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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.
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Washington, D.C. 20536



File: EAC-01-262-53043 Office: Vermont Service Center Date: SEP 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as a consulting company engaged in cross-cultural education. The beneficiary is an historian. 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 educator at a salary of \$50,000 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 submitted a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in science and that the center 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 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 described as a native and citizen of Russia. She holds the equivalent of a Ph.D. degree in history from Perm State University in Russia. The record reflects that she has published four professional articles in peer-reviewed journals in Russia. The petitioner submitted at least five letters from professors of history at Russian universities all praising the beneficiary's scholarly achievements and ability.

After reviewing the evidence submitted in support of the petition, the center director found the beneficiary ineligible for O-1 classification based on finding the sum of the evidence insufficient to demonstrate that she is "at the very top" of her field of science pursuant to 8 C.F.R. 214.2(o)(3)(ii). The director acknowledged the facts presented that the beneficiary was a published researcher, 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 an historian of extraordinary ability whose achievements have been recognized in the field through extensive documentation.

In the appellate brief, counsel argued, in pertinent part, that the director failed to consider all the evidence submitted and asserted that the evidence is sufficient to satisfy at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii). Counsel argued, in part, that the beneficiary has received numerous awards and grants including a grant from Fulbright to study at the University of Pittsburgh.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objections. The petitioner did not establish that the beneficiary has received a significant national or international award pursuant to 8 C.F.R. 214.2(o)(3)(iii)(A). Therefore, in order to establish the requisite extraordinary ability, the petitioner must satisfy at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B), or submit comparable evidence as provided for by 8 C.F.R. 214.2(o)(3)(iii)(C).

In order to establish extraordinary ability in science, a petitioner must do more than merely submit documentation addressing the eight criteria at 8 C.F.R. 214.2(o)(3)(iii)(B); the sum and the quality of that evidence must establish that the criteria have been satisfied.

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 counsel asserted that the beneficiary received a grant from "Fulbright," the nature and status of that grant was not documented. Moreover, merely receiving a single grant for continued study from a prestigious academic source is not the type of award for excellence contemplated by the regulation.

For criterion number 2, there is no evidence that the beneficiary is a member of organizations which require outstanding achievements of their members. Merely being a member of professional historical societies open to practitioners in the field, is not sufficient to satisfy this requirement.

For criterion number 3, the petitioner did not submit evidence of "published material in professional or major trade publications or major media about the alien."

For criterion number 4, there is no evidence that the beneficiary has served as a judge of the work of others, such as serving as an editor or reviewer for a professional journal.

For criterion number 5, while the beneficiary has published articles, the record does not show that her 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 authored scholarly articles and this criterion may be considered satisfied.

For criterion number 7, while the beneficiary was described as being Head of the History Department at Chelyabinsk State University, this position has not been shown to be recognized as having a distinguished reputation in the field of endeavor as contemplated by the provision.

For criterion number 8, there is no evidence of the beneficiary's salary history and the petitioner has not shown that she has commanded a high salary in the field. The current offer of \$50,000 cannot be considered a "high salary" relative to the field of professional historians or academic positions.

As noted by the director, publishing scholarly articles, joining professional associations, and engaging in research is the norm in the professions and is not, in and of itself, sufficient to establish the requisite acclaim or recognition in the field of science necessary to sustain a claim of extraordinary ability as contemplated under this provision. Nor does mere recognition as an expert in a specialized area of a field of endeavor establish that one is at the very top of the field as a whole.

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 meet this criterion 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). Pursuant to section 212(e) of the Act, an alien admitted under section 101(a)(15)(J) of the Act who is subject to the two-year foreign residence requirement is ineligible to apply for an immigrant visa or for an employment-based nonimmigrant visa. Contrary to the statement in the director's decision, an approved petition for O-1 classification does not provide relief from the restrictions of section 212(e).

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.