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U.S. Department of Homeland Security

Citizenship and Immigration Services

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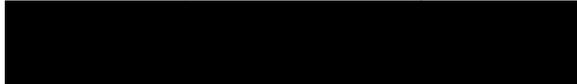


File: WAC 03 111 54138

Office: CALIFORNIA 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:



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

The petitioner is a neurological center¹ that provides patient care and conducts research trials. 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), 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 three years as a stroke program director in Temecula, California, at an annual salary of \$140,000.

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 her field of endeavor.

On appeal, counsel for the petitioner submits additional evidence.

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 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 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.

¹ The petitioner states that it was founded in 1995 and has become well-known for its dedication to the treatment of strokes.

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.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

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 34-year old native of Syria and citizen of Lebanon. The record reflects that she received her medical degree in 1994 at the American University of Beirut. She completed a three-year residency in internal medicine at the American University of Beirut. She completed a four-year residency program in neurology at the University of Arkansas Medical Sciences Medical Center. In June 2001, she commenced a two-year fellowship at the Stroke Center at the University of California at San Diego. The record reflects that she was last admitted to the United States on July 30, 2000, in J-1 classification as an exchange visitor.

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 she is "at the very top" of her field of science pursuant to 8 C.F.R. § 214.2(o)(3)(ii). The director acknowledged the facts presented that the beneficiary is well-educated and accomplished, 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 beneficiary meets the criteria to be classified as an alien of extraordinary ability in sciences.

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).

For criterion number one, no evidence was submitted.

For criterion number two, while the beneficiary is a member of the American Academy of Neurology and the American Heart Association, 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.

For criterion number three, no evidence was submitted.

For criterion number four, no evidence was submitted.

For criterion number five, the petitioner asserts that the beneficiary satisfies this criterion by virtue of her "active" participation in ten research trials. It is noted that the beneficiary is listed as one of several or many subinvestigators for each research trial. 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 numerous testimonials about the value of the beneficiary's work. Dr. [REDACTED] Co-Director of the University of California at San Diego (UCSD) Stroke Center, wrote that the beneficiary is an "accomplished and outstanding physician." Dr. [REDACTED] Director of UCSD Stroke Center, wrote that the beneficiary has reached the top of her field as a stroke specialist. Dr. [REDACTED] Professor and Vice Chairman of the UCSD Department of Neurosciences, used almost identical language to describe the beneficiary. While the testimonials' authors all speak highly of the beneficiary, they fail to demonstrate how the beneficiary's work has impacted her field or how she has made a significant contribution to her field. 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.

For criterion number six, the beneficiary has drafted a book chapter, "Intravenous Thrombolysis," which will be published in 2003 in a stroke reference book. The beneficiary is co-authoring another book chapter, "Emergent Therapies," that will be published in the book "Prevention and Treatment of Ischemic Stroke." Given that these chapters have not yet been published, the beneficiary does not satisfy this criterion.

No evidence was submitted in relation to criteria number seven or eight.

On appeal, counsel for the petitioner asserts that the beneficiary has comparable evidence of her extraordinary ability. The petitioner failed to establish that the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B) do not readily apply to her occupation. Nonetheless, the AAO considered the evidence that she had given lectures to other health care professionals and students as well as presentations to a committee of the American Heart Association.

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.

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

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.