



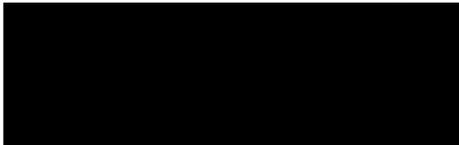
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U.S. Department of Justice

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 02 143 50145 Office: TEXAS SERVICE CENTER Date: **OCT 17 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:
[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

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 is a neonatal practice group. The beneficiary is a neonatologist. 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 a neonatologist at Baylor University Medical Center, Department of Neonatology, 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 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 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 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 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 Thailand. According to his curriculum vitae, he received his medical degree in 1991 at Chulalongkorn University in Bangkok, Thailand. He completed a residency program in obstetrics and gynecology at Chulalongkorn University in Chonburi, Thailand in 1993. He worked as a pediatric resident at the Jersey City Medical Center from 1993 until 1995. Next, he completed a residency program in pediatrics at the Hope Children's Hospital-Christ Hospital and Medical Center in 1996. From 1996 to 1999, the beneficiary was a neonatal-perinatal medicine fellow at the Floating Hospital for Children at Tufts University. The beneficiary has been employed as a pediatrician and neonatologist at the Bangkok Christian Hospital in Bangkok, Thailand since July 2000.

He authored four articles that were published in professional journal publications, and two professional research abstracts.

The record reflects that he was admitted to the United States on in J-1 classification as an exchange visitor. His visa is annotated that he is subject to the foreign residency requirement of section 212(e). The beneficiary has fulfilled his two-year foreign residency requirement.

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 that the beneficiary was a good and capable physician, and that he had published in professional journals, but concluded that such accomplishments were insufficient to satisfy the criteria of 8 C.F.R. 214.2(o)(3)(iii). The director determined that the beneficiary was recognized as an expert in his field but that such recognition has not been sustained over a significant period of time.

In the appellate brief, counsel argues, in pertinent part, that the director failed to consider all the evidence submitted and asserted that the evidence is sufficient to satisfy at least five of the criteria at 8 C.F.R. 214.2(o)(3)(iii). Counsel argues, in part, that the director discounted peer testimonials submitted with the petition because they were written by peers at institutions where the beneficiary had studied or worked. Counsel asserts that the Service had approved other O-1 petitions on the basis of peer testimonials of co-workers and colleagues. Counsel also asserts that media articles about neonatologists are practically non-existent so he offered comparable evidence in the form of ten testimonials.

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).

For criterion number 1, there is evidence that the beneficiary has been the recipient of a nationally recognized award for excellence. The beneficiary received the Ross Award from the New England Perinatal Society. Although the name of the society suggests that it is regional in scope, it accepts submissions nationwide. However, this is not evidence of national acclaim in the beneficiary's field of endeavor because contestants are not limited to physicians. Physicians in training, junior faculty, senior faculty, and related professions such as nursing are all encouraged to submit abstracts for consideration of awards.

No evidence was submitted in relation to criteria 2, 3 and 4.

For criterion number 5, the beneficiary has published the results of his research and presented it at meetings of pediatric societies. The petitioner provided testimonials from the chief of pediatrics at Baylor University Medical Center, an assistant professor of pediatrics at Tufts University School of Medicine, and the pediatrician-in-chief of the Floating Hospital for Children at the New England Medical Center/Tufts University Medical Center, which speak to the originality and value of his work. According to one, the beneficiary has advanced the knowledge of pediatric and neonatal science with his "groundbreaking research including the initiation and development of work concerning the effects of thyroid hormone on branching morphogenesis and cellular differentiation."

For criterion number 6, the beneficiary has published four articles. The director determined that "what the beneficiary has done is no different from other doctors or researchers." Counsel asserts that the beneficiary's authorship is noteworthy. The petitioner provided the Service with testimonials or peer letters as evidence that the beneficiary has sustained national or international acclaim and recognition for achievements in his field by authoring one article relating to his research on the

effects of thyroid hormone on embryonic lung development. In review, the petitioner has failed to demonstrate that the beneficiary has sustained national or international acclaim. The evidence indicates that the beneficiary received acclaim for his work on the effects of thyroid hormone on embryonic lung development. The record does not show that the acclaim has been sustained over a significant period of time.

The director determined that the beneficiary met criteria number 7 and 8.

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). The petitioner has not established that the beneficiary is at the very top of his field of endeavor, neonatology.

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.