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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.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



File: SRC 02 191 52008 Office: TEXAS SERVICE CENTER Date: **MAY 20 2003**

IN RE: Petitioner: [Redacted]  
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)

ON BEHALF OF PETITIONER:  
[Redacted]

**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.

*for Elizabeth Hayward*  
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 medical oncology practice that provides medical care and conducts research. The beneficiary is a physician. The petitioner seeks O-1 classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(o)(i), as an alien with extraordinary ability in medical science in order to employ him temporarily in the United States for an undetermined period as an associate and assistant medical director of clinical trials at an annual salary of \$185,000.

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 his field.

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, 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 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 33-year old citizen of Argentina. He received his medical degree in 1994. The beneficiary interned at the University of Miami/Jackson Memorial Medical Center. He conducted a residency in internal medicine from June 1996 until June 30, 1999 at the University of Miami/Jackson Memorial Medical Center. He conducted a fellowship in hematology and oncology from July 1999 until June 2002 at the same institution. The record reflects that he was last admitted to the United States on July 30, 2001 as an exchange visitor (J-1) and subsequently departed in April 2003.

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 acknowledged the facts presented that the beneficiary is a skilled researcher and practitioner in the fields of oncology and hematology, but concluded that the record failed to show that the beneficiary was recognized as a physician 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, and asserts that the beneficiary has demonstrated extraordinary talent, ranking him among the top of his field of endeavor.

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).

*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 petitioner asserts that the beneficiary's receipt of the 2001 GlaxoSmithKline National Medical Oncology Fellows' Forum Certificate and the Aventis Hematology/Oncology Scholarship plus additional travel and educational grants to participate in conferences are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

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 a field of endeavor. Moreover, only fellows compete for such awards. As the beneficiary 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 asserts that the beneficiary's receipt of an award for clinical research at the Joint Cancer Conference of the Florida Universities is a nationally or internationally recognized prize or award for excellence in the field of endeavor. The petitioner failed to submit any documentary evidence to corroborate its assertion.

The petitioner asserts that the beneficiary earned distinction by being listed in the *Marquis Who's Who*. The petitioner failed to establish that this is a nationally or internationally recognized award for excellence.

The petitioner failed to establish that the beneficiary satisfies criterion number one.

*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 Medical Association, the American Board of Internal Medicine (ABIM), the American College of Physicians - American Society of Internal Medicine (ACP-ASIM), and the American Society of Clinical Oncology, 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.*

For criterion number three, the petitioner submits a news article titled "Medical Doctors from Florida Holding a Congress in Managua." The article mentions the beneficiary in a photo that accompanied the article. The petitioner has not demonstrated the reputation of this publication or the value of being mentioned in it. The beneficiary does not satisfy this criterion.

*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, the petitioner asserts that the beneficiary was a member of a panel selected to evaluate and grade the abstract and oral presentations of other oncologists at the National Medical Oncology Forum, he evaluated the work of other physicians competing for an oncologist position at the University of Miami, and as a member of the Journal Club, he reviewed hematology, bone marrow transplant and oncology papers.

For evidence in this criterion to establish sustained national or international acclaim, the petitioner must show that the beneficiary has been selected to serve as a judge of the work of his peers as a result of a degree of national or international recognition in the field of endeavor. The record contains no evidence establishing the length of time he has served as an evaluator and reviewer, or indicating that the beneficiary was selected to perform peer review based on his expertise in the subject matter. The record is silent as to how the beneficiary was selected for these responsibilities. The petitioner failed to establish that the beneficiary was selected on the basis of sustained national or international acclaim or recognition for his achievements.

The petitioner also states that the beneficiary was chosen to be a member of the Lymphoma, Oncology and Lung Cancer Tumor Boards where cases in each of these specialties are presented, reviewed and discussed, and further, the beneficiary evaluated other oncologists, residents and medical students. The beneficiary's work overseeing and evaluating residents and medical students does not fit into the category of judging others' work. Although a fellow supervises others, he does not judge others' work within the meaning of the Act; rather, he is performing his job.

The director determined that the beneficiary satisfies criterion number four. This portion of the director's decision shall be withdrawn. The beneficiary does not satisfy this criterion.

*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 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. Counsel for the petitioner asserts that the beneficiary has acquired "rare and invaluable clinical expertise in bone marrow transplantation, hematology and oncology." Counsel further asserts that the beneficiary "developed new and improved pre-transplant chemotherapy regimens." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner provided the Bureau with numerous testimonials about the value of the beneficiary's work. [REDACTED] wrote that the beneficiary has become an expert in treating a wide variety of cancers. [REDACTED] wrote that the beneficiary has a wide range of abilities and extraordinary skills. [REDACTED] wrote that the beneficiary possesses outstanding expertise in administering chemotherapy as treatment for cancer patients. [REDACTED] wrote that the beneficiary has conducted several trials to evaluate different schedules for delivering chemotherapy to prepare a patient for a transplant and that the beneficiary is a co-investigator in a lung cancer research protocol. 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.

As further evidence that the beneficiary satisfies this criterion, the petitioner provided the Bureau with an estimate of the total number of patients that the beneficiary has treated, and a list of the names of his current patients, plus statistics on the number of patients receiving chemotherapy.

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.*

For criterion number six, the beneficiary has co-authored several abstracts and scholarly articles that were published in professional journals. 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 articles 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 petitioner has not demonstrated that the beneficiary's publications have had any impact on his field of endeavor. The beneficiary does not satisfy this criterion.

*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 asserted that the beneficiary has been in charge of the Bone Marrow Transplant Unit and therefore he satisfies this criterion. The record is insufficient to establish that the beneficiary was placed in charge of the Bone Marrow Transplant Unit. The director noted that the beneficiary served in this capacity while he was employed as an intern, resident or fellow and therefore he does not satisfy this criterion. The AAO concurs.

*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 petitioner did not assert that the beneficiary satisfies criterion number eight.

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.