

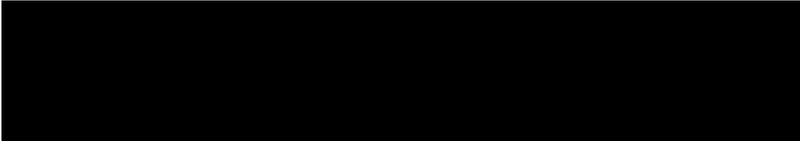


D8

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



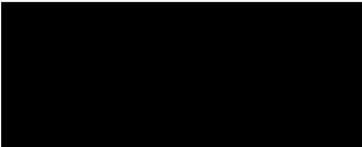
File: LIN 02 184 53385 Office: Nebraska Service Center Date: SEP 17 2002

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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a medical university. 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 Medicine in the Division of Immunotherapy at an annual salary of \$90,000.

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. The director also determined that the evidence is insufficient to establish that the position or services to be performed require a person of extraordinary ability.

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, counsel for the petitioner submits a brief and additional documentation.

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 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 Japan. His curriculum vitae reflects that he received his medical degree in 1991 in Tokyo, Japan. He completed an internal medicine residency program at the St. Luke's International Hospital, Tokyo, Japan from 1991 to 1994. He was a clinical fellow in hematology, pulmonary and critical care medicine at the Nihon University Hospital from 1994 to 1996. His postgraduate training included an internal medicine residency at the Thomas Jefferson Hospital in Philadelphia, Pennsylvania from June 1996 to June 1999. He recently completed a fellowship at the Northwestern University Medical School in hematology, oncology, and stem cell transplantation. He authored twenty-eight articles for professional journal publications or presentations at professional conferences. The record reflects that he was last admitted to the United States on January 20, 2002, 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).

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 an able and recognized researcher in his field of specialization who received special training to perform on a research team, was a published researcher, a member of professional societies, and had completed two residency programs in internal medicine, but concluded that such accomplishments were insufficient to satisfy the criteria of 8 C.F.R. 214.2(o)(3)(iii). The director concluded that the record failed to show that the beneficiary was recognized as a physician of extraordinary ability whose achievements have been recognized in the field through extensive documentation.

On appeal, counsel first asserts that the director applied an incorrect legal standard in stating that the position offered to the beneficiary does not require a person of extraordinary ability. Second, counsel asserts that the director failed to consider all the evidence submitted and asserts that the evidence is sufficient to satisfy at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii). Counsel asserts that the director erred in rejecting evidence of the beneficiary's judging others' work and in ignoring letters from international experts in the beneficiary's field testifying to the beneficiary's contributions of major significance. Finally, counsel asserts that the director erred in rejecting evidence of the beneficiary's authorship of scholarly publications.

On review, the record is persuasive in establishing that the beneficiary qualifies as an alien who has extraordinary ability in the sciences, which has been demonstrated by sustained 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 record contains evidence that the beneficiary began a fellowship in July 1999, concentrating on hematology, oncology and stem cell transplantation. The stem cell transplantation that the beneficiary is involved in exclusively utilizes hematopoietic stem cells which are produced by the patient's own body, as opposed to the more controversial use of embryonic stem cells. The transplant procedure involves destroying a patient's own faulty immune system with chemotherapy and immunosuppressive drugs and then using the hematopoietic stem cells to reproduce a new healthy immune system. The beneficiary and his colleagues have made significant advances using this procedure to treat patients with such debilitating and potentially fatal diseases as multiple sclerosis, Crohn's disease and lupus.

The record shows that the beneficiary has participated in research that has received attention in the media and in professional publications. The beneficiary has been working in the field of hematopoietic stem cell transplantation for autoimmune diseases, a novel area of clinical medicine. He has participated in some of the pioneering early studies of stem cell transplantation for rheumatoid arthritis, systemic lupus erythematosus, Crohn's disease, and multiple sclerosis. The beneficiary helped to organize the first major international conference in hematopoietic transplantation for autoimmune diseases. The record shows that the beneficiary's research is of major significance in relation to other similar work being performed. The beneficiary has published extensively.

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 established that the beneficiary's abilities have been so recognized. He has demonstrated that he meets at least three of the criteria set forth in 8 C.F.R. 214.2(o)(3)(iii).

The director denied the petition, in part, because he determined that the evidence is insufficient to establish that the position actually requires a person of extraordinary ability. Counsel asserts that the director applied an incorrect legal standard in making this determination. Counsel cited the supplementary information from the current regulations governing O-1 petitions: "After careful consideration, the Service agrees that there is no statutory support for the requirement that an O-1 alien must be coming to the U.S. to perform services requiring an alien of O-1 caliber." 59 Fed. Reg. 41820 (August 15, 1994). In review, the director applied an incorrect legal standard.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has been met. The petition will be approved.

**ORDER:** The appeal is sustained.