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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



D8

File: LIN 02 220 56135 Office: NEBRASKA SERVICE CENTER Date: **JUL 17 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)

ON BEHALF OF PETITIONER:

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 Bureau of Citizenship and Immigration Services (Bureau) 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a medical practice. The beneficiary is a radiologist. 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 radiologist.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained national or international acclaim.

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, and the appeal documents.

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.

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 the Republic of China (Taiwan). The record reflects that he received his medical degree in 1995 at the University of Vermont. From 1995 to 1996, the beneficiary completed an internship in transitional medicine at the University of Chicago. From 1996 to 2000, he completed a residency in diagnostic radiology, also at University of Chicago. The beneficiary then completed a fellowship in vascular and interventional radiology at the University of Chicago from 2000 to 2001. Since August 2001, the beneficiary has been employed by the petitioner as Director, Vascular and Interventional Radiology.

The record reflects that the beneficiary was last admitted to the United States on January 22, 2002, as an H-1B non-immigrant.

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 has sustained national

On appeal, counsel for the petitioner asserts that the director erred in weighing the evidence, and that the beneficiary satisfies at least three of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

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).

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

For criterion number one, the evidence states that the beneficiary was awarded the Best Resident in Body Imaging Award in 1998. In the same year, he received the Introduction to Research Award that is given yearly to 40 residents in the United States. In 1999, the beneficiary received the Best Musculoskeletal Case Award, sponsored by the Armed Forces Institute of Pathology. It is noted that all three of the above awards were restricted to residents. On appeal, counsel for the petitioner asserts that the beneficiary was selected to receive the Best Musculoskeletal Case Award from among 300 other radiologists from around the world. According to a letter submitted by the petitioner from [REDACTED] the beneficiary competed with 149 other residents for this award in 1999, all of whom were enrolled in a six-week course.

As further evidence in support of its claim that the beneficiary satisfies criterion number one, the petitioner asserts that by virtue of his selection in highly competitive fellowship and residency programs, the beneficiary received honors or awards for excellence.

Academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work, scholarships and fellowships cannot be considered awards in the field of endeavor. Moreover, only students compete for such awards. As the petitioner did not compete with nationally or internationally recognized experts in the field, the awards cannot be considered evidence of the beneficiary's national or international acclaim. The petitioner failed to demonstrate that these were awards for excellence in the field of endeavor.

The petitioner also submits that the beneficiary was invited to make presentations at numerous prestigious international scientific meetings. The petitioner has failed to establish that these invitations were awards for excellence in his field of endeavor.

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.

For criterion number two, while the beneficiary is a member of the American College of Radiology, the Radiological Society of North America (RSNA), the American Roentgen Ray Society (ARRS) and the Society of Cardiovascular and Interventional Radiology (SIR), 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.

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 translations.

No evidence was submitted in relation to criterion number three.

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.

No evidence was submitted in relation to criterion number four.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.

For criterion number five, while the beneficiary has published and presented the results of his research, the record does not show that his research is considered of "major significance" in the field. 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 asserts that the beneficiary has made significant research contributions in the field of vascular and interventional radiology including "important discoveries relating to interventional radiology techniques and procedures." In support of this assertion, the petitioner provided the Bureau with testimonials. [REDACTED]

[REDACTED] University of Chicago Hospitals, wrote that the beneficiary has been working in the area of regional oncologic therapy and is playing a "leading role in the development of a radiofrequency ablation program." [REDACTED]

Ha wrote further that the beneficiary made "significant contributions to [its] uterine artery embolization program."

[REDACTED] University of Chicago Hospitals, wrote that the beneficiary performed valuable research with his colleagues to develop angiographic dialysis protocols. [REDACTED]

[REDACTED] University of Chicago Hospitals, wrote that the beneficiary contributed to the development of virtual colonoscopy for more comfortable and cost-effective colon cancer screening, development of computed tomography (CT) angiography methods to screen kidney transplant donors, and interpretation of CT scans taken following laparoscopic surgery.

While favorable to the beneficiary, the testimonials fail to state how the beneficiary has made a significant contribution to his field of endeavor in relation to others in his field. In the absence of corroborating evidence, the record is not persuasive in establishing that the beneficiary satisfies this criterion.

The nature of scientific research is to expand the body of knowledge of science. The beneficiary's contributions are original and noteworthy, but they are best described as adding to our body of knowledge incrementally rather than as a scientific breakthrough. 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.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

The director determined that the beneficiary satisfies this criterion. The AAO concurs.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

For criterion number seven, the petitioner asserts that the beneficiary played a critical role as a fellow at the University of Chicago School of Medicine. The petitioner provided the Bureau with [REDACTED] letter that states that the beneficiary "provided a critical service in the training and evaluation of future physicians while rendering quality medical care to the patients." While the director determined that the University of Chicago Medical School has a distinguished reputation, he concluded that the petitioner failed to establish that the beneficiary had been employed in a critical or essential capacity there. The AAO concurs. The evidence is insufficient to establish that the beneficiary had been employed in a critical capacity at the University of Chicago Medical School.

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.

For criterion number eight, the petitioner provided the Bureau with a letter from a health care consultant asserting that the average wage for radiologists is \$303,839. The petitioner provided the Bureau with a copy of its employment contract with the beneficiary that provides that the petitioner will pay the beneficiary \$241,500 for the first year, \$266,500 for the second year and \$321,500 for the third year of employment. The director determined that the petitioner failed to establish that the beneficiary satisfies this criterion. The AAO concurs. The evidence shows that the petitioner is prepared to pay the beneficiary less than the average wage. 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).

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.