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U.S. Department of Justice

Immigration and Naturalization Service

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[redacted]

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

File: EAC 02 208 53073 Office: VERMONT SERVICE CENTER Date: JAN 23 2003

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a pharmaceutical company. The beneficiary is a microbiologist. 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 science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as an investigator at an annual salary of $65,780.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has maintained a level of international or national acclaim in his field of endeavor. The director determined that the petitioner failed to establish that the beneficiary is in the very top of his field of endeavor as is required by regulation.

On appeal, counsel for the petitioner asserts that the director erred in weighing the evidence and 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, 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 science as defined by 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 native and citizen of India. The record reflects that he received a master's degree in genetics at the Indian Agricultural Research Institute in New Delhi, India in 1991. He completed a Ph.D. in microbial genetics at Illinois State University in 1995. Since 1995, the beneficiary has been working in the United States as a researcher for pharmaceutical companies and a private medical school. At the time of filing this petition, the beneficiary was employed by the petitioner as an investigator. The record reflects that he was last admitted to the United States on June 11, 2000, in H1B classification as a temporary worker.

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 concluded that the record failed to show that the beneficiary was recognized as a scientist 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 on the record and submits additional documentation.

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, the petitioner indicated that the beneficiary received the Phi Sigma Most Outstanding Ph.D. Student Award at Illinois State University and won appointment to the [redacted] Trust Fellowship at Tufts University School of

Medicine as a postdoctoral associate. The beneficiary competed with other students for these awards. The petitioner failed to demonstrate that these awards are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner also indicated that the beneficiary has been the recipient of numerous research grants. Research grants are funds provided to employ the grant recipient to perform specific research. Again, the petitioner failed to demonstrate that these awards are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

For criterion number two, while the beneficiary was a member of the Sigma Xi Scientific Research Society at Illinois State University in 1993, and is currently a member of the American Society for Microbiology and the American Association for the Advancement of Science, the petitioner failed to provide evidence that these associations require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines.

For criterion number three, the petitioner provided the Service with a newspaper article about the beneficiary and members of his research team. The article was published in 1992. No evidence was submitted indicating that the beneficiary has been noted for his accomplishments in any published materials for the last ten years. The petitioner failed to establish that the beneficiary has sustained acclaim and that the beneficiary satisfies this criterion.

For criterion number four, no evidence was provided.

For criterion number five, the petitioner submitted numerous testimonials from professional colleagues of the beneficiary. One wrote that the beneficiary was on a research team that was the first to report on the isolation and characterization of mutant autolysins. Another wrote that the beneficiary made remarkable progress in unraveling how a bacterium regulates toxin production. A third wrote that the beneficiary performed cutting edge research and his work was patented. A patent may establish the originality of one's research, but does not demonstrate that the research is of major significance in the field. The petitioner did not submit testimonials or contemporaneous citations from independent experts in the field commenting on the significance of the beneficiary's research. The petitioner has failed to establish the significance of the beneficiary's research work in relation to similar work performed by others in the field.

For criterion number six, the beneficiary has published eight articles in peer reviewed literature. The articles were published

between 1992 and 2001. The director determined that the beneficiary satisfies this criterion. 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. 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, 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.

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.