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

D8

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
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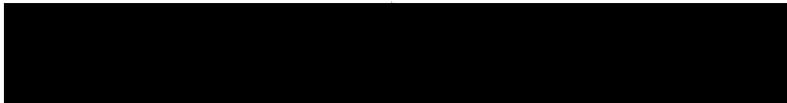


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Office: TEXAS SERVICE CENTER

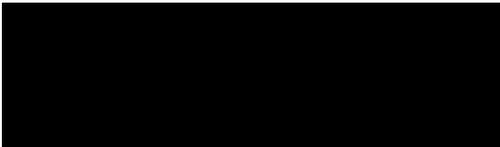
Date: DEC 30 2003

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:



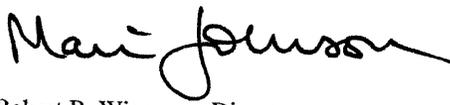
INSTRUCTIONS:

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 an academic research institution, 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), 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 and physician in the Division of Rheumatology, Department of Internal Medicine.

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 arguing that the director erred in denying the petition, and applied the "Nobel Prize standard . . . creating an impossible barrier to any J-1 physician seeking O1 classification."

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 33-year old native and citizen of India. He received a bachelor of medicine and bachelor of surgery (MBBS) at the All India Institute of Medical Sciences (AIIMS), New Delhi, in 1991. He received a diploma in acupuncture and moxibustion from the Indian Research Institute of Integrated Medicine, Calcutta, in 1992. He completed a one-year internship in general surgery and a three-year residency at AIIMS. He performed a clinical fellowship in rheumatology at the University of Texas Southwestern Medical Center, Dallas, Texas, from May 1999 through June 2000. He next pursued a clinical fellowship in rheumatology at the Baylor College of Medicine, Houston, Texas, from July 2000 through June 2001. He most recently completed two consecutive residencies in internal medicine at the University of Texas Medical Branch (UTMB), Galveston, Texas, from June 28, 2001 to July 5, 2003. The record reflects that he was last admitted to the United States on December 10, 2000 in J-1 exchange visitor status. 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).

On appeal, counsel for the petitioner asserts that the evidence is sufficient to show that the beneficiary meets at least three of the criteria listed in the regulations 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). 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 following awards:

- The New Zealand High Commissioner's Award as the

best undergraduate in the field of community medicine in 1991.

- The gold medal award in psychiatry at AIIMS in 1991.
- The beneficiary and his team won first place in a state-wide competition among residents in a "doctor's dilemma competition."
- Prize for a clinical vignette in the Texas Academy of Internal Medicine's Southeast region.
- Best educator of the month for April 2002.
- "Questions of the day morning report" award in April 2002.
- The beneficiary and his team won first place in the UTMB internal medicine jeopardy competition.

Upon review, the evidence indicates that the beneficiary won all of the above awards in competition with fellow students and residents. 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 American Medical Association, the American Academy of Rheumatology, and the National Academy of Sciences in India, 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 his discipline. The evidence shows that the beneficiary became a diplomate member of the National Academy of Sciences in India upon passing an examination and paying a membership fee. 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.

For criterion number three, the petitioner submitted several articles that mention the beneficiary and his colleagues' receipt of student awards. The articles were published in institutional newsletters, rather than major press or trade publications. In any event, the articles listing the beneficiary's receipt of student awards fail to indicate that the beneficiary has sustained international or national acclaim for achievements in his field of endeavor. 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 served on the editorial board of *Drug Alert*, a journal based at the All India Institute of Medical Sciences from 1996 to 1999. The evidence also contains a letter from a representative of *Drug Alert* that states that the beneficiary had contributed a few articles to the publication and had served as a section editor for a single special issue in 1996. The petitioner's assertion that the beneficiary served on an editorial board for three years and the letter from the publication stating that the beneficiary served as a section editor for a single issue are inconsistent. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Even assuming that the letter from the publication's representative is truthful, it fails to establish that the beneficiary satisfies this criterion. Serving as an editor for a single special issue fails to indicate the beneficiary enjoys national or international acclaim as judge of the work of others. In a field where peer review is a regular element of the publication process, the regulation requires frequent or regular participation as a judge of the work of others; the beneficiary's selection to edit must distinguish him from his colleagues. Not every academic who serves as an editor will be recognized as nationally or internationally acclaimed.

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 results of his research, the record does not show that his

research is considered of "major significance" in the field. By definition, all professional research must be original and significant in order to warrant publication in a professional journal. The record does not show that the beneficiary's research is of major significance in relation to other similar work being performed. The petitioner provided CIS with eight general testimonials about the value of the beneficiary's work. The testimonials' authors speak to the beneficiary's clinical skills, and knowledge. Five of the eight testimonials were written by persons employed either at the petitioner's organization, or its affiliates in Texas. While these testimonials speak highly of the beneficiary, letters written by those with professional ties to the beneficiary do not establish that the beneficiary is well known beyond his immediate circle of colleagues, as one might expect of a person who had made an original contribution of major significance in the field. A former professor and colleague at the Mubarak Hospital in Kuwait wrote one testimonial. The remaining two were written at the beneficiary's alma mater in India. The testimonials' authors speak highly of the beneficiary, but they fail to establish that the beneficiary has made an original scientific or scholarly contribution of major significance in his field. Most of the testimonials' authors wrote in general terms about the beneficiary's potential. One testimonial author wrote that the beneficiary had made original contributions by his research on auto-immune diseases, for "the first time report" of a combination of familial Mediterranean fever with a crippling rheumatic disease; recognizing and publishing about some rare manifestations of common infections in the musculoskeletal system; and being the first to describe the common rheumatic problems among AIDS patients in India. The author went on to say that the beneficiary showed that a simple laboratory test offers a cost-effective method to assess the progress of AIDS in developing countries. Finally, the author states that the beneficiary made a contribution by virtue of his research and evaluation on the efficacy of various tests to diagnose the antiphospholipid syndrome. The petitioner did not submit corroborative evidence to indicate that any of these research results or tests have been widely utilized or applied in the field.

In review, the testimonials fail to show that the beneficiary has sustained national or international acclaim and recognition for major achievements in the field of medicine. The beneficiary does not satisfy this criterion.

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 co-authored 26 articles in scientific journals. The director determined that the beneficiary satisfied this criterion. This portion of the

director's decision shall be withdrawn. The petitioner failed to submit an extensive citation history that would indicate that the beneficiary's work has had an impact on his field. The petitioner did submit one article that cited the beneficiary's work. The evidence is insufficient to show that 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 the beneficiary has been employed in a critical or essential capacity for institutions with distinguished reputations, such as the Baylor University. The AAO acknowledges the distinguished reputation of Baylor University, but the evidence does not show that the beneficiary was employed in a critical or essential capacity at any institution. While employment with esteemed institutions is evidence of a degree of recognition, staff or assistant positions such as those held by the beneficiary are not considered employment in a "critical or essential capacity" for the institution as might a department head or lead researcher in a nationally recognized unit of the organization.

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, no evidence of the beneficiary's salary history was provided. The proffered annual salary is \$120,000. The petitioner should have submitted wage survey information for all assistant professors and physicians in rheumatology on a nationwide basis. To evaluate whether the salary is high, CIS must compare it to the median and highest wages offered nationwide to assistant professors and physicians in rheumatology. The petitioner failed to establish that the beneficiary satisfies 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.

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). 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.