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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

JAN 10 2003

File: LIN 02 206 55999 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
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:

[redacted]

Identifying data deleted to prevent invasion of personal privacy

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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a medical care facility and a teaching institution. 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 fellow at a salary of $41,216 per year.

The director denied the petition finding that the beneficiary is still in a learning phase of his specialty so he would not be considered one of the small percentage who have arisen to the very top of the field of endeavor. The director found that the proffered job offer as a "fellow" would not satisfy the statutory requirement that the alien is coming to the United States to work in the area of extraordinary ability.

Counsel for the petitioner submitted a motion to reopen and reconsider. The director declined to treat the appeal as a motion to reopen or reconsider, and forwarded the appeal and the related record to the Associate Commissioner for review. C.F.R. 103.3(a)(2).

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. Counsel for the petitioner asserts that there is no requirement that the position for which the services of an O-1 caliber alien are being sought must require the services of someone of that caliber. Counsel also argues that the beneficiary is not precluded from O-1 classification merely because he is a fellow.

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 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 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 Panama. The record reflects that he received a medical degree in 1993 then completed an internship in Panama. He performed two consecutive externships and two consecutive residency programs. The beneficiary is now applying for this visa classification to complete a fellowship at the petitioner medical center. The record reflects that he was last admitted to the United States on April 14, 2002, in J-1 classification as an exchange visitor.

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's career is admittedly promising, but concluded that he is not one of a small percentage who has risen to the very top of his field of medicine.

On appeal, counsel for the petitioner asserts that the director erred in focusing on the beneficiary's job title and duties and in finding that the beneficiary would not be working in his area of extraordinary ability serving as a fellow. Counsel argues that the Service failed to take into consideration all the evidence provided, and applied incorrect standards in deciding the case.

After careful review of the record, it must be concluded that the petitioner has failed to establish that the beneficiary meets the O-1 eligibility requirements. 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).

For criterion number one, the petitioner asserts that the beneficiary satisfied the criterion by virtue of being named chief of residents in 1997 and having served as president of the association of residents and interns at the Caja de Seguro Social Hospital from 1997 to 2000. The petitioner states that the beneficiary was appointed to a medical commission for the acts of transference of the Panama Canal, thereby responsible for the medical care of high-level personnel from foreign countries visiting Panama. Finally, the petitioner states that the beneficiary was one of six medical professionals from the United States selected to speak at a Congress of the Latin American Federation of Neurosurgery. The petitioner failed to establish that these prizes or awards 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 Panamanian Society of Neurology and Neurosurgery, the Latin American Federation of Neurosurgery, the American Association of Neurological Surgeons and the World Federation of Neurosurgical Societies, the Wayne County Medical Society, the Michigan State Medical Society, the International Society for Prevention of Child Abuse and Neglect, and the Michigan Association of Neurological Surgeons, there is no evidence that these are associations that require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines.

For criterion number three, the petitioner submits that the beneficiary was interviewed by an educational radio and television station in Panama in 1995, and produced a video that features the beneficiary for approximately seven minutes. The beneficiary was interviewed regarding his recommendations and comments about the health care situation in a medically underserved area of Panama. The petitioner failed to establish that this video is evidence of the beneficiary's sustained national or international acclaim and recognition for achievements in the field of expertise.

For criterion number four, the beneficiary was chosen to perform medical evaluations of the candidates who would represent Panama at the International Expo Hannover 2000. The petitioner failed to establish that the beneficiary was selected on the basis of sustained national or international acclaim and recognition for his achievements. The record is silent as to how the beneficiary was selected for this responsibility.

The beneficiary has served as a reviewer for *Neurological Research*, a multidisciplinary journal, since 2000. Beginning in October, 2001, the beneficiary has served as an assistant to the editorial board, and as a book review editor for *Psychline*. The beneficiary has served as an assistant to the book review editor of the World Federation of Neurological Societies since January 2002. According to the book review editor of the World Federation of Neurological Societies, the beneficiary "was chosen based on his stellar fund of knowledge in neurosurgery and his ability to conduct important neurosurgical research that has greatly impacted the field." The evidence shows that the beneficiary satisfies this criterion, but it is only one criterion.

For criterion number five, the petitioner submitted twelve testimonials, four of which were written by employees of the petitioner. One employee, Dr. Fernando Diaz, wrote that the beneficiary is "greatly enhancing our understanding of cerebral vessel anatomy." The Service gives credence to testimonials written by employees of the petitioner, but such testimonials are given less weight than those from independent sources.

Dr. Fernando Gonzales-Portillo wrote that, "I anticipate that [the beneficiary's] contribution *will* influence positively in the diagnosis and treatment of stroke." Dr. Richard Fessler said that, "the *future* development of a computer model [by the beneficiary] will permit a better treatment and selection of the vascular coils or stents . . . ." Predictions of the beneficiary's *future* contributions do not satisfy this criterion.

Dr. Konstantin Slavin wrote that the beneficiary's research on brain trauma cases by baseball bat injuries led to a "better understanding of this particular syndrome in the neurosurgical community." While all of the testimonials' authors value the beneficiary's work, they do not establish that the beneficiary has made original scientific contributions of major significance relative to the work of others in the field.

For criterion number six, the beneficiary has published two articles and eighteen book reviews in peer-reviewed publications and three to eleven abstracts. 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. The material submitted by the petitioner does not distinguish the beneficiary from others in his field.

For criterion number seven, the record is silent.

For criterion number eight, no evidence of the beneficiary's salary history was provided, nor were salary surveys supplied to the Service so that the current salary offer could be evaluated.

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.

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.

Counsel for the petitioner argues that the director erred in finding that as a fellow, the beneficiary would not be working in his area of extraordinary ability. Counsel's argument has merit. 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. Here, the beneficiary intends to continue work in the area of his alleged extraordinary ability, medical science. Given that the case is being decided on the insufficiency of the evidence of the beneficiary's sustained acclaim and recognition, the matter will not be discussed further.

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.