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U.S. Citizenship
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Services

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MAR 16 2004

FILE: LIN 03 215 52087 Office: NEBRASKA SERVICE CENTER Date:

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:



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.


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 a radiology physician group that seeks to employ the beneficiary as a radiologist for a period of three years. The director denied the petition, finding that the petitioner failed to establish that the beneficiary satisfied the regulatory standard for an alien with extraordinary ability in the sciences under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i).

On appeal, counsel for the petitioner states as the reasons for the appeal: "[t]he Nebraska Service Center decision misapplied 8 C.F.R. § 214.2(o)(3)(iii) in evaluating whether the beneficiary met the relevant legal/evidentiary standard . . . [and] failed to properly analyze the evidence submitted in support of this O-1 visa petition." Counsel also submitted a brief in support of the appeal.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), 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 or, with regard to motion picture and television productions, has a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and 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 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.

The regulation at 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 Turkey. The record reflects that she received her degree in medicine from the Ankara University in Ankara, Turkey in 1990. The beneficiary completed a residency in Turkey before entering the United States to complete a second residency program in nuclear medicine at the University of Maryland Medical Center in Baltimore, Maryland. She completed a two-year fellowship at the Memorial Sloan-Kettering Cancer Center, New York, New York in June 2003. The record reflects that she was last admitted to the United States on August 30, 2001 in J-1 classification as an exchange visitor and that she is subject to the two-year foreign residency requirement. She has subsequently left the United States and returned to Turkey.

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

On appeal, the petitioner asserts that the director erred in finding the evidence insufficient to find that the beneficiary is a physician 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).

For criterion number one, the petitioner asserts that the beneficiary's receipt of research grants and fellowships satisfy this criterion. 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 grants, 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 evidence is insufficient to establish that the beneficiary satisfies this criterion.

For criterion number two, while the beneficiary is a member of the Society of Nuclear Medicine, the Academy of Molecular Imaging, the American Medical Association, the Turkish Society of Nuclear Medicine, and the Turkish Medical Association, the petitioner failed to establish that these organizations require outstanding achievements of their members. While the organizations require licensure in the medical field or specialty, licensure is not a measure of extraordinary ability but of competence in the field.

For criterion number three, the petitioner failed to submit published material in professional or major trade publications or major media about the beneficiary. In his decision, the director indicated that he had previously indicated to the petitioner that he would consider citations by other authors to the beneficiary's research as an alternative type of evidence for this criterion. This portion of the director's decision shall be withdrawn. Citations to the alien's work are not published material *about* the alien under this criterion. Citations are a measure of influence that the alien's work has had on the field and are addressed under a separate criterion. The beneficiary does not satisfy this criterion.

For criterion number five, the petitioner asserts that the beneficiary has made numerous original scholarly contributions of major significance in her field. The petitioner provided CIS with testimonials about the value of the beneficiary's work and her personal qualities. The petitioner submitted testimonials. Abass Alavi, Chief, Division of Nuclear Medicine, Professor of Radiology, University of Pennsylvania Medical Center, wrote that some of the beneficiary's most notable contributions include:

[h]er article entitled "Assessment of tissue viability in frostbite injury by Tc-99m sestamibi scintigraphy in an experimental rabbit model" was . . . pioneering in demonstrating the value of Tc-99m sestamibi, a cardiac and tumor imaging agent, to evaluate viable tissues and in distinguishing between infarction and reversible ischemia after frostbite injury. The study showed that this agent may be useful in selecting early therapeutic or surgical interventions to salvage bone and soft tissue after frostbite injury in clinical cases.

[The beneficiary's] research has also changed the way in which ulcerative colitis has been diagnosed. Her article . . . introduces a new inflammation imaging agent, Tc-99m Dextran, to image Ulcerative Colitis.

In the absence of extensive objective corroborative evidence such as press coverage on the significance of the contributions noted in the testimonials, or practical applications of her research in business or academic settings, the evidence is insufficient to establish that these contributions may be considered of "major significance." The evidence does not demonstrate that the beneficiary's contributions can be considered to be of major significance in relation to other similar work being performed. 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 medicine.

For criterion number six, the beneficiary has co-authored numerous articles that were published in peer-reviewed journals and abstracts. She has written a chapter for a textbook. The petitioner provided an extensive citation history for the beneficiary's publications. The beneficiary satisfies this criterion.

For criterion number seven, the petitioner worked as a research fellow and faculty member at the Ankara University and Kocaeli University in Turkey prior to her entry to the United States. In the United States, she was employed as a resident/research fellow at the University of Maryland Medical Center's nuclear medicine department and as a fellow in PET/Nuclear Oncology at the Memorial Sloan-Kettering Cancer Center. The director noted that although the beneficiary has held responsible positions, such staff positions are not considered to be employment in a critical or essential capacity. The AAO concurs. The beneficiary does not satisfy this criterion.

For criterion number eight, the beneficiary's proffered salary is \$175,000. The petitioner submitted evidence that an experienced physician earns an average annual salary of \$109,262 in the petitioner's locality. The director determined that the beneficiary satisfied this criterion. This portion of the decision shall be withdrawn. The petitioner should have submitted wage survey information for all radiologists on a nationwide basis. The petitioner should have provided more than just the average (mean) wage. To evaluate whether the salary is high in relation to others in the field, CIS needs to compare it to the median and highest wages offered nationwide to radiologists. The petitioner failed to establish that the beneficiary meets 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." 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.