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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

[Redacted]

File: WAC 01 072 51425

Office: CALIFORNIA SERVICE CENTER

Date: MAR 13 2003

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]

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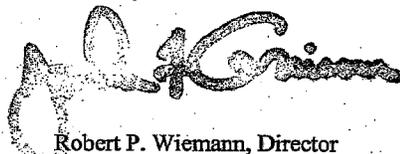
INSTRUCTIONS:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen. The motion will be granted. The decision of the director will be affirmed.

The petitioner is a medical center. The beneficiary is a medical researcher specializing in endocrinology. 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 research endocrinologist at an annual salary of \$77,000.

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 medical science.

On motion, 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, an appeal, the AAO's previous decision, the motion to reconsider or reopen, and additional documentation including a copy of an application requesting a waiver of the two-year foreign residency requirement.

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 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 his medical degree in 1975 in Amritsar, India. From 1976 to 1979, he worked at the Department of Internal Medicine at the RK Hospital in Amritsar, India. From 1979 until 1981, he practiced family medicine in New Delhi, India. He spent the next thirteen years in the United Kingdom, as a senior resident and a registrar in internal and geriatric medicine, then in postgraduate training for general practice. He completed a three-year residency in internal medicine at the Medical College of Ohio at Toledo. In December 2000, he completed a three-year fellowship in endocrinology and metabolism at the petitioning organization, the [REDACTED]. The record reflects that he was last admitted to the United States on September 18, 1995 in J-1 classification as an exchange visitor subject to the two-year foreign residency requirement.

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 medical science pursuant to 8 C.F.R. § 214.2(o)(3)(ii). The director acknowledged the facts presented that the beneficiary is creative, productive and dedicated to his profession, but concluded that the evidence failed to show that the beneficiary

has been recognized as a researcher of extraordinary ability whose achievements have been recognized in the field through extensive documentation.

On motion, counsel for the petitioner asserts that the director and the AAO erred in weighing the evidence, and submits additional 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).

The petitioner described the beneficiary's achievements without categorizing them as pertinent to individual criteria.

For criterion number one, the petitioner states that the beneficiary won honors such as a fellowship at the petitioning organization, and that the beneficiary was a "student of extraordinary merit." The petitioner indicates that the beneficiary was awarded the "Best Student Teaching award." The petitioner provided the Service with the beneficiary's internal medicine certification, his physician's and surgeon's certificate, evidence that he passed the Foreign Medical Graduate Examination, a license to practice medicine in Ireland and his medical school diploma. The petitioner failed to establish that these certificates and honors 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 Royal College of Physicians,¹ the petitioner failed to establish that this is an association that requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines.

For criterion number three, no evidence was submitted.

For criterion number four, no evidence was submitted.

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

¹ The petitioner failed to indicate the type of membership held by the beneficiary in the Royal College of Physicians. According to its website at <http://www.rcplondon.ac.uk/college/membership>, there are four levels of membership, each with different prerequisites.

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 Service with numerous testimonials about the value of the beneficiary's work and his individual qualities. Dr. Basil Akpunonu wrote that the beneficiary is "smart, hard working and intelligent." Dr. Vijay Mahajan wrote that the beneficiary is a "superb clinician who has made very significant contributions in Clinical Medicine." Dr. William Henrich wrote that the beneficiary is "diligent . . . and a "very good teacher . . . whose fund of knowledge would be judged as slightly above average by most raters." Dr. Mayer Davidson wrote that he would rank the beneficiary among the top 20% of all physicians whom he has trained. Dr. Keith Norris wrote that the beneficiary is "an outstanding physician and researcher." Dr. Linda Woodhouse wrote that the beneficiary is "an outstanding, well-respected academic clinician." Dr. Shalender Bhasin wrote that the beneficiary is an "outstanding endocrinologist with terrific clinical skills." Dr. Behrouz Salehian wrote that the beneficiary is "gifted and enormously talented." Dr. Thomas Storer wrote that the beneficiary is an asset to the petitioning organization and said that the beneficiary developed a two-volume book on endocrinology as a learning tool for residents. Dr. Keith Norris wrote a letter that was identical to that of Dr. Storer. The petitioner submitted eleven testimonials, eight of which were written by employees of the petitioner. The Service gives credence to testimonials written by employees of the petitioner, but such testimonials are given less weight than those from independent sources, which would be more indicative of the beneficiary's influence on the field. While all of the testimonials' authors value the beneficiary's work and individual qualities, 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 co-authored a handful of peer-reviewed articles that have been published in professional journals, and authored three review articles and one abstract. 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 the beneficiary's work 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 beneficiary has been employed as a

resident, a fellow, a physician, and a registrar² at esteemed medical institutions. While employment with such institutions is evidence of a degree of recognition, such staff or assistant positions are not considered employment in a "critical or essential capacity." Counsel for the petitioner asserts that the beneficiary was selected for a research post by the petitioning organization in a highly competitive process. Counsel's assertions are not persuasive. Evidence that the beneficiary was selected for employment as a researcher in a competitive process is not evidence that he has served in a critical or essential capacity.

In relation to criterion number eight, the initial petition was silent as to the amount of salary the petitioner would pay the beneficiary. In response to a request for additional documentation, counsel for the petitioner asserts that the petitioner will pay "an extremely competitive" annual salary of \$77,000. The petitioner stated that the beneficiary would be paid a salary that is standard for starting faculty at the petitioning organization. The petitioner failed to establish that the beneficiary would command a high salary in relation to others similarly employed in his field.

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, or 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 decision of the director is affirmed.

² A registrar is a hospital admitting officer.