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U.S. Department of Homeland Security
Citizenship and Immigration Services

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

File: SRC 03 030 50095

Office: TEXAS SERVICE CENTER

Date: DEC 17 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.

Mari Johnson
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 teaching hospital and medical center, seeking an extension of 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 continue to employ the beneficiary temporarily in the United States for a period of one year as director of its neuroscience critical care unit, co-director of its surgical intensive care unit, associate professor of neurosurgery and assistant professor of physiology and biophysics.

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

On appeal, the petitioner asserts that the record contains substantial evidence that the beneficiary is an alien with extraordinary ability, that the director erred in weighing the evidence, and that CIS has granted O-1 status to the beneficiary for the same position with the same employer on three prior occasions.

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.

The regulation at 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 beneficiary in this matter is a 43-year old native and citizen of Egypt. The record reflects that he received his degree in medicine from the Tanta University School of Medicine in 1983 and a masters degree of surgical sciences in 1988. The beneficiary completed an internship, residency and fellowship in Egypt before entering the United States to complete an internship at the Medical Center of Central Georgia in Macon, Georgia. The beneficiary completed a three-year residency in anesthesiology then a two-year fellowship in critical care medicine at Vanderbilt University Medical Center, Nashville, Tennessee. He has been working for the petitioner since December 1997. The record reflects that he was last admitted to the United States on August 25, 2001 as an O-1 alien of extraordinary ability. He previously entered the United States in J-1 classification as an exchange visitor, and 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).

On appeal, the petitioner asserts that the director erred in finding the evidence insufficient to find that the beneficiary is a physician of extraordinary ability.

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).

For criterion number one, the beneficiary and three colleagues are credited with developing the airway cam, a camera adapted to teach the novice the technique of direct laryngoscopy. This technique won the Best Scientific Exhibit Award, Second Place, at the 70th Clinical and Scientific Congress in Washington, D.C. in March 1996. The petitioner did not establish that this is an internationally or nationally recognized prize for excellence. Further, it is just one award. The statute and regulations require extensive documentation that the beneficiary has sustained acclaim. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

For criterion number two, the beneficiary is a member of sixteen different professional associations, including the American Society of Critical Care Anesthesiologists and the American Society of Anesthesiologists. The petitioner failed to establish that these organizations require outstanding achievements of their members, beyond licensure.

For criterion number three, no evidence was submitted.

The petitioner asserts that the beneficiary satisfies criterion number four by virtue of reviewing one article for the *Journal of Clinical Anesthesia*. The record also contains two e-mail messages dated June 20, 2003 and July 3, 2003. The first message requests the beneficiary to review a funding proposal for the United States Department of State's Science Center Program. The second asks him to join an international editorial committee to review four to twelve manuscripts per year. The director noted that the reviewing activity has yet to begin and cannot be

considered. The AAO concurs. The petitioner must establish eligibility as of the date of filing, November 8, 2002. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The beneficiary does not satisfy this criterion.

For criterion number five, the petitioner asserts that the beneficiary has made two original scholarly contributions of major significance in his field, the Airway Cam and the use of hyperbaric¹ oxygen to treat stroke victims' brains. The petitioner asserts that because the Airway Cam was prominently featured in the journal *Anesthesiology*, was presented at a scientific conference and was awarded Best Scientific Exhibit, Second Place, that this is a major breakthrough in anesthesia. In the absence of extensive objective corroborative evidence such as press coverage on the significance of the contribution, or evidence that the procedure has been adopted or applied by others or other objective evidence indicating that the beneficiary's contribution has garnered national acclaim, the evidence is insufficient to establish that this contribution may be considered of "major significance" in relation to other similar work being performed. Similarly, the petitioner failed to establish that the beneficiary's use of "new brain cooling techniques" for treating stroke patients is an original contribution of major significance. The petitioner provided CIS with testimonials about the value of the beneficiary's work and his personal qualities. One testimonial author wrote that the beneficiary's "pioneering work with a new method of insuring airway management called the Airway Cam has the potential to increase the success of laryngoscopy." Another wrote that the beneficiary "has shown imagination, innovation, technical skill and persistence, all of which mark him as a man who has potential for an outstanding career in academic research." Finally, one wrote that the beneficiary's "combination of skills is truly unique . . . and places [him] in a position to make contributions far beyond the ordinary." All of the testimonials' authors speak to the beneficiary's potential, rather than establishing that the beneficiary's contributions are already considered to be of major significance. In review, the evidence fails to show that the beneficiary has sustained national or international acclaim and recognition for major achievements in the field of medicine.

¹Hyperbaric is defined as: Of, relating to, producing, operating, or occurring at pressures higher than normal atmospheric pressure. *Webster's II New College Dictionary*, 2001.

For criterion number six, the petitioner had co-authored thirteen articles that were published in peer-reviewed journals as of the date of filing the petition. He had also authored twenty-two abstracts and a chapter in an Intensive Care Unit Guide for Residents' Education. It is not known whether the Guide was published and widely disseminated. The petitioner submitted evidence that one of the beneficiary's articles had been cited once. In the absence of a more extensive citation history indicating that the beneficiary's work has been noted by others in the field, the petitioner failed to establish that the beneficiary satisfies this criterion. The material submitted by the petitioner does not distinguish the beneficiary from others in his field.

For criterion number seven, as the head of the Critical Care Division for the University of Mississippi Medical Center, the beneficiary serves as Director of the Neuroscience Critical Care Unit, Director of Neuroanesthesiology, and Co-Director of the Surgical Intensive Care Unit. The director noted that although the beneficiary holds positions as head of the critical care division, associate professor and "key researcher," such staff positions are not considered to be employment in a critical or essential capacity. In review, the beneficiary does hold a critical position as head of a division, but the petitioner failed to establish that the critical care division itself has a distinguished national reputation. The beneficiary is not employed in a critical or essential capacity for the University of Mississippi Medical Center as a whole. The beneficiary does not satisfy this criterion.

For criterion number eight, the beneficiary's proffered salary is \$289,000. In 2002, the beneficiary earned \$311,000. The petitioner submitted evidence that an experienced physician earns an average annual salary of \$92,000 in New York City and \$143,000 in Los Angeles. The petitioner also submitted evidence that the prevailing wage for neuroanesthesiologists in Mississippi is \$139,000. The petitioner should have submitted wage survey information for all neuroanesthesiologists on a nationwide basis. The petitioner should have provided more than just the average (mean) wage. To evaluate whether the salary is high, CIS needs to compare it to the median and highest wages offered nationwide to neuroanesthesiologists. The petitioner

failed to establish that the beneficiary meets 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 has not established that the beneficiary's abilities have been so recognized.

The petitioner asserts that the instant petition should be approved because the beneficiary previously received approval for O-1 classification. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals, which may have been erroneous. See *Matter of Church of Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engineering, Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied* 485 U.S. 1008 (1988). The AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800 (E.D. La. 2000), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert denied* 122 S.Ct. 51 (2001).

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.