

PUBLIC COPY

U.S. Department of Homeland Security

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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
125 I Street NW
Washington, D.C. 20536



File: SRC 03 097 52136

Office: TEXAS SERVICE CENTER

Date:

DEC 11 2003

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)

ON BEHALF OF PETITIONER:



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 Citizenship and Immigration Services (CIS) 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 
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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a nonprofit organization, affiliated with Baylor University, seeking O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a hepatology physician to conduct research, provide clinical care and instruction to medical students.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being among a small percentage at the very top of his field of endeavor.

On appeal, counsel for the petitioner submits a brief and additional evidence. Counsel for the petitioner asserts that the director used an improper standard in denying the petition and did not accord sufficient weight to the evidence submitted by the petitioner to establish the beneficiary is an alien of extraordinary ability.

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 to be addressed in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in medical 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.

The regulation at 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 34-year old native and citizen of Jordan. He received his medical degree from the University of Jordan in 1993. He completed an internship in June 1994 at the Al-Bashir hospital in Amman, Jordan. He was an internal medicine resident at the Arab Center for Heart and Special Surgery in Amman from October 1994 to May 1996. Subsequently, the beneficiary completed an internal medicine residency then a hepatology/transplant fellowship at the Cleveland Clinic Foundation. He most recently completed a gastroenterology fellowship at Case Western Reserve University/MetroHealth program in Cleveland, Ohio. The record reflects that he was last admitted to the United States on January 25, 2003 as a J-1 exchange scholar. He is subject to the two-year foreign residency requirement.

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 medical science pursuant to 8 C.F.R. § 214.2(o)(3)(ii).

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). Neither is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

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 indicates that the beneficiary received the "Hard Working, Hyperdynamic Resident Award" at the Cleveland Clinic in 1999. The American Board of Hospital Physicians awarded the beneficiary a fellowship. The

beneficiary received the American Gastroenterological Association (AGA) "Fellow's Poster of Distinction Award," given at the 2002 AGA meeting. He received a North American Conference of Gastroenterology Fellows (NACGF) "Research Fellow Award," given at a meeting of other gastroenterology fellows in Miami in 2002. The beneficiary received three grants to conduct research. The American Board of Hospital Physicians and the American College of Ethical Physicians granted the beneficiary Diplomate status.

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.

On appeal, the petitioner submitted a letter written by Dr. Phillip Katz, Director, 2002 NACGF, stating that the beneficiary competed for the NACGF Research Fellow Award with physicians from all over the United States. The petitioner failed to establish that this is an internationally or nationally recognized award for excellence in the field of endeavor.

Regarding the beneficiary's research grants, it is noted that research grants simply fund a scientist's work. The past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and is not an award to honor or recognize past achievement. Although the beneficiary was named the principal investigator in two grants awarded to Case Western Reserve University, these are not indicative of sustained national or international acclaim.

Counsel for the petitioner asserts that diplomate status is a competitive award. The evidence is insufficient to establish that this is an internationally or nationally recognized award for excellence in the field of endeavor. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 American Association for the Study of Liver Diseases, the American Society for Gastrointestinal Endoscopy, the American College of Gastroenterology, the Crohn's and Colitis Foundation of America, the American Gastroenterological Association (AGA), and the American College of Physicians (ACP), the petitioner failed to establish that these are associations which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. The beneficiary does not satisfy this criterion.

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.

No evidence was submitted in relation to criterion number three.

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.

No evidence was submitted in relation to criterion number four.

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

For criterion number five, while the beneficiary has published the results of his research, the record does not show that his research is considered of "major significance" in his field. The beneficiary has done research describing the role of liver biopsy in patients with Hepatitis C. He has written two articles about his research results, which were published in peer-reviewed journals. The petitioner states that the beneficiary's work has been heavily cited to underscore the impact of the beneficiary's work on his field. The petitioner submitted eight testimonials about the value of the beneficiary's work. All of the testimonials' authors speak highly of the beneficiary's personal qualities, skills and abilities. Almost all speak of the beneficiary's potential. In review, the evidence is insufficient to establish that the beneficiary has made an original scientific or scholarly contribution of major significance in his field. The record does not show that the beneficiary's research is of major significance in relation to other similar work being performed. In review, the testimonials fail to show that beneficiary has sustained national or international acclaim and recognition for major achievements in the field of medicine.

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 had authored three articles that were published in peer-reviewed journals as of the date of filing the petition. The beneficiary has written nine abstracts. According to the citation history submitted, the beneficiary's work has been extensively cited. Normally, publishing two or three articles would not satisfy this criterion, but given that two of the three articles were published in prestigious journals and were extensively cited, the beneficiary satisfies this criterion.

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

For criterion number seven, the petitioner asserted that if the petition is approved, the beneficiary would be employed in a critical capacity by the petitioner. The regulation requires evidence that the beneficiary has or currently holds an essential or critical position. It is not enough to assert that the beneficiary will hold such a position in the future. The petitioner further asserted that as a gastroenterology fellow at Case Western Reserve University and a fellow and a resident at the Cleveland Clinic Foundation, the beneficiary was employed in a critical capacity for organizations that have a distinguished reputation. One testimonial author wrote that the beneficiary's "contributions to the field of hepatology while at Cleveland Clinic were crucial to the success of the program while he was there." The AAO agrees that these organizations have a distinguished reputation. 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. The evidence is insufficient to establish that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

Counsel further asserts that the director erred in concluding that the evidence does not show that the beneficiary was the principal investigator on any major grant. Counsel asserts that the beneficiary was the principal investigator on two grants. Even if the beneficiary had been the principal investigator on two grants, it would not establish that the beneficiary had played a critical or essential role for an establishment or organization with a distinguished reputation. Grants and studies are not establishments or organizations.

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.

For criterion number eight, the petitioner provided a copy of the beneficiary's contract indicating that the beneficiary would earn an annual base salary of \$275,000 plus performance incentives. The petitioner submitted a printout from the Department of Labor's OES-SOC wage library evidencing that the prevailing wage for surgeons in Dallas is \$145,413. The petitioner submitted a salary survey from the Internet site, Hepatologist Jobs.com for: southeastern U.S., Midwestern U.S., and an international category. The information from the Internet site is insufficient to establish a national average wage for hepatologists. The petitioner submitted two expert statements opining that the beneficiary's salary "far exceeds the average salary of hepatologists in the U.S. today." The petitioner should have submitted wage survey information for all hepatologists on a nationwide basis. The petitioner should have provided more than just the average (mean) wage. To evaluate whether the salary is high, CIS must compare it to the median and highest wages offered nationwide to hepatologists. The beneficiary does not satisfy this criterion.

On appeal, counsel protested the director's finding that the beneficiary was still in training in the field of gastroenterology. Counsel asserts that the beneficiary completed his training and that his field of specialization is hepatology, not gastroenterology. The director's point in finding that the beneficiary was still in the early stages of his career was to underscore that the petitioner had not demonstrated that the beneficiary had sustained acclaim in his field of endeavor. While an alien in training could theoretically qualify as an alien of extraordinary ability, it is less likely that he or she would have reached the very top of his or her field over the course of a short-lived career.

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 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 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, or hold regular seats on editorial boards of major publications in the field. The beneficiary's achievements have

not yet risen to this level.

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.