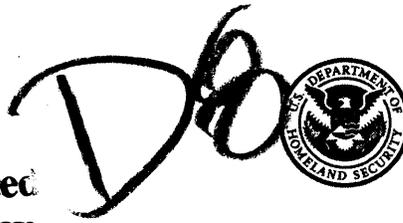


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**U.S. Citizenship
and Immigration
Services**

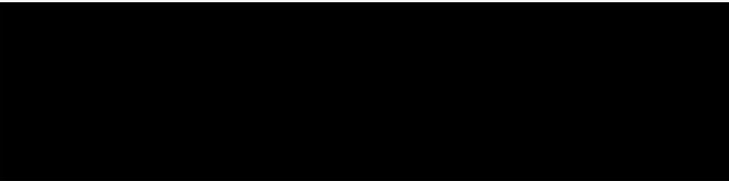


FILE: SRC 03 207 50719 Office: TEXAS SERVICE CENTER Date: **JAN 14 2004**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Plussa
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 specializing in hematopathology. 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 an assistant professor in the department of pathology, research pathologist, and director of the petitioner's tissue bank.

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 the field.

On appeal, counsel for the petitioner submits a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in his field.

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 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 beneficiary in this matter is a 37-year old native and citizen of Lebanon. The record reflects that he received his medical degree in 1991 at the American University of Beirut. He completed a first year residency training in obstetrics and gynecology in 1992; and a second year residency training in obstetrics and gynecology at the American University of Beirut in 1993. From 1993-1997 he did residency training in pathology at Baylor College of Medicine. From 1997-2001, he did residency training in pathology and laboratory medicine at the University of Texas in Houston. He completed a fellowship in surgical pathology and another fellowship in hematopathology, both at the M.D. Anderson Cancer Center in Houston, Texas. The record reflects that he was last admitted to the United States on January 8, 2000, in J-1 classification as an exchange scholar. 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 science pursuant to 8 C.F.R. § 214.2(o)(3)(ii). The director acknowledged the facts presented that the beneficiary is very accomplished in the field of pathology, 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 director erred in weighing the evidence, and submits additional 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 was awarded the Arab-American Award for Research in 1994. The petitioner further asserts that by virtue of receiving two highly competitive fellowships, the beneficiary received internationally or nationally recognized prizes for

excellence in his field. The petitioner states that the beneficiary received another such award in the form of an American Medical Association (AMA) research seed grant.

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. 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. The petitioner failed to demonstrate that these were awards for excellence in the field of endeavor.

Regarding the beneficiary's research grant, it is noted that 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 petitioner failed to establish that these are nationally or internationally recognized awards for excellence in the field of endeavor. The beneficiary does not satisfy 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 Lebanese Order of Physicians, the Houston Society of Clinical Pathologists, the American Society of Clinical Pathology, the College of American Pathologists, the U.S. and Canadian Academy of Pathology, and M.D. Anderson Associates, 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. The beneficiary does not satisfy this criterion.

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 an article titled "Sentinel Node Processing" that discusses the beneficiary's research. This published article is not about the beneficiary as required by the regulation. The petitioner failed to establish that the beneficiary satisfies criterion number three.

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 because he was selected to make presentations at numerous medical conferences and to perform a lab inspection at the Columbia Mainland Medical Center in Texas City, Texas. The petitioner further asserts that the beneficiary satisfies this criterion by virtue of his day-to-day job activities requiring constant evaluation of the work of others as part of a research team. The beneficiary's work evaluating fellow research team members is not indicative of the beneficiary's sustained acclaim. He evaluated the work of others as an integral part of his job. When the beneficiary made presentations at conferences, he was presenting his own research results, rather than judging the work of others. The petitioner failed 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 eight testimonials about the value of the beneficiary's work. One testimonial's author wrote that the beneficiary made an "original contribution to the hematopathology field through his research and patenting of technology that could potentially improve the treatment of Rh blood disease." The granting of a patent documents that an invention or innovation is original, but not every patented invention or innovation constitutes a significant contribution in one's field. The petitioner failed to demonstrate that the beneficiary's patented techniques are a significant contribution in relation to others in the field.

One testimonial author wrote that the beneficiary's alternative technique to diagnose breast cancer is an "extraordinary original contribution to the field." 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).

Another testimonial's author wrote that the beneficiary made "possible breakthroughs in the JAK/Stat3 signaling pathway in Mantle Cell Lymphoma. Another wrote that the beneficiary's research "could potentially improve the treatment of Rh blood disease." A third said that the beneficiary "will do much to advance the study of blood pathogens." Another wrote that the "Rh purification, stabilization, and antigenic enhancing technique that [the beneficiary] invented potentially allows the automation of Rh testing." The authors indicate that the beneficiary's work may have a significant impact in the future, but the statute and regulation require evidence that the beneficiary has sustained acclaim for his achievements as of the date of filing the petition. It is not enough to claim that the beneficiary will make an original contribution of major significance in the future.

The nature of scientific research is to expand the body of knowledge of science. The beneficiary's contributions are original and noteworthy, but they are best described by his colleagues as adding to the body of knowledge incrementally rather than as a scientific breakthrough. The record does not contain corroborating objective evidence indicating that the beneficiary's achievements are of major significance. In review, the evidence fails to show that the beneficiary has sustained national or international acclaim and recognition for major achievements in the field of medical 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 numerous peer-reviewed articles and abstracts that have been cited extensively. 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 asserts that the beneficiary served as a lead researcher on critical projects at M.D. Anderson, "the most prestigious cancer center in the United States." The petitioner asserts that as a post-doctoral research fellow at Baylor College of Medicine and as resident and fellow at the University of Texas, the beneficiary satisfies this criterion. 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 served as a lead researcher on critical projects but failed to establish that those projects are organizations or establishments that have a distinguished reputation. 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, the petitioner has offered to pay the beneficiary an annual salary of \$125,000. The petitioner provided CIS with the prevailing wage for physicians in the geographical area where the petitioner is located. The survey¹ submitted indicates that the beneficiary would receive \$10,000 more (9 percent) than the prevailing wage for physicians in the geographical area of the petitioner. The survey submitted is geographically too restrictive. This criterion must be indicative of national acclaim in the field. The petitioner should have submitted wage survey information for all pathologists on a nationwide basis. The petitioner should have provided more than just the average (mean) wage. To evaluate whether the salary is high, AAO needs to compare it to the median and highest wages offered nationwide to medical school assistant professors. The beneficiary does not satisfy this criterion.

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 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.

¹ Citing the Department of Labor's *Occupational Employment Statistics* (OES) survey .