that the director failed to consider all the evidence submitted.

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 science as defined in 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 in this matter is a native and citizen of Korea. His curriculum vitae reflects that he received his medical degree in 1990 in Seoul, Korea. He completed an internship in medicine, a residency in neurology and a stroke fellowship at Seoul National University Hospital. He completed an epilepsy research fellowship at the Mayo Foundation in Minnesota. He completed a clinical neurophysiology fellowship, a pediatrics internship, and a child neurology residency at the Medical College of Georgia. He completed his last residency in July 2002. He authored numerous articles and contributed to one chapter in a textbook on epilepsy. The record reflects that he was last admitted to the United States on October 24, 1998, in J-1 classification as an exchange visitor. His IAP-66 is annotated that he is subject to the foreign residency requirement of section 212(e).

After reviewing the evidence submitted in support of the petition, the director found the beneficiary ineligible for O-1 classification based on finding the sum of the evidence insufficient to demonstrate that he is "at the very top" of his field of science pursuant to 8 C.F.R. 214.2(o)(3)(ii). The director acknowledged the facts presented that the beneficiary appeared to be well known, but concluded that the petitioner failed to establish the beneficiary qualified for the classification.

On appeal, the petitioner asserts that the material previously provided to the Service establishes that the beneficiary is an "alien of extraordinary abilities." The petitioner includes additional documentation in the form of a testimonial from the president of the petitioning medical college. The petitioner argues that the denial of this petition "runs counter to Congressional intent in creating the O-1 provisions as well as various previous approvals received for select, outstanding members of our faculty."

The record of proceeding contains a petition with supporting documentation, a request for additional documentation, a reply to the request for additional documentation prepared with the assistance of outside counsel, the director's decision, and an appeal with additional documentation. The record does not contain a notice of appearance of attorney or representative (G-28); therefore, this decision will be furnished to the applicant only, in accordance with 8 C.F.R. 292.4.

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

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. The National Epifellows Foundation awarded the beneficiary a research grant. The petitioning organization awarded him an outstanding teaching award in May 2000. In 1996, the Association of Korean Neuroscientists awarded the beneficiary an outstanding research award. Finally, the beneficiary received a scholarship for residents from the American Academy of Neurology. The beneficiary competed with other residents and fellows for these awards and not with professors who had completed their training and earned acclaim and recognition for their achievements in the field of medicine. The petitioner failed to demonstrate that the scholarship and research grants were awards for excellence in the field of endeavor.

For criterion number 2, the petitioner indicated that the beneficiary is a member of the American Epilepsy Society, the American Academy of Neurology, and is board certified as a neurologist in the Republic of Korea. Although the beneficiary is a member of professional societies, there is no evidence that these are associations that require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines, nor is there such evidence on the organizations' websites.

For criterion number 3, the beneficiary has presented scientific papers at annual meetings of the American Academy of Neurology, and the American Epilepsy Society.

For criterion number 4, no evidence was submitted.

For criterion number 5, while the beneficiary has published and presented the results of his research, the record does not show that his research is considered of "major significance" in the field. By definition, all professional research must be original and significant in order to warrant publication in a professional journal. The record does not show that the beneficiary's research is of major significance in relation to other similar work being performed. The petitioner provided the Service with numerous testimonials. One attested that the beneficiary possessed "research potential." Another opined that the beneficiary has demonstrated considerable aptitude, and that he had already made contributions in the area of research in the surgical management of epilepsy, experimental aspects of epilepsy, and computerized

analysis of neuroimaging related to epilepsy. One went so far as to say that the beneficiary "is at the very top of the field of pediatric neurology," as he scored on the 100-percentile level on two neurology examinations for residents. In review, the beneficiary competed with other residents for his test score and not with professors who had completed their training and earned acclaim and recognition for their achievements in the field of medicine.

For criterion number 6, the beneficiary has published and this criteria may be considered satisfied.

For criterion number 7, the beneficiary has been an intern, a resident and a fellow at respected distinguished hospitals and is being offered a position as an assistant professor. While employment with such institutions is evidence of a degree of recognition, such staff or assistant positions are not considered employment in a "critical or essential capacity" as would a department head or lead researcher on major projects.

For criterion number 8, the petitioner failed to provide evidence to establish that the current offer of \$110,000 should be considered a "high salary" in the field of medicine.

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 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.

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). In order to meet these criteria in the field of science, the alien must normally be shown to have a significant history of scholarly publications, have held senior positions at prestigious institutions, and hold regular seats on editorial boards of major publications in the field. The beneficiary's achievements have not yet risen to this level.

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.