

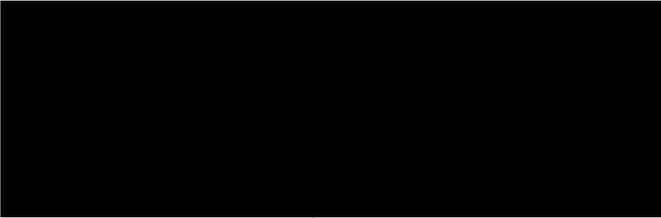
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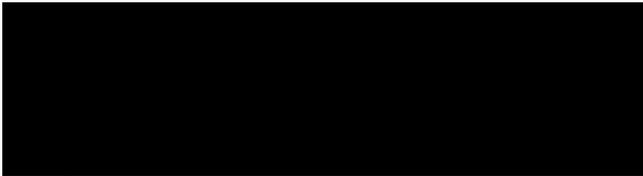
APR 21 2005

FILE: SRC 03 236 51017 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:



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 Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition in a decision dated November 14, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a public university, seeking 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)(i), as an alien with extraordinary ability in epidemiology. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of one year as a visiting research associate.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary can be considered as one of the small percentage who have ascended to the very top of his field.

On appeal, the petitioner submits a statement and asserts that the beneficiary is qualified for the O-1 visa classification.

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 epidemiology as defined by the statute and the regulations.

The regulation at 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 the People's Republic of China (PRC). The record reflects that he received his bachelor's, master's and doctorate degrees in applied statistics from the Fudan University in Shanghai, PRC. In 1998, the beneficiary received a master's degree in management from the Norwegian School of Management in Oslo, Norway. From March 2000 until the date of the filing of the instant petition, the beneficiary has worked as a post-doctoral fellow in the Department of Epidemiology and Biostatistics at the petitioning organization. The record reflects that the beneficiary was last admitted to the United States on March 15, 2000, in J-1 classification as an exchange visitor, 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 that the petitioner failed to establish that the beneficiary meets the requirements of Title 8, Code of Federal Regulations, Part 214.2(o)(3), *supra*.

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.

The petitioner asserts that the beneficiary satisfies criterion number one because he has received the following awards:

- 1999: Massachusetts Institute of Technology (MIT) Sloan School of Management award in recognition of successful participation in the MIT-China Management Education Project as an International Faculty Fellow.

- 1995 City Bank Teaching Award, Shanghai, PRC.
- 1997 Yu Cai Award for Achievement in undergraduate education, Shanghai, PRC.
- 1998 Meng Sandu Fellowship for achievement in statistical research, Shanghai, PRC.
- 1999 Johnson & Johnson Teaching Award, Shanghai, PRC.

This criterion requires nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Fellowships

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.

Teaching awards

According to the evidence on the record, the petitioner received two teaching awards. The Yu Cai award is an award for undergraduate educators that is awarded every two years to approximately 50 professors in the PRC. The petitioner failed to establish that the Yu Cai award is an internationally or nationally recognized award for excellence in the beneficiary's field of endeavor.

The Johnson & Johnson award was a second-place teaching award from the Fudan University School of Management. Institutional awards such as the Johnson & Johnson award are limited to employees or students at a single institution. As the beneficiary 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 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 American Statistical Association (ASA), the International Chinese Statistical Association (ICSA), and the International Biometric Society, there is insufficient evidence that these are associations which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. The petitioner failed to submit information about the membership requirements for two of the three associations. The petitioner submitted a copy of a homepage for ASA that indicates it has 19,000 members as of April 18, 2005. The petitioner failed to establish that the beneficiary satisfies 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.

No evidence was submitted in relation to 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.

In July 1999, the beneficiary reviewed "Statistical Analysis and Correction of Contaminated Data" for *Applied Probability and Statistics*, Shanghai. In January 2000, he reviewed "The Consistence of Error Density Estimation under M-estimate" for *Applied Probability and Statistics*, Shanghai. The petitioner failed to establish the basis for the beneficiary's selection to review these articles.

In April 2003, the beneficiary reviewed a paper for *Biometrics* and another article for the *Journal of Statistical Planning and Inference*. It appears that the beneficiary performed these two reviews at the behest of his Director, Biostatistics Program and Biostatistics and Epidemiology Center for Collaborative Research at the petitioning organization. Selection by one's superior is not tantamount to selection by an independent editor. 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 Citizenship and Immigration Services (CIS) with eleven testimonials about the value of the beneficiary's work.

██████████, Massachusetts Institute of Technology, a former teacher of the beneficiary, wrote that the beneficiary "created a new process for statistical estimation that is more efficient than classical processes by an order of magnitude."

██████████ President, Biostat International, Inc., wrote that the beneficiary is "especially well known for his major contribution in the studies of Generalized Mixed Effects Model" and that his work *will* greatly enhance the application of the model in the analysis of clinical trial safety and efficacy data.

██████████ Associate Professor and Director, Biostatistics & Epidemiology Center for Collaborative Research, University of South Florida, wrote that the beneficiary has great ability and potential and that he "has made significant contributions to [the] research of the Health Risk Assessment Methodology Group (HRAMG)."

██████████ Professor of Statistics, Fudan University School of Management, wrote that the beneficiary's work on Edgeworth Expansion is regarded as a big breakthrough in mathematical statistics theory.

██████████ Associate Professor of Division of Health Sciences, University of East Asia, Japan, noted the beneficiary's "well-known contribution on the Generalized Mixed Effects Model."

██████████ Professor, Department of Epidemiology and Biostatistics at the petitioning organization wrote that the beneficiary has made "many important advances."

██████████ Epidemiology Program Manager, Florida Department of Health, wrote that her agency contracted with the petitioning organization to conduct an evaluation of the state's ongoing syndromic surveillance system.

██████████ Environmental Manager, Florida Department of Health, states that the beneficiary's contributions to the project are "extraordinary."

██████████ Professor and Chair, Department of Epidemiology and Biostatistics, University of South Florida, states that the beneficiary's "recent work on Generalized Mixed Effects Models has brought this important longitudinal study to a new level" such that it "could be utilized in a much more broad application scope."

██████████ Professor of Statistics, Columbia University, wrote that the beneficiary has made significant contributions in the development of statistics by extending the applications for generalized mixed effects models.

The testimonials, while expressing high praise for the beneficiary, are conclusory rather than specific in detailing the beneficiary's contributions. In review, the evidence fails to show that the beneficiary has sustained national or international acclaim and recognition for major achievements in his field of endeavor. The beneficiary does not satisfy this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

The director determined that the beneficiary satisfied criterion number six. According to the evidence on the record, the beneficiary has co-authored four articles that have been published. The evidence further indicates that the beneficiary has written additional articles that are either under review or are to be submitted. The AAO will only consider those articles that had been published as of the date of the filing of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). No citation history of the beneficiary's articles has been submitted. Published articles by the beneficiary that have been cited by others would more meaningfully establish that the beneficiary enjoys a measure of influence through his publications. The petitioner has not demonstrated that the beneficiary's work has had a major impact on his field of endeavor. 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.

██████████ Associate Professor and Director, Biostatistics & Epidemiology Center for Collaborative Research, University of South Florida, wrote that the beneficiary played a "pivotal role" with the HRAMG on a research

project related to neurotoxicity risk assessment. He further notes that the beneficiary is the principal investigator on a research project to evaluate and develop an enhanced medical symptomatic surveillance system for anti-bioterrorism.

██████████ Associate Professor, University of East Asia, wrote that in the years 2001 to 2003, the petitioning organization and the University of East Asia collaborated on a research project to study the association between depression and low serum cholesterol levels. He wrote that the beneficiary's work "is essential and critical to this project."

It is not enough to establish that the beneficiary played a lead role for one or more research projects, unless the petitioner can establish that these projects 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 states that the beneficiary will earn an annual salary of \$45,000. In response to a request for additional evidence, counsel for the petitioner stated that "[a]lthough the proffered salary may not [be] considered high by private industry standards, it is considered market value for a grant funded research professional at an academic institution." The petitioner failed to establish that the beneficiary satisfies 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. 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 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.