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U.S. Department of Justice

Immigration and Naturalization Service

...ent clearly unwarranted
invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
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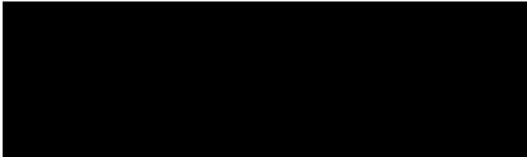


File: LIN 02 269 52573 Office: NEBRASKA SERVICE CENTER Date: FEB 12 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

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 Service 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 THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a teaching hospital. The beneficiary is a physician. The petitioner seeks 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 medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a clinical neuro-oncologist in the Department of Neurology with joint appointments in the Departments of Neurosurgery and Biomedical and Therapeutic Science.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being one 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 record shows that the beneficiary is an alien with extraordinary ability in his field.

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

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 medical science as defined in these proceedings.

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 native and citizen of Romania. The record reflects that he received his medical degree from the Carol Davila Medical School in Bucharest, Romania in 1991. He completed the required internship in Romania. He completed residencies in psychiatry and behavioral science neurology, and clinical neurology at the University of Texas. He also completed a fellowship in neuro-oncology at the University of Texas in 2001.

The record reflects that he was last admitted to the United States on October 30, 1997 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). The director acknowledged the beneficiary's specialized training, but concluded that eligibility for the O-1 classification is not based on a beneficiary's performance during preparatory specialized training, or in having specific professional competencies, but rather hinges on the beneficiary's level of acclaim and recognition in the actual field.

On appeal, counsel for the petitioner asserts that the beneficiary is eligible for O-1 classification and that many of the deficiencies in the record are attributable to the beneficiary's move from one medical institution to the petitioner's institution.

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, no evidence was initially submitted. In response to a request for additional documentation, the petitioner asserts that the vast majority of physicians never submit an abstract or experience the privilege of having an abstract accepted for presentation at national or international meetings of peers, whereas the beneficiary has authored three poster abstract presentations that have been accepted by the American Academy of Neurology at its annual meeting in 1999 and the Fifth Congress of the European Association of Neuro-Oncology in 2002. The petitioner asserts that by virtue of such publication, the beneficiary has received nationally or internationally recognized prizes or awards. The petitioner has failed to establish that these accomplishments are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

For criterion number two, while the beneficiary is a member of the Harris County Medical Society, the Texas Medical Association, the American Medical Association, the American Academy of Neurology, the Society for Neuro-Oncology and the American Association for Cancer Research, there is no evidence that these are associations which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. The petitioner failed to establish that these are associations within the meaning of the regulation and failed to establish that the beneficiary satisfies this criterion.

For criterion number three, no evidence was initially submitted. In reply to a request for additional documentation, the petitioner states that because neuro-oncology is a relatively new specialty, it is impossible to satisfy this criterion for published material in professional or major trade publications or major media about the alien. The petitioner concedes that the beneficiary does not meet this criterion but asserts that there are sufficient documents that support the need to train physicians in the beneficiary's specialty.

For criterion number four, the beneficiary completed a fellowship and several residency programs. The petitioner asserts that as a resident and fellow, the beneficiary was required to evaluate the work of support staff, supervise other residents, fellows and medical students, and participate in the evaluation of the program and its faculty. These functions are part of the normal job requirements of a medical researcher such as the beneficiary. The petitioner failed to establish that the beneficiary was chosen to

judge the work of other medical practitioners on the basis of his acclaim in his field. The petitioner also states that the beneficiary performed peer review of manuscripts on an ad hoc basis for the *Journal of Neurosurgery*. Selection to review manuscripts for publication on an ad hoc basis does not indicate that the beneficiary enjoys sustained national or international acclaim.

For criterion number five, the petitioner provided the Service with testimonials about the value of the beneficiary's work and his individual qualities. Professor Kyritsis wrote that "[the beneficiary's] diagnosis and treatment abilities are comparable to those of most senior physicians in his specialty." Assistant Professor Wasay wrote: "I have met a large number of excellent physicians from all over the world during my training...[the beneficiary] ranks at the very top of the list. [The beneficiary] presented a study concerning patterns of metastasis in prostate cancer with important therapeutic implications in the American Academy of Neurology meeting." Dr. Puduvalli wrote that the beneficiary "retrospectively reviewed information from over 16,000 patients with prostate cancer to identify the subgroup who had brain metastases." Dr. Forman wrote "[the beneficiary] is an original thinker. . . and will be an asset for advancing our understanding of neuro-oncology and improving care for patients." Dr. Groves wrote that the beneficiary is an "excellent neuro-oncologist." 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 evidence fails to show that beneficiary has sustained national or international acclaim and recognition for major achievements in the field of medical science. The beneficiary does not satisfy this criterion.

For criterion number six, the beneficiary has co-authored six articles that have appeared in peer-reviewed medical journals. The beneficiary authored two chapters for *eMedicine*, an on-line medical journal and presented three abstracts at two different medical conferences. Medical researchers routinely publish and present the results of their scholarly research. Not every researcher who publishes articles in the field will satisfy this criterion. The petitioner has not established that the beneficiary's publications have been cited or otherwise influenced the field. The beneficiary does not satisfy this criterion.

For criterion number seven, no evidence was submitted.

For criterion number eight, the petitioner asserts that according to the Medical Student Resource Guide, a neurologist can anticipate a starting salary of \$130,000 on average. The beneficiary's offered salary of \$120,000 is less than the average. The beneficiary does not satisfy 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 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, and 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.