

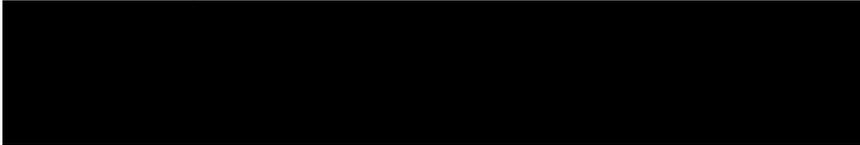
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**D8**

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



File: SRC 03 167 50031

Office: TEXAS SERVICE CENTER

Date:

**DEC 22 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*

 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 medical school, 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 an assistant professor in the department of neurology.

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 and additional evidence; and asserts that the director erred in denying the instant petition.

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.

The regulation at 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 40-year-old native and citizen of Germany. The record reflects that he earned a medical degree in 1993 and a doctorate in molecular medicine in 1994 from the Free University of Berlin Medical School, Berlin, Germany. He completed internships first in surgery at the Groote Hospital, University of Cape Town, South Africa, then in internal medicine at the University of Washington, Seattle, Washington in 1997. He completed the residency program in neurology at the University of Washington, Seattle and a fellowship in neuroimmunology at McGill University, Montreal, Canada in 1996. He was pursuing a fellowship in multiple sclerosis at the University of California, San Francisco, California from 2000 through the date of filing the instant petition. The record reflects that he was last admitted to the United States on November 2, 2002 as a J-1 non-immigrant exchange visitor. The beneficiary 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 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 H.L. Teuber prize by McGill University in 1996 for his presentation on the effects of interferon-beta on systemic immune regulation at the Montreal Neurological Institute. The National Multiple Sclerosis Society awarded the beneficiary a postdoctorate fellowship grant and a Dale McFarlin Travel Award. The beneficiary received a postdoctorate scholarship from Boehringer Ingelheim Funds. The beneficiary was named as a sub-investigator on a clinical trial grant sponsored by Biogen and Elan.

The petitioner supplied CIS with two letters from representatives of McGill University's Montreal Neurological Institute stating that the beneficiary was awarded the H.L. Teuber Prize for his presentation at the 1996 Montreal Neurological Institute Fellow's Day meeting. It is not clear whether this is an institutional award. According to the evidence on the record, only one H.L. Teuber Prize is awarded each year by a review committee of senior scientists at the Institute. The petitioner failed to establish that this is a nationally or internationally recognized prize for excellence in the beneficiary's field of endeavor.

Awards for academic work, scholarships, travel grants and fellowships cannot be considered awards in the field of endeavor because academic study is not a field of endeavor, but rather, training for a future 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.

Regarding the beneficiary's research grant, 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.

*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 of Immunologists (AAI), the American Academy of Neurology (AAN), the American Medical Association (AMA), the American Association of the Advancement of Science (AAAS), and the Clinical Immunology Society (CIS), the evidence is insufficient to establish that these are associations which require 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 submitted copies of thirteen articles published in major media. One of the thirteen articles quotes the beneficiary as the co-author of a study that is the subject of all these articles. None of the articles are about the alien, rather, they are about the results of a research study in which the alien participated. The beneficiary does not satisfy this criterion.

*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.*

For criterion number four, the petitioner asserts that the beneficiary has reviewed manuscripts for thirteen different scientific journals. 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). The petitioner submitted letters from the editors of two publications that state that the beneficiary has reviewed manuscripts for those two publications on an ad hoc basis. The director determined that reviewing manuscripts on an ad hoc basis did not satisfy this criterion. If the petitioner had shown that the beneficiary had been conducting peer review on a more regular or frequent basis, and that he was selected to conduct peer review because of his stature and expertise in the field, he might have established that the beneficiary satisfies this criterion. Here, the petitioner failed to establish that the beneficiary satisfies this criterion.

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

The petitioner provided CIS with eighteen testimonials about the beneficiary's original contribution to his field of endeavor. It is noted that most of the letters use identical language, such as the following:

[The beneficiary] is credited with the first demonstration that interferon beta (IFN $\beta$ ), an immunosuppressive medication used in multiple sclerosis (MS) treatment, reduces matrix metalloproteinase-9 (MMMP-9) secretion by activated T-lymphocytes and decreases their ability to migrate across biological membranes.<sup>1</sup>

[The beneficiary's] research has led to the development of more specific inhibitors of MMP's, which are being evaluated for treatment of MS and other autoimmune diseases.

He has made several novel observations, and has established the role of CIITA in class II expression and antigen presentation by astrocytes using newly generated GFAP-CIITA transgenic mice. He has also identified CIITA-independent mechanisms for class II regulation and T cell

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<sup>1</sup> See letter of Dr. [REDACTED] Chair, Department of Neurology, The University of Texas Southwestern Medical Center at Dallas (the petitioner).

distinguished reputation. The beneficiary has been employed as a resident, intern and fellow at esteemed medical institutions. While employment with such institutions is evidence of a degree of recognition, the AAO does not consider such staff or assistant positions as employment in a "crucial or essential capacity."

*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 failed to provide a salary history. The petitioner proposes to pay the beneficiary an annual salary of \$95,000. Counsel for the petitioner states:

The [director] erroneously concluded that this is not considered a high salary on the basis of the salary of a neurologist. However, [the beneficiary] is not a private practice neurologist. He is a physician-scientist who will be employed as a faculty member of a public institution of higher education. His salary of \$95,000 is considered well-above average for first year faculty . . . .

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The director determined that the petitioner failed to present evidence that the beneficiary would be paid substantially more than other assistant professors in the United States. The AAO concurs. The petitioner should have submitted wage survey information for all medical school assistant professors on a nationwide basis. To evaluate whether the salary is high, AAO needs to compare it to the median and highest wages offered nationwide to medical school assistant professors. The petitioner failed to establish that the beneficiary meets this criterion.

Finally, counsel for the petitioner cites two federal district court decisions for the proposition that an examiner cannot substitute his or her judgment for that of experts. In review, the director did not substitute his judgment for that of experts. In evaluating the quality and quantity of the evidence on the record, the director

cannot simply defer to expert opinion. The evidence is insufficient to establish that the beneficiary has sustained international or international acclaim in his field of endeavor.

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 must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii).

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.