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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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Administrative Appeals Office
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: EAC 02 183 51958

Office: VERMONT SERVICE CENTER

Date: MAR 31 2003

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under 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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

The petitioner in this matter is a private college. The beneficiary is an electrical engineer and an adjunct professor specializing in control technology and automation. 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, in order to employ him in the United States for a period of three years as an assistant professor of electrical engineering at an annual salary of \$55,000.

The director denied the petition, in part, finding that the petitioner failed to establish that the position offered required an alien of extraordinary ability.

On appeal, the petitioner submits a two-page statement asserting that the director incorrectly denied the petition on the grounds that the petitioner failed to demonstrate that the teaching position offered to the beneficiary requires a person with extraordinary ability. Counsel for the petitioner indicated that he would submit a brief and additional evidence to the AAO within 30 days of the appeal. Eight months have lapsed since filing the appeal. No further evidence or brief have been submitted to the AAO.

The record of proceeding consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, and an appeal with a statement.

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 first 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 the sciences 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.

The beneficiary is a citizen of Brazil. He was last admitted to the United States on December 1, 2001, in A-2 nonimmigrant classification and departed ten days later. The record reflects that the beneficiary was awarded a Ph.D. in electrical engineering from the Swiss Federal Institute of Technology in Zürich in 1990. The beneficiary worked as a researcher for the Systems and Control Department of Brazil's Institute of Aeronautics and Space. He has taught as an adjunct professor in the Systems and Control Department of the Instituto Tecnológico de Aeronautica (ITA) in Sao Jose dos Campos, Brazil since 1993. The beneficiary served as a missile expert for the United Nations Special Commission (UNSCOM) from October through December 1995. From November 1996 to October 1997, the beneficiary worked at the German Aerospace Institute for Robotics and System Dynamics. He has served as a technical advisor to the Brazilian Ministry of Aeronautics and Raytheon E-Systems, and as consultant to the Project for the Vigilance of the Amazon.

On appeal, counsel for the petitioner asserts that the director concedes that the beneficiary has demonstrated O-1 caliber extraordinary ability in the area of electrical engineering.

In his decision, the director wrote that the petitioner had submitted "a significant amount of documentation describing how the beneficiary has been and is currently an engineer of extraordinary ability. This will not be questioned." This portion of the director's decision shall be withdrawn.

After careful review of the record, it must be concluded that the petitioner has failed to establish that the beneficiary has "sustained national or international acclaim" and that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." Section 101(a)(1)(O)(i) of the Act.

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, there is no evidence that the beneficiary has been the recipient of a nationally or internationally recognized prize or award for excellence in the field of endeavor. The petitioner asserted that by virtue of receipt of a research fellowship, the beneficiary received a nationally and internationally recognized prize for excellence in his field of endeavor. Research fellowships simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. The past achievements of the principal investigator are a factor in grant proposals and fellowship awards. The

funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant or fellowship is principally designed to fund future research, and not to honor or recognize past achievement.

The petitioner asserts that by virtue of being made a senior member of the International Electrical and Electronics Engineers (IEEE), the beneficiary received an internationally recognized award for excellence in the field of endeavor. The petitioner states that this title is awarded to less than ten percent of the membership. Information found on the IEEE membership web page states that:

The grade of senior member is the highest for which application may be made and shall require experience reflecting professional maturity....The candidate shall have been in professional practice for at least ten years and shall have shown significant performance over a period of at least five of those years, such performance including one or more of the following:

Substantial engineering responsibility or achievement

Publication of engineering or scientific papers, books, or inventions

Technical direction or management of important scientific or engineering work with evidence of accomplishment

Recognized contributions to the welfare of the scientific or engineering profession

Development or furtherance of important scientific or engineering courses in a program on the "reference list of educational programs"

Contributions equivalent to those of (a) to (e) in areas such as technical editing, patent prosecution, or patent law, provided these contributions serve to advance progress substantially in IEEE-designated fields.

The petitioner has failed to establish that an "award" of senior membership in the IEEE is a nationally or internationally recognized prize or award for excellence in the 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 field.

The petitioner asserts that as a senior member of the International Electrical and Electronics Engineers (IEEE), the beneficiary satisfies this criterion. There is insufficient

evidence that the IEEE is an association that requires outstanding achievements of their members¹ (including their senior members) as judged by recognized national or international experts in their disciplines. See discussion *supra*.

The petitioner asserts that the beneficiary satisfies this criterion by virtue of his selection for inclusion in the *Marquis Who's Who in the World*.² There is no evidence that inclusion in this publication is limited to individuals that require outstanding achievements of their "members," as judged by recognized national or international experts in their disciplines. The petitioner has failed to establish that the beneficiary satisfies this criterion.

Published material in professional or major trade publications or other 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.

No evidence was submitted to satisfy 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.

For criterion number four, an author of one testimonial stated that the beneficiary has served as a reviewer for the *ASME Journal of Dynamic Systems, Measurement and Control*. The record contains no evidence from the *ASME Journal* establishing the length of time the beneficiary served as a reviewer, the volume of the reviewed work, or indicating that the beneficiary was selected to perform peer review based on his expertise in the subject matter. The petitioner has failed to show that the beneficiary satisfies this criterion.

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

For criterion number five, the petitioner provided a letter written by [REDACTED] a professor at Oklahoma State University stating that "[t]he importance of [the beneficiary's] original and novel work has been internationally recognized by the research community through his presentations in leading domestic and international conferences and his publications in IEEE journals as well as numerous international journals." The petitioner failed to corroborate this claim with objective documentation of the research community's commentary on the beneficiary's contributions to the field such as articles published in professional trade journals or in other major media. The evidence on the record does not establish that the beneficiary has made original scientific contributions of major significance

¹ The petitioner indicated that IEEE has 337,000 members.

² 11th Edition (A Reed Reference Publishing Company, 1993-1994).

relative to the work of others in the field.

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

For criterion number six, the beneficiary has published one textbook and numerous research articles in professional journals. It is expected that 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 his works 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.

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 beneficiary has been employed as a researcher, fellow, consultant, advisor and adjunct professor at esteemed establishments. 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." The petitioner provided the Bureau with testimonials that assert that the beneficiary has been employed in an essential capacity for several organizations that have a distinguished reputation. A former supervisor wrote that while the beneficiary was a research fellow at the German Aerospace Center, the beneficiary played a critical role in the Center's research into the problems of advanced optimization methodologies within the Group for Aeronautical Research and Technology in Europe's Action Group on Robust Flight Control. [REDACTED]

[REDACTED] wrote that as a Control Systems Expert for the United Nations, the beneficiary's "combination of technical expertise, communication skills and work discipline contributed decisively to the detection and investigation of proscribed missile activities conducted by Iraq after 1991." Another colleague praised the beneficiary's abilities as an electrical engineering educator. A former colleague wrote that the beneficiary played a critical role in the design and development of control systems for the satellite launcher vehicle in Brazil. While the testimonials' authors value the beneficiary's work, they fail to state how the beneficiary has been employed in a critical or essential capacity. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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, while there is no evidence of the beneficiary's salary history, the current offer of \$55,000 cannot be considered a "high salary" in the field of science in the absence of salary surveys of other similarly employed workers.

The petitioner failed to establish that the beneficiary satisfies any of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii).

The director denied the petition, in part, finding that the petitioner failed to establish that the position offered required an alien of extraordinary ability. On appeal, counsel for the petitioner cites commentary to relevant regulations: "After careful consideration, the Service [now the Bureau] agrees that there is no statutory support for the requirement than an O-1 alien must be coming to the U.S. to perform services requiring an alien of O-1 caliber."³ This portion of the director's decision shall be withdrawn.

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.

³ 59 Fed. Reg. 41820 (Aug. 15, 1994).