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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

DP

[REDACTED]

OCT 28 2003

File: LIN 02 280 54210 Office: NEBRASKA SERVICE CENTER Date:

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]

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an institution of higher education and research, seeking 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 science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a research associate at an annual salary of \$32,000.

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 a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in her 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, 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 ability in medical science as defined by 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 45-year old native and citizen of China. The record reflects that she received her medical degree in 1982 from the Chongqing University of Medical Science in China. She later obtained her Ph.D. degree in neurobiology in 1997 from the West China University of Medical Science. She taught as an assistant professor from 1984 to 1994 then as an associate professor from 1997 to 1998 at Zunyi Medical College in China. Since 1998, the beneficiary has worked as a research associate at the petitioner's Department of Histology and Embryology. The record reflects that she was last admitted to the United States on May 13, 1998, in F-1 nonimmigrant student status and subsequently changed her status to J-1 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).

On appeal, counsel for the petitioner asserts that the director erred in over-restrictively interpreting the regulation, and applied inappropriate methods 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 by her receipt of "numerous prestigious awards from the Chinese government, including a First Place Award in Science and Technology Achievement (Health Department of Guizhou Province, 1992), and Second and Third Place

Awards of Excellence of Scientific Thesis (Association of Natural Science and Technology, Guizhou Province, 1988)." The petitioner further asserts that the beneficiary's receipt of a research grant satisfies this criterion. Finally, the petitioner asserts that the beneficiary's receipt of the SCI Research Inspiration Award, the Research for Freedom Award and the L.W. Freeman Award for significant contributions to regenerative spinal cord research satisfy this criterion.

The record contains evidence as follows:

The Guizhou Science and Technology Association certified that in 1988 the beneficiary and two other individuals won second place for the thesis titled "Effects of SPA and SPA Thallus on Transformation of Peripheral Blood Lymphocyte in 65 Mouse."

The Guizhou Science and Technology Association certified that the beneficiary and two colleagues won third place for the thesis titled "SPA Induces Mouse Peripheral Lymphocytes to Become Binuclear or Micronuclear: A Preliminary Study" at their first annual thesis competition in 1988.

In review, the latter two awards were granted to the beneficiary by the Guizhou province. The record does not establish that the competition extended beyond the provincial level. As the beneficiary did not compete for a nationally or internationally recognized award in the field, the awards cannot be considered evidence of the beneficiary's national or international acclaim.

The petitioner asserted that the beneficiary's receipt of a research grant from the Association of Natural Science Foundation of China should be considered an award for excellence. Research grants simply fund a scientist's work. The past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and is not an award to honor or recognize past achievement.

The record contains the following evidence:

The Guizhou Province Health Department declared the beneficiary as the first place winner of the "1992 All-Province Excellence in Scientific and Medical Achievement" for her research project titled "Induced Transformation of Mouse Lymphocyte by SPA and SPA Thallus and Study of its Genetic Effects."

In response to a request for additional evidence, the petitioner submitted to CIS a letter written by the President of the Zunyi

Medical College where the beneficiary earned her medical degree that states that "it was a very high honor to receive [a first grade award] and it indicates that the research of the recipient has reached and represented an advanced position in the field at [a] national level." The Zunyi Medical College President also wrote that in 1992 there were 425 candidates for the award and that only two were granted the First Grade Awards. In review, the petitioner failed to establish who was allowed to compete for this award. It appears to have been limited to scientists residing in Guizhou Province. If the competition was limited to Guizhou Province scientists, the beneficiary did not compete with nationally or internationally recognized experts in the field, and the awards cannot be considered evidence of the beneficiary's national or international acclaim.

The petitioner asserts that awards granted to the petitioner's research project team that includes the beneficiary satisfy this criterion. The record contains a letter from the National Spinal Cord Injury Association informing the petitioner's Neurology department chairman, Dr. John McDonald III, that he had been awarded the 1999 L.W. Freeman Award for his research. The record also contains a news article published in the *St. Louis Post Dispatch* that notes that Dr. John McDonald III, was recognized at an awards dinner of *Gateway to a Cure*, which supports spinal cord injury research. In review, it is clear that these awards were granted to Dr. McDonald alone, rather than to the beneficiary. The beneficiary does not satisfy 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 China Anatomy Association, the China Cell Biology Association, and the United States Society for Neuroscience, 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.

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 submitted several articles about the research project in which she is involved. None of the articles mention the beneficiary by name. All of the articles mention the research project director, Dr. John McDonald III by name. The petitioner failed to establish how these articles

can be considered to be *about the alien* as required by the regulation. 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 allied field of specialization to that for which classification is sought.

For criterion number four, the petitioner's documentation indicated that the beneficiary has reviewed one article for the *Sichuan Journal of Anatomy* and is to continue to review for them. The evidence also indicated that the beneficiary has been invited to serve as a special reviewer for the *Academic Journal of Kunming Medical College*. The record does not establish that the beneficiary has extensively reviewed her peers or participated as a judge of their work, and is not indicative of sustained national or international acclaim in the context of 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 her research, the record does not show that her 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.

In a lengthy response to the director's request for additional evidence, Dr. John McDonald III of the petitioner's spinal cord injury program, explained the context of the beneficiary's current work. Dr. McDonald wrote that:

Our primary research goal is to find a novel way to treat and cure the disability and loss of body functions suffered from injury on a person's spinal cord (where the central nervous system locates). One of the primary reasons underlying loss of function after spinal cord injury is demyelination caused by the death of oligodendrocytes, one of the three types of component cells in CNS.¹ Oligodendrocyte cells provide the insulation to the neurons, somehow like the plastic skin provides the insulation to the copper core in electrical wire.

One way to reverse the injury on oligodendrocytes is to transplant new oligodendrocytes into the damaged spinal cord. However, [the] lack of a suitable source of cells for transplantation blocked the advancement in this type

¹ Central nervous system.

of research. Not until recent[ly] . . . scientists found embryonic stem (ES) cells may provide solutions to all of the difficulties. . . . ES cells can be grown under conditions that cause them to differentiate into one of the three cell types found in the CNS, and these cells can be used for transplantation. In practice, however, it is . . . extremely difficult to develop and perform a method for producing almost pure populations of oligodendrocytes from ES cells. . . . Among [the beneficiary's] various achievements in the research, the greatest one is the development of a process that vastly increases the proportion of ES cells that differentiate into oligodendrocytes. Under conventional process . . . the differentiated oligodendrocytes are in a rather low level of density and will not make notable results in transplantation. On the contrary, the unique process creatively designed by [the beneficiary] can produce spherical clusters of cells called oligospheres, which contains many times more oligodendrocytes; high concentration of oligodendrocytes is of immense importance for the production of cells for transplantation studies. . . . This process is absolutely one of the original contributions of [the beneficiary] and is the cornerstone that our overall ES cells based research has to rely upon.

One would expect that scientific findings of major significance would be widely reported. There is no corroborating evidence from those outside the beneficiary's immediate circle of colleagues to indicate that her research has garnered national or international acclaim. While the petitioner has established that the beneficiary's work is significant to the petitioner's spinal cord injury research center, the record does not establish that the beneficiary's research has been implemented or applied beyond the petitioner's organization.

The petitioner provided CIS with numerous testimonials about the value of the beneficiary's work. Prof. Fred Gage, The Salk Institute for Biological Studies, wrote that the beneficiary's "independent research on embryonic stem cell derived oligodendrocytes is a pioneering effort that is central to the advancement of Dr. McDonald's transplantation studies." Prof. Xiao-Ming Xu, Kentucky Spinal Cord Injury Research Center, wrote that one of the beneficiary's "greatest achievements is the development of a process that vastly increases the differentiation of embryonic stem cells into oligodendrocytes." Dr. Wu Liangfang, Professor of Histology and Embryology, West China University of Medical Sciences, wrote that the beneficiary's "findings could potentially lead to treatments of central nervous system (CNS) injury." In review, the evidence fails to show that beneficiary has sustained national or international acclaim and recognition for

major achievements in the field of science.

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 published 13 articles and 19 abstracts about her research in the United States. Counsel for the petitioner submitted evidence that the beneficiary's articles were published in peer-reviewed journals that are frequently cited. The petitioner submitted evidence that the beneficiary's articles have been cited by others, thereby demonstrating that her research has had an impact on the field of spinal cord injury research. The beneficiary satisfies this criterion, but it is only one 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 member of a research team as a research associate at an esteemed medical institution, the petitioner. 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 petitioner asserts that the beneficiary plays an essential role on its spinal cord injury research team. Prof. Mary Bartlett Bunge, University of Miami School of Medicine and the Miami Project to Cure paralysis, wrote that the beneficiary "has been responsible for the difficult task of growing and characterizing the various ES cell lines used by all the other members of the laboratory." Prof. Lorne Mendell, State University of New York, wrote that "all of the ES cell experiments conducted by other investigators in the lab depend on the cells she is primarily responsible for providing. She, therefore, occupies a position of central importance to the overall program."

In review, the petitioner has failed to establish that the beneficiary has been employed in an essential or critical role either within the Washington University School of Medicine's Neurology Department or within the university at large.

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.

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 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.