



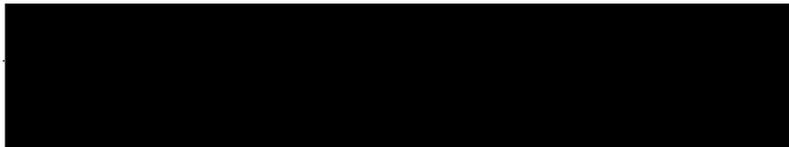
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U.S. Department of Justice

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 02 157 53541 Office: Texas Service Center Date:

IN RE: Petitioner:
Beneficiary:



SEP 26 2002

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

The petitioner is a pediatric medical center. The beneficiary is a pediatric 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 a pediatric endocrinology physician at a salary of \$115,000 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 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 the Philippines. She received her medical degree in 1993 at the University of the East in the Philippines. She completed a rotating internship at the Iloilo Doctor's Hospital in the Philippines and a pediatric residency program in 1999 at the Nassau County Medical Center in East Meadow, New York. Since 1999, she has been employed as a clinical and research fellow in pediatric endocrinology at the Winthrop University Hospital in Mineola, New York. The record reflects that she was last admitted to the United States on February 5, 2000, in J-1 classification as an exchange visitor. Her visa is annotated that she is subject to the foreign residency requirement of section 212(e).

After reviewing the evidence submitted in support of the petition, and the evidence supplied in response to a request for additional documentation, the 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 had achieved an excellent reputation, but concluded that such an accomplishment was 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.

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

After careful review of the record, it must be concluded that 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 that evidence in order to determine if the criteria has been satisfied at the level contemplated for O-1 classification.

For criterion number one, there is no evidence that the beneficiary has been the recipient of an internationally recognized prize or award for excellence. The beneficiary received three awards: Most Outstanding Intern, Best Resident of the Year, and Outstanding Resident in Pediatric Infectious Diseases. She was inducted into the Lawson Wilkins Pediatric Endocrine Society and selected for inclusion in the 2002-2003 edition of America's Registry of Outstanding Professionals. She was certified by the International Society for Clinical Densitometry and awarded a travel grant to attend the Endocrine Society's annual meeting in 2002. These are not the type of awards contemplated by the regulation. These awards are not limited to the small percentage who have risen to the very top of her field of endeavor.

For criterion number two, while the beneficiary is a member of the American Academy of Pediatrics, the Endocrine Society, the American Association of Clinical Endocrinologists, and the Lawson Wilkins Pediatric Endocrine Society, 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 such evidence on the organizations' websites.

On appeal, the petitioner submits one item for criterion number three: evidence that the beneficiary was recognized in the Endocrine Society News for her award from the Endocrine Society. In review, the petitioner failed to demonstrate how the beneficiary has sustained national or international acclaim and recognition for achievements in her field by this single recognition.

For criterion number four, counsel asserts that the beneficiary judged the work of others by overseeing the work of more than 36 interns and residents each year during her fellowship. The beneficiary's work overseeing interns and residents does not fit into the category of judging others' work. Although a fellow supervises others, she does not judge others' work in the sense of ranking contestants. Counsel also asserts that the beneficiary participated as the judge of the work of others when she was chosen to sit on the committee that drafted guidelines for the management of diabetic ketoacidis. Counsel's assertions are not persuasive evidence that the beneficiary has been chosen to judge the work of other medical practitioners on the basis of her acclaim in her field.

For criterion number five, the petitioner submitted several testimonial letters which state that the beneficiary has made original scientific research contributions that are of major significance in the field of pediatric endocrinology. The petitioner included evidence that the beneficiary sat on the

committee that formulated the Winthrop University Hospital's protocol for the management of diabetic ketoacidosis in children. Finally, the petitioner submitted evidence that the beneficiary had presented her research at professional conferences. The record does not show that the beneficiary's work is of major significance in relation to other similar work being performed.

For criterion number six, the beneficiary has published one abstract and presented nine papers to professional organizations. In review, the petitioner failed to demonstrate how the beneficiary has sustained national or international acclaim and recognition for achievements in her field by authoring one abstract and nine papers.

For criterion number seven, the beneficiary has been a resident and a fellow at distinguished hospitals and is being offered a position as a staff physician. Counsel asserts that the beneficiary's critical work for her employer has made her a critical employee. 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 eight, there is no evidence of the beneficiary's salary history, or whether the current offer of \$115,000 can be considered a "high salary" in the field of medicine.

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, have held 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.