

PUBLIC COPY

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

D8

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



NOV 22 2003

File: SRC 03 152 50213 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:

SELF-REPRESENTED

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.

for 
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 school. The beneficiary is a physician. 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), 8 U.S.C. § 1101(a)(15)(O)(i), 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 one year as an assistant professor of radiology.

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 of endeavor.

On appeal, the petitioner submits a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in his field. The petitioner also indicated that it would submit additional evidence by August 16, 2003. Nothing more has been added to the record since the receipt of the appeal.

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

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 32-year old native and citizen of India. The record reflects that he received his medical degree in 1993 from the Bangalore University School of Medicine in India. He completed a residency program in radiology at the University of Mumbai, India in 1998. He pursued a fellowship in radiology at Harvard Medical School and Massachusetts General Hospital from 1999 to 2001. He recently completed a fellowship in body imaging at Washington University in St. Louis at the Mallinckrodt Institute of Radiology. The record reflects that the beneficiary entered the United States on August 27, 1999 in J-1 classification as an exchange visitor and that he is subject to the two-year foreign residency requirement. The record reflects that he was last admitted to the United States on March 6, 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 determined 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 appeal, the petitioner asserts that the director erred in weighing the 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).

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 has been the recipient of numerous honors and awards. The petitioner states:

In 2002, [the beneficiary's] work on non-invasive, cross-sectional imaging of gynecologic conditions received "Cum Laude" award at the Radiological Society of North America (RSNA) meeting. Cum Laude award is given to less than 1% of the approximately 1000 scientific exhibits presented at the annual conference. In 2001, [the beneficiary] received the best paper award in the Health Science-Policy/Outcome category (RSNA research prize). . . . In 2000, [the beneficiary] received the prestigious RSNA research prize for a paper that discussed the methods of measuring treatment response in cancer patients. In 1999, [the beneficiary] was the only Indian to receive BRACCO-AOCNHNR fellowship (with a \$1000 travel grant) to present his work on rare fungal infections of the brain . . . in Australia.

* * *

[The beneficiary] was selected for the Diagnostic Radiology program at the prestigious King Edward Memorial Hospital based on his scoring in the top ten percent on the All-India postgraduate entrance examination, an exam that was administered to over 30,000 students.

Further, [the beneficiary's] selection to the radiology department with the prestigious Massachusetts General Hospital, affiliated with the Harvard University, evidences his level of expertise.

According to the evidence on the record, the two RSNA awards that the beneficiary received in 2000 and 2001, the Research Trainee Prize, are given only to residents/trainees. Only residents compete for these awards. As the petitioner 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.

In 2002, the beneficiary's team received a Cum Laude citation for their work on non-invasive, cross-sectional imaging of gynecologic conditions. The citation was within the category of Education Exhibits at the annual RSNA meeting. However, according to the information posted at the RSNA's online website, www.rsna.org, there are two higher citations for the same category: Summa Cum

Laude and Magna Cum Laude. Out of a total 1,074 exhibits, approximately four percent of the Education Exhibitors received a citation at the beneficiary's level or higher (eight for Magna Cum Laude and 33 for Cum Laude). The beneficiary was one of a team of six physicians that received the award. The record contains no evidence demonstrating that the beneficiary's contributions within the framework of a team also establish his individual acclaim at the national level. In addition, this is just one award. The statute and regulations require extensive documentation of sustained acclaim.

In 2002, [the beneficiary's] scientific exhibit titled "Multimodality Evaluation of the Female Urethra" received the Certificate of Merit and Excellence in Design awards from RSNA. The petitioner failed to establish the significance of these two awards.

The petitioner failed to establish that selection for a fellowship at Harvard Medical School and a radiology residency at the University of Mumbai are internationally or internationally recognized prizes or awards.

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 the field of endeavor. Moreover, only students compete for such awards.

The petitioner asserts that the beneficiary earned distinction by being listed in the *Marquis Who's Who* and the *Empire Who's Who Executive and Professional Registry*. These publications register thousands of names with brief biographies. The petitioner failed to establish that these are nationally or internationally recognized awards for excellence.

The petitioner failed to demonstrate that the beneficiary satisfies this criterion.

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 Radiological Society of North America, the American Roentgen Ray Society, the National Board of Radiology and the Medical Council of India, there is insufficient evidence that these are associations that 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 asserts that:

An entire editorial in the *American Journal of Roentgenology* was devoted to discussing the impact of [the beneficiary's] research on low-dose CT scans in cancer patients and its implications on the way we perform state-of-the-art CT scans. . . . "Focal Spot", the quarterly publication of the Mallinckrodt Institute of Radiology, has also acknowledged [the beneficiary's] contributions in various conferences and scientific fora. [The beneficiary's] biography has been included in the latest editions of *Marquis Who's Who in America* series.

The editorial published in the *American Journal of Roentgenology* is an article about the alien's work, but it is just one article. The *Focal Spot* is not major media or a major trade publication so it cannot satisfy this criterion. Mere inclusion in a *Who's Who* series is likewise not a major trade publication, or major media, and does not discuss the alien and his work in sufficient depth to be considered published material about the alien, relating to his work. 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 satisfies this criterion by virtue of supervising the work of residents, medical students and supporting staff while he worked as a physician at King Edward Memorial Hospital. Further, the petitioner asserts that the beneficiary judged the work of others while teaching residents and fellows. The beneficiary's work overseeing students and residents at his job is not indicative of the beneficiary's sustained acclaim. He routinely supervises students and residents as an integral part of his job as assistant professor of radiology. This evidences does not establish that the beneficiary was judging the work of experienced professionals in the field, or that he was selected to do so based on his stature in the field.

The beneficiary was selected to be a reviewer for the official publication of the *Journal of Postgraduate Medicine*, a biomedical journal published by the Staff Society of Seth G.S. Medical College and K.E.M. Hospital. The petitioner submitted a letter dated June 10, 2001, from the associate editor of the journal

inviting the beneficiary to be a reviewer for the radiology section of the journal. Being selected to review manuscripts for a professional trade journal could satisfy this criterion, provided that the beneficiary was selected on the basis of his national or international acclaim and that the beneficiary actually accepted the offer and participated in the requisite capacity.

The petitioner submitted letters from his former professors, Dr. [REDACTED] Professor of Radiology, University Health Science Center at San Antonio, and Dr. [REDACTED] Professor of Radiology, Washington University School of Medicine. Both professors state that the beneficiary was selected to be a reviewer based on his stature as a top physician and his numerous research achievements. However, there is no evidence that Dr. [REDACTED] or Dr. [REDACTED] are affiliated with the *Journal of Postgraduate Medicine*, serve on the editorial board of the journal, or otherwise participated in the selection of the beneficiary as a reviewer for the journal. There is no other documentation from an editorial board member of the journal establishing that the beneficiary was selected as a peer reviewer based on his national or international acclaim. In addition, because there is no evidence that the beneficiary actually accepted the offer and worked as a peer reviewer for the *Journal of Postgraduate Medicine*, the record does not establish that the alien has actually participated on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization. Accordingly, the petitioner has not 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.

For criterion number five, the evidence indicates that the beneficiary's research has had a measurable impact on his field. In 2002, the beneficiary's presented a paper to the RSNA on the efficacy of low-dose CT scans in patients with cancer that resulted in major changes in CAT scan protocols at Harvard University.

The petitioner provided CIS with numerous testimonials about the value of the beneficiary's work. Dr. [REDACTED] Assistant Professor of Radiology, Case Western Reserve University, wrote that:

The beneficiary's most important contributions to radiology have been in the area of cross-sectional imaging, especially CT scanning and Magnetic Resonance Imaging. He has carried out detailed investigations on new contrast agents used in MRI and has evaluated new technological developments in both MRI and CT

particularly in relation to oncologic imaging.

[The beneficiary] has consistently presented scientific work at major international meetings, including the annual meetings of the American Roentgen Ray Society, Society of Body CT/MR, and the Radiological Society in North America.

In addition to the above evidence, the beneficiary has published results of his research. The petitioner submitted citation histories for the beneficiary's published articles. Citations are a good further indication that the author's work has had an impact on his field of endeavor.

In review, the evidence indicates that the beneficiary has made an original contribution of major significance with his work on low-dose CT scans. The beneficiary satisfies this criterion.

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 75 articles that were published in peer-reviewed journals. The petitioner submitted a significant citation history for the beneficiary's publications, which is essential to establishing that the alien satisfies this criterion. In academic fields such as medicine, not all published research is indicative of national or international acclaim. Frequent citation of an author's work measures the scientific community's reaction to the work. The beneficiary satisfies 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 beneficiary has been employed as a senior resident, clinical tutor, postdoctoral associate in clinical research in abdominal radiology, and fellow 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" as would a department head or lead researcher on major projects. The beneficiary does not satisfy this criterion.

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, no evidence of the beneficiary's salary history was provided, nor were salary surveys supplied to

CIS so that the current salary offer could be evaluated.

It is noted that the director denied a request for an extension on a previously approved petition. The director's decision does not indicate whether she reviewed the prior approval of the other nonimmigrant petition. The record of proceeding does not contain copies of the visa petition that was previously approved. If the previous nonimmigrant petition was approved based on the same evidence that is contained in the current record, the approval would constitute error on the part of CIS. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals, which may have been erroneous. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engineering, Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied* 485 U.S. 1008 (1988). The AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800,803 (E.D. La. 2000), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied* 122 S.Ct. 51 (2001).

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.