

DB

U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy



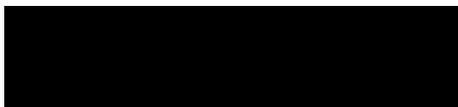
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street N.W.  
Washington, D.C. 20536

FILE: SRC 02 202 54837

Office: TEXAS SERVICE CENTER

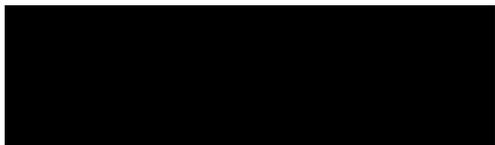
Date: NOV - 6 2003

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:



PUBLIC COPY

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 Citizenship and Immigration Services (CIS) 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. A subsequent appeal and motion to reopen and to reconsider were dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted and the petition will be approved.

The petitioner in this matter is a public university. The beneficiary is a physician. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking continuation of classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act) as an assistant professor of surgery.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability within the meaning of section 101(a)(15)(O)(i) of the Act.

On motion, counsel for the petitioner submits a brief and new evidence not previously available. Counsel further asserts that the director applied incorrect law or policy based upon the evidence in the record at the time of the initial decision.

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 to be addressed 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.

The beneficiary in this matter is a native and citizen of Pakistan. He received his medical degree in 1989 at the University of Karachi and completed a rotating internship at the University of Karachi in 1990. He performed a residency in general surgery at the Flushing Hospital Medical Center (teaching hospital of Yeshiva University). He completed a fellowship in cardiopulmonary transplantation at the University of Wisconsin in 1998. He spent the next two years as a postdoctoral research fellow at the University of

Kentucky College of Medicine in the division of cardiothoracic surgery. He was a senior resident in general surgery from 1997 to 1998 and a special trainee in general surgery at the same institution from 1998 to 1999. The beneficiary has subsequently been employed by the petitioning organization as an assistant professor of surgery. The record reflects that he was last admitted to the United States on April 5, 2002, in O-1 classification as an alien of extraordinary ability.

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 has an impressive record, but concluded that the record failed to show that the beneficiary is recognized as a physician of extraordinary ability whose achievements have been recognized in the field through extensive documentation.

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

*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 satisfies this criterion because he was awarded the Joseph W. Gayle Award for outstanding patient care in 1996 and the Dedicated Service Award in 1997 by the University of Wisconsin. According to the petitioner, the Joseph W. Gayle Award is based on exemplary patient care and is awarded to only one recipient in the cardiothoracic surgery division at the University of Wisconsin. The petitioner failed to establish that these are nationally or internationally recognized awards for excellence in the field of endeavor. It appears that the beneficiary competed only with other physicians, residents and fellows at the University of Wisconsin. As such, the award is not a nationally or internationally recognized award for excellence in the beneficiary's field of endeavor.

On motion, counsel for the petitioner states that subsequent to the AAO's last decision, the beneficiary has been the recipient of four additional awards. On August 4, 2003, the State of West Virginia commissioned the beneficiary as an Honorary West Virginian in recognition for "his superior surgical skills, his unique capability to offer hope and solace to those in pain, his unsurpassed knowledge in the organ transplant field and his tireless dedication to the University of Kentucky's innovative transplant program." On August 7, 2003, the governor of West

Virginia awarded the Honorary West Virginian Award to the beneficiary in recognition of his "exceptional accomplishment." The governor of Kentucky similarly recognized the beneficiary for "his contributions to the people of Kentucky and to the medical profession" on August 6, 2003. The National Republican Congressional Committee awarded the beneficiary a National Leadership Award in 2003 in "recognition of outstanding service and commitment to Republican ideals, and in particular for assistance and guidance administered to the Republican Leadership in the area of health care reform."

In review, the awards cannot be given any weight. These awards were all granted long after the petition was filed. The petitioner must establish the beneficiary's eligibility as of the date of filing the petition. 8 C.F.R. § 103.2(b)(12). See also *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Even if the awards could be considered, the petitioner failed to establish that these awards are nationally or internationally recognized awards for excellence in the field of endeavor. The beneficiary was not competing with others in his field. The petitioner failed to establish the significance of these awards.

*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 Surgeons (Initiate Group), the Kentucky Medical Association, the Lexington Medical Society, the International Society of Heart Lung Transplantation, the American Medical Association, the South Eastern Surgical Congress, the Heart Failure Society and the International Society of Heart Research, there is no evidence that these are associations that require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. On motion, counsel for the petitioner states that the beneficiary was appointed as a member of the National Republican Congressional Committee Physicians Advisory Board. Counsel states that membership on the Physician Advisory Board is "restricted only to those physicians whose achievements have merited such national and international attention as to bring their extraordinary abilities to the attention of the membership." The petitioner failed to establish that the National Republican Congressional Committee Physicians' Advisory Board requires outstanding achievements of their members, as judged by recognized national or international experts in his field of endeavor. According to a press release submitted on motion, the beneficiary was appointed in recognition of "his valuable contributions and dedication to the Republican Party." The beneficiary does not satisfy this criterion.

*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.

For criterion number three, the petitioner provided copies of four news articles, two of which cannot be considered professional or major trade publications. The single print media publication in the record that can be considered major media, *The Lexington Herald-Leader*, published two articles that are about the lives of two of the beneficiary's patients, rather than about the beneficiary and his work.<sup>1</sup> The petitioner asserts that the beneficiary has been featured on three television newscasts. A description of these newscasts provided by the petitioner indicates that two of the three newscasts are about heart transplant patients, rather than about the beneficiary and his work.

On motion, the petitioner submitted the following additional new evidence:

The beneficiary co-authored a chapter in a medical textbook, which was published since the last motion to reopen was filed.

Barnes & Noble, a book distributor, offers this medical textbook and reviews of the textbook on its Internet site.

An NBC-affiliate in Lexington, Kentucky aired a story about the beneficiary and his research since the last motion was filed.

Awards presented by the Governor of Kentucky and the State of West Virginia.

As noted above, none of this new evidence may be considered, because the petitioner must establish eligibility as of the filing date of the petition.

Further, in review, the medical textbook chapter authored by the beneficiary is not published material about the alien as required by regulation. The review published on the Barnes & Noble Internet site does not mention the beneficiary by name so it cannot qualify as published material about the beneficiary. Counsel for the petitioner asserts that the awards presented by the States of Kentucky and West Virginia constitute documentation of published material in major media inasmuch as the awards are official public records. Counsel's argument that official public records constitute major media is not persuasive. The program aired on television would be considered but for the fact that it does not establish eligibility as of the date of filing. Further, the program is about one of the beneficiary's patients, rather than about the beneficiary.

---

<sup>1</sup> Another of the beneficiary's patients was featured in articles published in the *Floyd County Times* and *The Big Sandy News*, primarily local in distribution.

*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, counsel for the petitioner asserts that the beneficiary satisfies this criterion by virtue of his work reviewing research proposals. The beneficiary was not judging the work of others in this instance, but rather the merit of grant proposals.

The beneficiary states that he "continues to serve as an expert reviewer of manuscripts submitted to the *Journal of Thoracic and Cardiovascular Surgery* and the *American Journal of Physiology*." The beneficiary's supervisor at the petitioning organization states that the beneficiary has reviewed manuscripts for these journals. On motion, the petitioner submitted a letter from the associate editor of *American Journal of Physiology, Heart and Circulatory Physiology*, stating that the beneficiary was selected to perform peer review based on his expertise in the subject matter. The petitioner has established that the beneficiary satisfies this criterion.

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

The petitioner provided CIS with numerous testimonials about the value of the beneficiary's work and his individual qualities. Initially, the petitioner submitted seven testimonials, five of which were written by employees of the petitioner. CIS gives credence to testimonials written by employees of the petitioner, but such testimonials are given less weight than those from independent sources, which would tend to demonstrate sustained national or international acclaim in the field. Dr. Victor Ferraris wrote that the beneficiary "displays a remarkable ability in cardiopulmonary transplantation as well as cardiac research." Dr. Rolf Bunker wrote that the beneficiary is "one of the very few of the top of his field." Dr. Robert Mentzer wrote that the beneficiary has "excelled among his peers at levels of his career and indeed is a top notch physician/scientist." Dr. Thomas Waid wrote that the beneficiary's "work ethic is outstanding and his integrity is above reproach." Many of these testimonials are conclusory and fail to state how the beneficiary has made an original contribution of major significance.

On motion, counsel for the petitioner submits additional testimonials. Dr. Sibu Sahha, World Governor of the International College of Surgeons, wrote that the beneficiary "has been personally responsible for saving the lives of hundreds of patients who otherwise would have no hope of surviving." Dr. Robert Mentzer, Director of the petitioner's transplant center, wrote that the beneficiary successfully implemented the "first ever outpatient ventricular assist program in Eastern and Southern Kentucky."

The petitioner also asserts that the beneficiary satisfies this

criterion by virtue of his diagnosis and correction of a heart device malfunction. This discovery was published in the *Journal of Thoracic and Cardiovascular Surgery* and resulted in a design change in the device. In review, the beneficiary has made a significant contribution to his field of endeavor by discerning a heart device defect, reporting it to the manufacturer that implemented the design changes and to his peers who took necessary steps to avoid injuring patients, thereby impacting his field. The beneficiary satisfies criterion number five.

*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 authored more than 25 scholarly articles that have been published in professional journals and co-authored a book chapter and two books. Counsel for the petitioner submitted a citation history of the beneficiary's articles as evidence of his acclaim. 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 beneficiary has been employed as a fellow at the University of Wisconsin, as a fellow, resident, trainee and an assistant professor at the University of Kentucky, and as of the date of filing the petition, a co-investigator on seven clinical trials including two NIH funded research projects.

On motion, the petitioner states that the beneficiary is the principal investigator of two ongoing research programs. The petitioner failed to establish that these research programs are organizations or establishments that have a distinguished reputation.

The petitioner asserts that the beneficiary is a critical and irreplaceable member of the petitioner's ongoing transplant patient, teaching, research and clinical care program. Dr. Robert Mentzer, Director of the petitioner's transplant center, wrote that the beneficiary successfully implemented the "first ever outpatient ventricular assist program in Eastern and Southern Kentucky." Dr. Mentzer wrote further that the beneficiary "has been and remains a very crucial investigator on the grant [titled 'Adenosine and Pyruvate Protection During Heart Surgery']."

On motion, the petitioner asserts that the awards conferred upon the beneficiary by the Governor of Kentucky and by the State of West Virginia serve as evidence that the beneficiary has played a critical and essential role not only for the petitioner, but also for the states of Kentucky and West Virginia. The petitioner says that it is federally designated as a heart transplant center and that such designation is evidence of the petitioner's national prestige. The petitioner submitted a letter from the University of Kentucky's president stating that the beneficiary is a "crucial

member" of its research efforts and a "principal investigator on many clinical research trials that are being conducted at the University of Kentucky." According to the evidence on the record, the beneficiary is the principal investigator on only two research trials at present.

The petitioner submits letters that were written after the last motion to reopen and reconsider. The petitioner's Deputy Director, University of Kentucky Transplant Center, wrote that:

[The beneficiary's] absence will create a great void during a time when it is very difficult to find and recruit transplant cardiologists and surgeons . . . . Until recently [he] was following over 100 post-transplant patients in addition to caring for 4 patients of LVAD . . . the continuity of their [care] is paramount to their success . . . . It is without reservation that I say that [the beneficiary's] withdrawal from the University of Kentucky's Transplant Center will greatly reduce Medicare beneficiaries' access to [organ] transplantation in the states of Kentucky, West Virginia, Ohio and Indiana.

The petitioner has failed to establish that the beneficiary satisfies criterion number seven. The beneficiary has never held a leadership role such that he held a critical or essential role for the University of Kentucky or its transplant center,<sup>2</sup> or for the states of Kentucky or West Virginia. He is an assistant professor of surgery and a surgeon for the transplant center.

*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.*

Counsel for the petitioner asserts that they did not submit evidence in relation to criterion number eight.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Ed. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability the statute requires evidence "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 established that the beneficiary's abilities have been so recognized. The petitioner has demonstrated that the beneficiary meets three of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii).

---

<sup>2</sup> The University of Kentucky transplant center home page indicates there are currently four members of the cardiopulmonary transplant team, one of whom acts as the chief of the team. Transplants are provided for many other organs, and the organizational structure of the center is divided into teams with respective chiefs. The evidence does not establish that the beneficiary served as chief of his team or in a leadership role for the center.

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 met that burden.

**ORDER:** The petition is granted.