



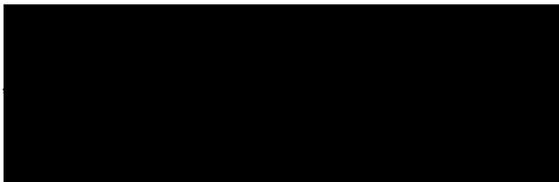
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U.S. Department of Justice

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 02 198 50004

Office: TEXAS SERVICE CENTER

Date: OCT 09 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 university. The beneficiary is an associate professor specializing in marketing. 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 education, in order to employ him in the United States for a period of three years as an associate professor at an annual salary of \$143,000.

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 education.

The director declined to treat the appeal as a motion to reopen or reconsider, and forwarded the appeal and the related record to the Associate Commissioner for review. 8 C.F.R. 103.3(a)(2).

On appeal, the petitioner submitted a brief arguing that the beneficiary satisfies six of the eight criteria listed at 8 C.F.R. 214.2(o)(3)(iii)(B) and that he qualifies for the classification sought.

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 in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in education 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.

The beneficiary is a native and citizen of India. He completed a bachelor's degree in mechanical engineering at the University of Bombay in 1988. He received a master's degree in business administration at the Indian Institute of Management in 1992, and a Ph.D. from the University of Chicago's graduate school of business in 1997. The beneficiary held the position of research and teaching assistant at the University of Chicago from September 1992 until July 1996. He was an assistant professor of marketing at the University of Colorado at Boulder from August 1996 until July 1999. Since August 1999, he has held the post of assistant professor of marketing at the Hong Kong University of Science and Technology.

After reviewing the evidence submitted in support of the petition, the director found that, although the beneficiary was an accomplished professor, he had not demonstrated the type of sustained national or international recognition of his accomplishments necessary for O-1 classification. The director concluded that the record was insufficient to demonstrate that the beneficiary was recognized as one of the small percentage recognized as being at the very top of the field of education pursuant to 8 C.F.R. 214.2(o)(3)(ii).

On appeal, the petitioner asserts that the beneficiary satisfies six of the regulatory criteria reprinted above.

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 necessarily establish that the beneficiary has sustained national or international acclaim in the field of education.

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 fact that the beneficiary was offered employment at a prestigious university is evidence 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.

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). Neither is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B).

*Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor*

The petitioner asserts that the beneficiary has received at least six nationally or internationally recognized prizes or awards for excellence in the field of education. The beneficiary received honorable mention in the annual Alden G. Clayton Doctoral Dissertation Proposal Competition in 1995. He received an honorable mention in the Hillel Einhorn New Investigator competition from the Society for Judgment and Decision Making in 1998. The petitioner provided background information regarding these two awards. The evidence fails to establish that these awards are nationally or internationally recognized awards for excellence. The petitioner submitted evidence that the beneficiary received a certificate for his participation in the 1995 American Marketing Association Doctoral Consortium. The beneficiary competed with other graduate students for these awards and not with professors who had completed their training and earned acclaim and recognition for their achievements in the field of education. The petitioner submitted evidence that the beneficiary was awarded three research grants, but failed to demonstrate that these were awards for excellence in the field of endeavor.

No evidence was submitted to satisfy criterion 2.

*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*

The petitioner provided the Service with approximately thirty publications that refer to the beneficiary's work. The vast majority of the items merely cited the beneficiary's work in a list of references. Two publications mention the beneficiary and his work by name, including a letter to the editor and an interactive website. The petitioner failed to demonstrate that the latter two publications are professional or major trade publications or major media.

The director determined that the petitioner established that the beneficiary met criterion four.

*Evidence of the alien's original scientific, scholarly, or business related contributions of major significant in the field*

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.

*Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media*

The fact that the beneficiary has published articles in professional journals is considered, but is not dispositive. Publishing is the norm in the professions and is not evidence of sustained national or international acclaim as required by the statute. The record does not show that the publication of these articles sets him above others in the field.

No evidence was submitted to satisfy criterion 7.

*Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services*

No evidence was submitted of the beneficiary's salary history. The petitioner failed to submit evidence of relevant wage surveys. In the absence of relevant salary data, the petitioner failed to establish that the beneficiary's wages are high in comparison to the wages of other college professors with similar qualifications.

Sustained national or international acclaim in the field of education is the standard that must be satisfied. 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 education or that he has sustained national or international acclaim. Therefore, the appeal must be dismissed.

The petitioner asserts that in 1998, the University of Colorado at Boulder submitted and received an approval of an I-140 petition filed in behalf of the beneficiary in the "outstanding professor" category. The petitioner claims that the fact that the beneficiary's previously filed I-140 petition was approved is evidence that he meets the O-1 criterion. The petitioner's argument is not persuasive. The requirements for classification as an outstanding professor under section 203(b)(1)(B) of the Act are not the same as the requirements for classification as an O-1 nonimmigrant.

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.