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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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JUN 28 2005

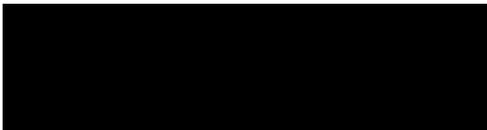
File: SRC 02 273 52897 Office: TEXAS SERVICE CENTER Date:

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a university. The beneficiary is a radiologist. The petitioner seeks a continuation of 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 radiology. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of one year as a professor, researcher, and interventionalist radiologist at an annual salary of \$205,000.

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 the field of radiology.

On appeal, counsel for the petitioner submits a brief asserting that the record contains substantial evidence that the beneficiary is an alien with extraordinary ability in the field of radiology.

The record consists of a petition with supporting documentation, a request for additional evidence, the petitioner's reply to the request, and 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 radiology 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 36-year old citizen of Turkey. The record reflects that he held O-1 status from October 20, 1999 to September 20, 2002 and was employed by the petitioner in a faculty position as an interventional radiologist.

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 radiology pursuant to 8 C.F.R. § 214.2(o) (3) (ii). The director acknowledged the facts presented that the beneficiary has an impressive record, but concluded that the record failed to show that the beneficiary was recognized as a radiologist 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 finding the evidence insufficient to find that the beneficiary is a radiologist of extraordinary ability.

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).

No evidence was submitted in relation to criteria numbers one, and three.

For criterion number two, while the beneficiary is a member of the Radiological Society of North American and the American Roentagen Ray Society, 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, nor is there such evidence on the organizations' websites.¹

¹ www.rsna.org and www.arrs.org.

For criterion number four, the petitioner provided the Bureau with a letter dated May 21, 2002, written by the editor of *Cardiovascular Interventional Radiology*, inviting the beneficiary to review manuscripts for the publication. The petitioner also submitted two memoranda listing cases to be presented by the beneficiary at monthly urology/radiology conferences. The petitioner provided the Bureau with a letter thanking the beneficiary for his hard work as a facilitator. On appeal, the petitioner provided an e-mail message indicating that the beneficiary accepted an invitation from the senior co-director of the national student research forum to review an abstract. The beneficiary's work reviewing a student's abstract does not fit into the category of judging others' work in the field. As an educator, the beneficiary was not judging the work of experienced professionals in the field, but was performing a professor's job. Similarly, the beneficiary's work as a facilitator and presenter do not satisfy this criterion. Finally, the record contains no evidence establishing the frequency or the length of time the beneficiary has served as a reviewer for *Cardiovascular Interventional Radiology*. 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 Bureau with testimonials about the value of the beneficiary's work. Dr. [REDACTED] Shriners Burns Institute, UTMB, wrote that "there is no doubt that [the beneficiary] is among the interventional radiologists who have reached the very top of the field through original contributions that have proven extraordinary as well as significant to the improvement of health care for patients with severe liver disease." Dr. [REDACTED] Victoria General Hospital, wrote that "[the beneficiary] has expanded the frontiers of research in interventional radiology, undertaking original investigations with Dr. [REDACTED] on complications associated with burn victims." Dr. [REDACTED] wrote further that the beneficiary's research on the role of radiology in pancreatic transplantation "will have a major impact on diabetics and other patients with pancreatic failure." Dr. [REDACTED] Wake Forest University School of Medicine, wrote that the beneficiary's "original work has made an impact on the field." Dr. [REDACTED] Baskent University Medical School, wrote that the beneficiary's research on testicular maladjustment and transtracheal access for endobronchial procedures is original. Dr. [REDACTED] University of Colorado, wrote that the beneficiary has, made and continues to make significant and original

contributions that advance the field of interventional radiology. Dr. [REDACTED] UTMB, wrote that the beneficiary's "work and skills have significantly improved the treatment of patients with difficult and complex urologic conditions." Dr. [REDACTED] Professor of Medicine, Hacettepe University, wrote that the beneficiary's "research has not only facilitated procedures within the field of interventional radiology, but it has also made crucial advances in other medical fields including cardiology." While the testimonials' authors all speak highly of the beneficiary's skills, they do not establish that the beneficiary has made original scientific contributions of major significance relative to the work of others in the field. The record contains no corroborating evidence in the form of articles about the impact of the beneficiary's discoveries in major media or professional trade publications. 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 the beneficiary has sustained national or international acclaim and recognition for major contributions in the field of radiology.

The director determined that the beneficiary satisfies criterion number six. This portion of the director's decision shall be withdrawn. The beneficiary has published eight articles and 23 abstracts. It is expected that researchers publish the results of their research in peer-reviewed journals, and publication of eight such articles does not constitute extensive documentation of sustained acclaim through publication of scholarly articles. Such evidence would be more persuasive if the beneficiary's articles had been extensively cited by others in the field. The petitioner has not submitted any citation history for these articles, which would tend to indicate acclaim. The beneficiary does not satisfy this criterion.

The petitioner asserts that the beneficiary meets criterion number seven because he plays an essential role at UTMB (the petitioner) in an \$8.1 million National Institute of Health (NIH) grant to evaluate colon lesions. The petitioner states that the beneficiary "plays a critical role as a named investigator" for on-going Federal Drug Administration trials. The petitioner further asserts that the beneficiary satisfies this criterion by virtue of his past employment as the main radiology investigator for NIH-funded research to analyze why children suffering severe burns also develop fatty liver. The petitioner also asserts that the beneficiary was the principal investigator and coordinator of a project entitled "utilization of ultrasound guidance for single wall common femoral artery puncture." The petitioner failed to indicate where the beneficiary participated in the latter research project. While the evidence suggests that the beneficiary played a lead or critical role in several research projects, it does not

establish that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. It is noted that a research team is not an organization or establishment.

For criterion number eight, no evidence of the beneficiary's salary history was provided, nor were salary surveys supplied to the Bureau 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.

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.