

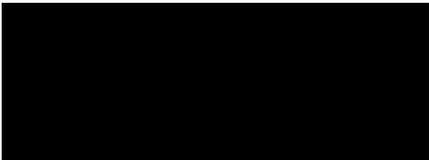
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U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

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



File: SRC 03 153 51475 Office: TEXAS SERVICE CENTER

Date: JAN 02 2004

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

Identifying data deleted to
prevent unauthorized dissemination
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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an academic institution, seeking an extension 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), as an alien with extraordinary ability in physics. The petitioner seeks to continue to employ the beneficiary temporarily in the United States for a period of one year as a research assistant professor, at an annual salary of \$40,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being among a small percentage at the very top of his field of endeavor.

On appeal, the petitioner submits a three-page letter and additional evidence, asserting that the beneficiary's continued involvement in the petitioner's research in nanotechnology is crucial for the future success of their endeavor.

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 physics 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 regulation at 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 40-year old native and citizen of China. According to the evidence on the record, the beneficiary worked as an associate professor of physics at the Fundan University in Shanghai, China, before starting his work with the petitioner in November 1998. The record reflects that he was last admitted to the United States on April 2, 2003 as an O-1 alien of extraordinary ability. The beneficiary was previously admitted as a J-1 exchange visitor. He is subject to the two-year foreign residency requirement.

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 physics pursuant to 8 C.F.R. § 214.2(o)(3)(ii).

On appeal, the petitioner asserts that the evidence is sufficient to show that the beneficiary meets at least three of the criteria listed in the regulations at 8 C.F.R. § 214.2(o)(3)(iii)(B).

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 evidence indicates that the beneficiary received the following awards in China: the Chinese Academy of Science Natural Sciences Award (second grade) in October 1992; the Science Council of the Foundation of the Chinese Academy of Engineering Physics (second grade) in December 1995; and a Certificate of Scientific and Technology Achievement by Shanghai City in August 1996. The petitioner failed to establish that these are internationally or nationally recognized prizes for

excellence in the field of endeavor. The record is insufficient to establish 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.

No evidence was submitted in relation to criterion number two.

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 submitted one article describing the research results of a team that included the beneficiary. The article was considered; however, it is not about the alien, but about the results of his research team. 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 has served as a referee in the peer review process of a physics journal, *Chinese Physics Letters*, and reviewed applications for projects seeking funding from the National Science Foundation of China. As corroborating evidence, the petitioner submitted a letter written by the managing editor of *Chinese Physics Letter* stating that the beneficiary served as a member of referees and contributed to the journal in the years 1990 to 1998. However, the managing editor failed to state the basis for the beneficiary's selection to perform peer review. He was unclear as to when and how frequently the beneficiary reviewed manuscripts for the publication. As evidence that the beneficiary had evaluated grant proposals, the petitioner submitted a letter addressed to the beneficiary, asking him to review one such proposal for the National Natural Science Foundation. There is no evidence of record that the beneficiary performed such review. Further, the petitioner submitted no evidence describing the National Natural Science Foundation or its criteria for awarding grants, the subject matter of applications to be reviewed, or who competes for such grant money. The evidence is insufficient to establish 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, 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 several testimonials about the value of the beneficiary's work. While all the testimonials' authors speak favorably of the beneficiary's skills, they fail to establish that the beneficiary's research is considered to be of major significance. The testimonials fail to show that the beneficiary has sustained national or international acclaim and recognition for major achievements in the field of physics.

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 co-authored 21 articles that were published in trade journals. The petitioner asserts that the beneficiary's articles have been cited more than one hundred times, but failed to provide corroborative evidence of these citations. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The evidence is insufficient to establish that 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 petitioner asserted that the beneficiary has played a critical and essential role in the National Nanotechnology Initiative. The petitioner did not establish that the National Nanotechnology Initiative is an organization or establishment, that it has a distinguished reputation, or that the beneficiary has played a critical or essential role at any institution. Shi-Yu Wu, a professor of physics at the University of Louisville, indicates that the initiative is still in its formative stage. 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.

No evidence was submitted in relation to criterion number eight.

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 his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). In order to meet these criteria in the field of science, the alien must normally be shown to have a significant history of scholarly publications, have held senior positions at prestigious institutions, or hold regular seats on editorial boards of major publications in the field. 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.