



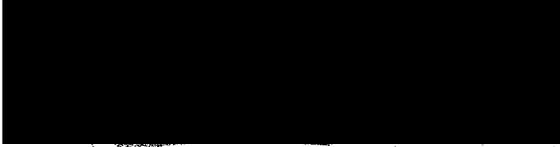
D8

U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536

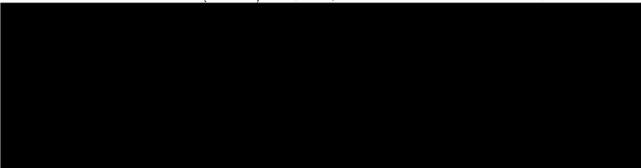


File: [redacted] SRC 02 222 52030) Office: TEXAS SERVICE CENTER Date: FEB 27 2003

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.

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 on appeal. The appeal will be dismissed.

The petitioner, [REDACTED] seeks a change of status for the beneficiary from J-1 exchange visitor to 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 neonatologist at an annual wage of \$150,000.

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, counsel for the petitioner asserts that the director's decision is an abuse of discretion mandating approval of the petition.

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, brief, and additional documentation.

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 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.

(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 citizen of Uruguay. The record reflects that he received his medical degree at the University of Uruguay in 1993. He completed a fellowship in surgical oncology at the University of Texas in 1996. He completed a three-year pediatric residency at Texas Tech University in El Paso, Texas in 1999. He completed a three-year neonatology fellowship at the Johns Hopkins University School of Medicine in 2002. The record reflects that he was last admitted to the United States on January 11, 2002 in J-1 classification as an exchange visitor 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 science pursuant to 8 C.F.R. § 214.2(o)(3)(ii). The director acknowledged the facts presented that the beneficiary is a very good and capable medical professional and that he is a recognized expert, but concluded that the record failed to show that the beneficiary has been recognized as a physician of extraordinary ability whose achievements have been recognized in the field through extensive documentation.

On appeal, counsel for the petitioner asserts that the director erred in weighing the evidence, and submits additional evidence. The petitioner asserts that the criteria set forth at 8 C.F.R. § 214.2(o)(3)(ii) are not readily applicable to the beneficiary, so the petitioner submitted comparable evidence.

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 submitted.

Counsel for the petitioner stated on appeal that it offered no evidence regarding criteria numbers two and three.

For criterion number four, the beneficiary served as an editor at *Harriet Lane Links*, an edited collection of pediatric resources on the world wide web that is maintained by Johns Hopkins University. The petitioner failed to indicate the length of time the beneficiary has served as a volunteer editor. As documentation, the petitioner included a letter from a senior editor associated with *Harriet Lane Links* that states that editors are selected based on their formal attainment of medical degrees, their reputation within the pediatric community and willingness to volunteer their editing skills in the review of ten pediatric-related web pages each month. In review, it appears that the beneficiary was selected on the basis of his reputation at Johns Hopkins University to review websites for a Johns Hopkins University website. The beneficiary was not selected on the basis of his reputation within the pediatric community at large. Reviewing web pages is not equivalent to judging the work of others. The beneficiary does not satisfy this criterion.

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 the Service with numerous testimonials about the value of the beneficiary's work. Dr. David Gozal wrote that the beneficiary's development of a neuron labeling technique has "literally shed light on an aspect of the infant nervous system that had previously never been uncovered." Dr. Javier Repetto wrote that it is well-known that the beneficiary created "a new technique for labeling sleep-related neurons that have opened a whole new window of observation for the medical community." Dr. Estelle Gauda wrote that the beneficiary wrote a guidebook for neonatal medical practitioners at Johns Hopkins University. Dr. Edward Lawson wrote that the beneficiary "excelled as a scholar, a physician, a scientist, a researcher and a superb clinician." Dr. Daniel Machiavello wrote that the beneficiary graduated from medical school with academic honors.

These testimonials are all conclusory and fail to demonstrate how the beneficiary's research has impacted his field. The record does not contain contemporaneous corroborating evidence such as news articles or articles in professional journals about the beneficiary's role in developing a new technique. The petitioner fails to demonstrate how the beneficiary has made a significant contribution to his 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). In review, the evidence fails to show that beneficiary has sustained national or international acclaim and recognition for major achievements in the field of medicine.

For criterion number six, the beneficiary has co-authored one abstract and one article on his research.<sup>1</sup> During his student and training years, he authored one article. The director determined that because the articles were either co-authored, or written while the beneficiary was a student or in training, the beneficiary did not meet criterion number six. On appeal, counsel for the petitioner argues that the director misapplied the regulations and relied upon unfounded assertions of fact in denying that the beneficiary meets this criterion. The AAO affirms the director's decision that the beneficiary does not satisfy criterion number six, but for reasons other than those cited by the director. It is expected that medical scientists will publish articles discussing their research. It does not follow that all scientists who publish articles in peer-reviewed journals enjoy sustained acclaim in their field. No citation history of his works has been submitted. Published articles by the beneficiary that have been cited by others would more meaningfully establish that the beneficiary enjoys a measure of influence through his publications. In review, the evidence fails to show that the beneficiary has sustained national or international acclaim and recognition for achievements in the field of medical science through authorship of scholarly articles.

For criterion number seven, counsel for the petitioner asserts that because the beneficiary authored a guidebook for medical practitioners at his place of employment that is "critical to the functioning of the hospital," the beneficiary satisfies this criterion. 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). Although the petitioner provided the Service with a testimonial that mentions the beneficiary's authorship of an in-house guide, the petitioner has not established that the beneficiary satisfies this criterion.

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<sup>1</sup> As of the date of filing the petition, the beneficiary's article was pending publication.

For criterion number eight, the petitioner provided the Service with evidence that the proffered wage of \$150,000 exceeds the prevailing wage of \$106,912 for a neonatologist in the Houston area. The petitioner established that the beneficiary satisfies this criterion. The portion of the director's decision that states otherwise shall be withdrawn.

The petitioner asserted that the criterion set forth at 8 C.F.R. § 214.2(o)(iii)(C) are not applicable to the beneficiary so the petitioner provided the Service with comparable evidence in the form of testimonials from the beneficiary's peers attesting to his extraordinary ability. The testimonials were discussed in relation to criterion number five.

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.

Beyond the decision of the director, the petitioner sought to change the beneficiary's classification from J-1 to O-1. A person subject to the two-year foreign residency requirement is ineligible for a change of status (except as to A and G classification) unless he returns home and physically resides in his country for two years following departure from the U.S. or obtains a waiver. Section 212(e) of the Act, 8 U.S.C. § 1182(e); 8 C.F.R. § 248.2(c)(d). As the decision is based upon the discussion above, no further discussion of this issue is required.

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.