



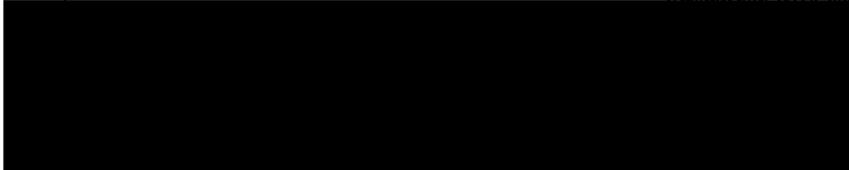
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U.S. Department of Justice

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 02 170 54602

Office: TEXAS SERVICE CENTER

Date: OCT 04 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The petitioner filed a motion to reconsider. The director declined to reconsider her decision, and forwarded the appeal and the related record to the Associate Commissioner for review. 8 C.F.R. 103.3(a)(2). The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a medical school, and a major research hospital. The beneficiary is a clinical physician, a medical school instructor and a 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 two years as an assistant professor of medicine in the Department of Cardiology and as director of nuclear cardiology services at its new facility at an annual salary of \$135,000.

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 for the petitioner submitted additional documentation and a brief asserting that the record shows that the beneficiary is an alien with extraordinary ability in science.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101 (a)(15)(O)(i) 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 a native and citizen of Guatemala. He received his medical degree at the Francisco Marroquin University in 1994 in Guatemala City, Guatemala. He completed an internal medicine internship in 1996 and an internal medicine residency in 1998 at the University of South Alabama Hospitals and Clinics. He served as the chief medical resident from July 1998 until June 1999 and has been employed as a cardiology fellow since July 1999 at the University of South Alabama Hospital and Clinics. He authored thirteen articles and six research abstracts. The record reflects that he was last admitted to the United States on December 26, 2000, in J-1 classification as an exchange visitor. His I-94 card 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 that the beneficiary is not "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 has substantial education and has received recommendations from various persons as to his abilities. The director concluded, "there is no evidence that shows the beneficiary is regarded as being in the top percentage of medical professors. There is no evidence that proves the beneficiary is distinguished from that of others with the same training and background."

On appeal, counsel asserts that the petitioner submitted additional expert testimony about the beneficiary's qualifications. One expert said that the beneficiary is in the "top 5% within his field ab initio." Another expert noted that the beneficiary has performed as an investigator and co-investigator in Health and Human Services funded scientific research projects. Counsel includes four recent publications addressing the critical shortage of physician-scientists (clinical investigators). Finally, counsel describes the beneficiary as a "nuclear cardiologist attempting to establish a nuclear cardiology division in an academic medical setting."

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 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).

In evaluating evidence addressing the eight criteria at 8 C.F.R. 214.2(o)(3)(iii)(B), the Service must evaluate whether that evidence demonstrates the beneficiary's sustained national or international acclaim.

For criterion number 1, there is no evidence that the beneficiary has been the recipient of an internationally recognized prize or award for excellence. While he was ranked number one throughout all his years of medical school, twice rated the highest internal medicine in-training examination score, awarded the Victor Benator Award for excellence in teaching, the Scarlet Sash Recognition, and two trainee awards by the Southern American Federation of Medical Research and was accorded the Aventis Cardiology Fellows Scholarship, these are not the types of awards contemplated by the regulation. The beneficiary competed with other medical students, residents or interns for these awards, and not with medical professionals who had completed their training and earned acclaim and recognition for their achievements in the field of medicine. The petitioner failed to provide sufficient information regarding the beneficiary's two McGhee Awards for scientific presentations at national meetings to evaluate whether these awards might satisfy this criterion.

For criterion number 2, while the beneficiary is a member of nine 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.

For criterion number 3, while the beneficiary received some local publicity for his awards, this is not the type of "published material in professional or major trade publications or major media about the alien" contemplated by the provision. In review, the petitioner failed to demonstrate how the beneficiary has sustained national or international acclaim and recognition for achievements in his field by these items.

No evidence was submitted relating to criterion number 4.

For criterion number 5, while the beneficiary has published 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.

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

For criterion number 7, the beneficiary has been a resident, an intern and a fellow at distinguished hospitals. 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. The petitioner provided expert opinions that the beneficiary will be employed in a critical position as director of nuclear cardiology and cardiovascular MRI. The regulation requires evidence that the alien has been employed in a critical or essential capacity.

For criterion number 8, there is no evidence of the beneficiary's salary history. The petitioner initially indicated on the Form I-129 petition that it intended to pay the beneficiary an annual salary of \$135,000. Subsequently, the petitioner indicated in a letter from the director of its cardiology division that the beneficiary would command a salary of \$150,000 annually. The petitioner failed to establish that this amount could be considered a high salary in the beneficiary's field of endeavor. 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).

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

Administrative notice is made that the beneficiary was admitted to the United States in J-1 classification and is subject to the provisions of section 212(e) of the Act. Pursuant to section 248 of the Act, an alien admitted in J-1 classification for the purpose of graduate medical education or training or who is subject to the two-year foreign residence requirement of section 212(e) is ineligible for a change of nonimmigrant classification, except to the A and G diplomatic classifications.

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.