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U.S. Department of Justice

Immigration and Naturalization Service

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



File: LIN 02 132 55630 Office: NEBRASKA SERVICE CENTER Date:

JAN 23 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)

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

The petitioner is a medical school. 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 an assistant professor of infectious diseases.

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 her 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 her 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 India. The record reflects that she received her medical degree in 1992 in Bangalore, India. She performed her medical internship from 1992 through 1993. From July 1995 to June of 1998, the beneficiary was in residency in internal medicine at St. Joseph's Hospital at Northwestern University. The beneficiary was a chief resident at St. Joseph Hospital from July 1998 to June 1999. She served as a fellow in infectious diseases from July 1999 at the University of Chicago and the University of Illinois at Chicago until March 2002.

The record reflects that she was last admitted to the United States on April 12, 1999, in J-1 classification as an exchange visitor. As of the date of filing the petition (March 13, 2002), the beneficiary was working on a master's degree in public health at the University of Chicago.

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 she is "at the very top" of her field of medical science pursuant to 8 C.F.R. 214.2(o)(3)(ii). The director acknowledged the beneficiary's specialized training, including her academic awards and selection for highly competitive training programs at leading institutions, but concluded that eligibility for the O 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 director failed to give full consideration and due weight to the 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, counsel for the petitioner argues that the beneficiary's receipt of the Merck Investigator Award is an award for excellence in the beneficiary's field of endeavor. Counsel also asserts that the beneficiary's high academic rankings during her pre-professional education satisfy this criterion. The director determined and the AAO affirms that academic awards received while preparing for the vocation fall substantially short of constituting a national or international prize or award for excellence in the field of endeavor. Counsel asserts that the beneficiary's "ground-breaking research on the treatment of invasive fungal infections in immunocompromised individuals led to her receipt of the Merck Investigator Award in March 2002 at the 12th annual conference of 'Focus on Fungal Infections.'" According to a testimonial in the record, the award is presented to the finest research paper presented at that national fungal infection conference. The beneficiary was one of thirty candidates for the award. While this particular Merck award may meet the definition of a nationally recognized award for excellence in the field of endeavor, it is only one award, therefore the petitioner failed to demonstrate that the beneficiary meets this criterion.

For criterion number two, while the beneficiary is a member of the Infectious Diseases Society of North America and was formerly a member of the American College of Physicians, 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. Counsel for the petitioner asserts that the beneficiary's selection for the position of chief resident at St. Joseph's Hospital, her board certification, and her selection for the Infectious Disease fellowship program at the University of Illinois at Chicago are all evidence of the beneficiary's membership in associations that require outstanding achievements. 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 submitted.

For criterion number four, the beneficiary performed peer review of manuscripts for two professional journals. She also served as a panel member on the medical education committee at Saint Joseph Hospital, reviewing and evaluating the performance of residents. The petitioner established that the beneficiary satisfies this criterion.

For criterion number five, counsel for the petitioner asserts that the beneficiary's research on drug therapies for invasive fungal infections constitutes a contribution of major significance in the field. 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 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 testimonials about the value of the beneficiary's work and her individual qualities. One wrote that the beneficiary is "exceptionally gifted." Another wrote that she has "shown exceptional clinical abilities." One said that during her residency, "she distinguished herself as an exceptionally competent and caring physician." Another opined that the beneficiary is "developing into an excellent researcher" and possesses "astute clinical judgment." One wrote that the beneficiary "would contribute greatly to the advancement and knowledge to the field of infectious diseases." The record does not demonstrate that the beneficiary has made a contribution of major significance in the field, but rather that the beneficiary shows potential to make a contribution in the future. 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 authored and presented one abstract on her research. As documentation that the beneficiary meets this criterion, the petitioner asserts that the beneficiary's lecture broadcast nationwide qualifies. Medical researchers are expected to and routinely publish results of their scholarly research. Not every researcher who publishes articles in the field will satisfy this criterion. One presentation and one lecture broadcast nationwide do not distinguish the beneficiary from others in her field. 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, counsel for the petitioner asserts that the beneficiary will be employed in a critical capacity at an establishment that has a distinguished reputation. The regulation requires evidence that the alien has been employed as such. An assertion about future employment does not qualify as evidence that the beneficiary meets this criterion.

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 her 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.