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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

[redacted]

File: SRC 02 190 56122 Office: TEXAS SERVICE CENTER Date: SEP 24 2002

IN RE: Petitioner:
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 medical school. The beneficiary is a physician specializing in cardiothoracic surgery. 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 clinical surgery at a salary of $185,000 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 asserting that the record shows that the beneficiary meets six of the eight criteria set forth in 8 C.F.R. 214.2(o)(3)(iii).

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 a native and citizen of Italy. His curriculum vitae reflects that he graduated cum laude from medical school in 1990 in Rome, Italy. He completed an internship in general surgery at the University of Rome, Italy in 1991, and a general surgery residency program at the Mount Sinai School of Medicine (Cabrini) Program, in New York in 1999. He had a two-year cardiothoracic surgery residency, first at SUNY, in Buffalo, New York, then at the University of Miami School of Medicine. The beneficiary authored at least sixty-five professional journal publications, nineteen book chapters, and three books.

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 the facts presented that the beneficiary is prominent in his medical field, but concluded that he failed to demonstrate that he has sustained national or international recognition as being at the top of his profession. Based upon his review of the evidence, the director determined that many of the papers authored are co-authored, and the awards "not of a major forum." "The organizations the beneficiary belongs to are standard for the profession. The pay and position offered do not appear to be for a person of O stature. The letters of recommendation submitted refer to the beneficiary as to what he will accomplish or to his potential."

In the appellate brief, counsel asserts that the evidence is sufficient to satisfy six of the eight criteria set forth in 8 C.F.R. 214.2(o)(3)(iii).

Counsel takes issue with the director's determination that "the only recognition that the beneficiary received was at universities and medical centers he has worked at." Counsel asserts that the regulations allow for affidavits written by present or former employers and recognized experts.

In review, the director took into consideration all letters and affidavits received into the record. The director did not disregard letters from the beneficiary's past and present employers. Nonetheless, 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 or nationally recognized prize or award for excellence. While he was selected as best resident in cardiothoracic surgery at the University of Miami School of Medicine, and as outstanding resident and outstanding intern at the Mount Sinai School of Medicine, these are not the types of awards contemplated by the regulation. The beneficiary competed with other residents or other 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.

For criterion number 2, while the beneficiary is a member of the Societa' Italiana di Chirurgia, the American Medical Association and the American College of Surgeons, there is no evidence that these are associations which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines, nor is there evidence of such a requirement on the organizations' websites.

For criterion number 3, while one of the beneficiary's publications was reviewed by the press, 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 this published item.

For criterion number 4, while the beneficiary has reviewed one article for the Journal of Cardiovascular Surgery, he has done so on an *ad hoc* basis. He is not a regular reviewer or board member of a professional publication. Therefore, he cannot be considered to have satisfied the intent of this provision.

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 extensively and this criteria may be considered satisfied.

For criterion number 7, the beneficiary has been a resident and an intern at distinguished hospitals and is being offered a position as an assistant professor of clinical surgery. 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.

For criterion number 8, while there is no evidence of the beneficiary's salary history, the current offer of $185,000 cannot be considered a "high salary" relative to the field in the absence of salary surveys or similar evidence.

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 these criteria 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.

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.