

D8

U.S. Department of Homeland Security

identifying data deleted to prevent clearly unwarranted invasion of personal privacy
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



AUG 18 2003

File: SRC 03 117 52708

TEXAS SERVICE CENTER

Date:

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)

PUBLIC COPY

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a state university. The beneficiary is a researcher specializing in endocrinology and genetics. The petitioner seeks an extension of 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 one year as an instructor and researcher in molecular genetics of obesity.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained national or international acclaim.

On appeal, counsel for the petitioner submits a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in her field.

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, and the appeal documents.

Section 101(a)(15)(O)(i) of 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 by the statute and 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 in this matter is a 27-year old citizen of France. The record reflects that she received her Ph.D. in molecular endocrinology at the Faculty of Medicine La Timone, Marseilles, France in 1997. She completed a three-year fellowship at the National Institute of Health and Medical Research in Marseilles, France in 1996. The beneficiary performed a visiting fellowship at the National Institutes of Health (NIH) at the National Cancer Institute. In 1999, the beneficiary was awarded a fellowship from the NIH at the National Cancer Institute in the genetics department. The beneficiary was approved for an O-1 visa on March 21, 2001 to

work in the position of instructor/researcher at the Pennington Biomedical Research Center at Louisiana State University (LSU-PBRC). Since April 2001, the beneficiary has been employed by the petitioner (LSU-PBRC) as an instructor in the experimental obesity group. According to the record, the beneficiary last entered the United States on April 25, 2001 as an O-1 alien of extraordinary ability.

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 she has sustained national or international acclaim.

On appeal, counsel for the petitioner asserts that the director erred in weighing the evidence, and that the beneficiary satisfies at least three of the criteria set forth at 8 C.F.R. §214.2(o)(3)(iii)(B).

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. §214.2(o)(3)(iii)(A).

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

For criterion number one, the evidence states that the beneficiary was awarded the Genzyme Corporation Travel Grant Award to attend the 71st Annual Meeting of the American Thyroid Association. The petitioner states that by virtue of receipt of three fellowships, the beneficiary satisfies this criterion.

Academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work, scholarships and fellowships cannot be considered awards in the field of endeavor. Moreover, only students compete for such awards. As the petitioner did not compete with nationally or internationally recognized experts in the field, the awards cannot be considered evidence of the beneficiary's national or international acclaim. The petitioner failed to demonstrate that these were awards for excellence in the field of endeavor.

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.

For criterion number two, while the beneficiary is a member of the Endocrinology Society, there is no evidence that this is an association that requires outstanding achievements of their members, as judged by recognized national or international experts in their disciplines.

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 translations.

For criterion number three, the petitioner asserts that by virtue of having her work cited in professional journals, the beneficiary satisfies this criterion.

The director determined that having one's work cited is not equivalent to having articles written about the alien and his work in major media or trade publications as envisioned in the statute. The AAO concurs. Citations are not about the alien or her work, rather, they are references to her work. The evidence is insufficient to demonstrate that the beneficiary satisfies this criterion. The evidence does not demonstrate that the beneficiary has sustained acclaim in her field of endeavor.

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.

On appeal, the petitioner submits evidence that the beneficiary has reviewed one manuscript for the journal *Life Sciences*. The petitioner is not a regular reviewer or board member of a professional publication. Therefore, she cannot be considered to have satisfied the intent of this provision.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.

For criterion number five, the beneficiary has published the results of her research. Ten of her peer-reviewed manuscripts have been published. The petitioner asserts that the

beneficiary satisfies this criterion, in part, because her work has been cited by others in her field. The petitioner provided the Bureau with nine peer-reviewed articles that purportedly referenced the beneficiary's work. In review, only two of the nine articles cite the beneficiary's work in the list of references. In five articles, the authors acknowledged having discussions with the beneficiary. The petitioner has failed to establish that the beneficiary's work has had a significant impact on her field in relation to other work being performed.

The petitioner provided the Bureau with several testimonials about the value of the beneficiary's work. Dr. Michael Kuehl, National Cancer Institute, and Dr. Gonzalo Barrera-Hernandez, University of California both wrote that the beneficiary has "already made important contributions to our understanding of the link that exists between retinoic acid, thyroid hormone and Vitamin D in the differentiation of adipocytes." Dr. Shoshana Segal, National Cancer Institute wrote that the beneficiary's research "findings had an enormous impact in the field," and further states "her results lay the foundation upon which new cancer therapies will be developed in the future." While all the testimonials' authors speak highly of the beneficiary, they fail to establish that the beneficiary's research is of major significance in relation to other similar work being performed.

The nature of scientific research is to expand the body of knowledge of science. The beneficiary's contributions are original and noteworthy, but they are best described as adding to our body of knowledge incrementally rather than as a scientific breakthrough. In review, the evidence fails to show that beneficiary has sustained national or international acclaim and recognition for major achievements in the field of science.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

For criterion number six, the beneficiary has authored ten articles that have been published in peer-reviewed publications. She has made eight peer-reviewed presentations at scientific conferences. The record does not indicate that her work has been cited extensively; therefore the petitioner failed to establish that the beneficiary's work has had a major impact on her field of endeavor.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

The petitioner asserts that the beneficiary is employed in a position equivalent to a research section head because her prospective duties include developing an independent research program. This criterion requires evidence that the alien has already been employed in a critical or essential capacity. It is not enough to assert that the beneficiary will be so employed in the future.

The petition further asserts that by virtue of being listed as the principal investigator on two recent grant applications, she satisfies this criterion. A research project is not an organization or establishment. The petitioner failed to establish that the beneficiary satisfies this criterion.

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.

The petitioner did not submit evidence relating to this criterion.

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 also must establish that the beneficiary is "at the very top" of her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The petitioner has not established that the beneficiary's abilities have been so recognized.

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.