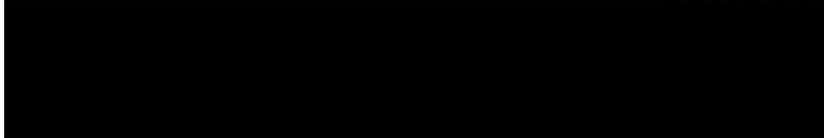


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U.S. Department of Homeland Security
Citizenship and Immigration Services

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



File: SRC 02 169 50834

Office: TEXAS SERVICE CENTER

Date: OCT 16 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, Baylor College of Medicine, is a medical school seeking 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 crystallography.¹ The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a post-doctoral associate in crystallography within its Department of Biochemistry and Molecular Biology at an annual salary of \$37,570.

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, counsel for the petitioner submits a brief asserting that the record contains substantial evidence that the beneficiary is an alien with extraordinary ability in the field of crystallography.

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, and brief.

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

¹ Crystallography is an experimental technique for determining molecular structure. Bernard Rupp, "Crystallography 101," Crystallography Tutorial Introduction @ http://www.structure.llnl.gov/Xray/index_intro.html accessed on September 25, 2003.

ability in 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 citizen of Russia. The record reflects that he received his degree in engineering physics in 1984 from the Nizhni Novgorod State University in Russia. He pursued graduate study at the Shubnikov Institute of Crystallography at the Russian Academy of Sciences and earned the equivalent of the United States Ph.D. in physics in 1992. The beneficiary participated in a research fellowship at the University of Houston's Department of Biochemical and Biophysical

Sciences in the years 1993 to 1994. From 1994 to 1998, he worked as a research associate at the Howard Hughes Medical Institute in Houston, Texas. Since 1998, the beneficiary has worked as a research associate for the petitioner. The record reflects that he was last admitted to the United States on May 15, 2000 in H-1 classification as a temporary worker.

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 beneficiary satisfied two criteria, but that the record failed to show that the beneficiary was recognized as a scientist 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 finding the evidence insufficient to find that the beneficiary is a scientist of extraordinary ability.

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).

No evidence was submitted in relation to criterion number one.

For criterion number two, the petitioner asserts that the beneficiary satisfies this criterion by virtue of his membership in the American Crystallographic Association (ACA). The evidence on the record contains a letter from the ACA that states that any person actively interested in the study of the interatomic arrangement of matter, its causes, its nature and its consequences or the tools and methods used in such study, whose application is seconded by two regular members of the association, may become a member. Therefore, the evidence does not prove that the organization requires outstanding achievements of its members, as judged by national or international experts in the field. The beneficiary does not satisfy this

criterion.

No evidence was submitted in relation to criteria numbers three and four.

The director determined that the beneficiary satisfies criterion number five. This portion of the director's decision shall be withdrawn.

The petitioner submitted a letter written by Professor [REDACTED] with whom the beneficiary has worked since 1994, that states:

[The beneficiary] has been doing extensive research in the field of crystallography as applied to the determination of the atomic three-dimensional structure proteins. He determined the structure of the dipeptide-binding protein. The work was published in *Biochemistry*, one of the prestigious science journals. The protein serve [sic] as initial receptor for bacterial ATP-binding cassette transporter (or ABC-transporter). The structure lay [sic] the foundation for the important structural analysis that he is currently undertaking on complexes of the peptide-binding protein with ligands. This analysis will provide unparallel [sic] understanding of the molecular basis for molecular recognition by the dipeptide-binding protein . . . More importantly, it will provide further fruitful leads and key information in the development of antibacterial drugs . . .

[The beneficiary's] other current important research project is the determination of the atomic three-dimensional structure of the enzyme Organophosphorus Acid Anhydrolase (OPAA for short). This enzyme has a great potential for an enzyme-based decontamination system, which not only provides rapid removal of chemical warfare agents, but also is environmentally safe and non-corrosive in nature . . . OPAA has been shown to contain low levels of activity for detoxifying . . . nerve agents (e.g., soman, sarin, tabun) and a number of other extremely toxic agents. . . Given the heighten [sic] concern about bioterrorism, this project is of paramount importance.

(emphasis added.) The professor describes the alien's contributions as setting the stage for future analysis and better understanding, rather than original contributions that are of major significance in the field.

It is noted that the beneficiary's work is important. It is not enough to establish that an alien's work is important, however, to satisfy this criterion. 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. The petitioner provided CIS with testimonials about the value of the beneficiary's work. Dr. [REDACTED] from the National Institutes of Health (NIH) wrote that the beneficiary worked on the purification and crystallization of the chromosomal protein CENP-B. He wrote further that "this work is still ongoing; however, it has already yielded in valuable insights . . . crucial for our understanding of molecular causes of cancer, and will ultimately lead to better diagnostics and treatments for this disease." Prof. B.V.V. Prasad from the petitioner's Department of Biochemistry and Molecular Biology wrote that the beneficiary "has made excellent contributions to the field of protein crystallography," and that he "has determined X-ray structures of several proteins." Dr. [REDACTED] from the University of Houston wrote that "there is a great shortage of trained crystallographers in the country." Dr. [REDACTED] from ICN Pharmaceuticals wrote that the beneficiary "made an original scientific contribution of major significance in the field of crystallography by determining the 2A Resolution Structure of DppA, a periplasmic dipeptide transport/chemosensory receptor." Dr. [REDACTED] of Geo-Centers wrote that the beneficiary "performed pioneering work on the elucidation of the three-dimensional structure of a very toxic neurotoxin in snake venom" and that he is involved in an ongoing project involving an important chemical warfare detoxifying enzyme, OPAA. While the testimonials' authors all speak highly of the beneficiary's skills and contributions, the evidence falls short of establishing that the beneficiary's contributions may be considered major in relation to the work of others in his field.

The nature of scientific research is to expand the body of scientific knowledge. The beneficiary's contributions are original and noteworthy, but they are best described as adding to our body of knowledge incrementally rather than as scientific breakthroughs. In review, the evidence fails to show that the beneficiary has sustained national or international acclaim and recognition for major achievements in his field of endeavor.

For criterion number six, the beneficiary has co-authored ten articles and one abstract. The articles were published in peer-reviewed journals. The petitioner submitted an extensive citation history of the beneficiary's articles, thus establishing that the beneficiary's work has had an impact in his field. The director determined that the beneficiary satisfies this criterion. The AAO concurs.

For criterion number seven, the petitioner asserts that the beneficiary meets this criterion by virtue of his work for the petitioner. The director noted that the beneficiary has been a postdoctoral associate in structural biology and crystallography in the Department of Biochemistry and Molecular Biology and a fellow at organizations with distinguished reputations, but that the beneficiary was not employed in a critical or essential capacity. The AAO concurs. While employment with esteemed 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 university dean or provost. The petitioner failed to establish that the beneficiary has been employed in a critical or essential capacity for either an organization or a department within an organization that possesses a distinguished reputation. The petitioner asserts that the beneficiary has been employed in a critical or essential capacity for the petitioner because he is the only person at the petitioning organization involved with working on the atomic three-dimensional structure determination by X-ray crystallography on OPAA. Counsel for the petitioner states that "the research that the beneficiary is involved in is critical and essential for the public's safety." The criterion requires evidence that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation, rather than on important projects for the "public's safety." The petitioner failed to establish that the beneficiary satisfies this criterion.

For criterion number eight, no evidence was submitted.

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." In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level. 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.