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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 03 177 50616 Office: TEXAS SERVICE CENTER Date: APR 12 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

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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 petitioner is 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 ophthalmology. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of two years as a clinical and research instructor in ophthalmology.

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 his field of endeavor.

On appeal, counsel for the petitioner submits a statement arguing that the record shows that the beneficiary is an alien with extraordinary ability in his field. Counsel for the petitioner indicated that he would submit a brief and/or additional evidence to the AAO within thirty days of filing the appeal. More than three months have lapsed since the filing of the appeal and nothing more has been submitted for the record.

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.

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 30-year old native and citizen of Pakistan. The record reflects that he received a degree in medicine in 1977 from the Hacettepe University in Ankara, Turkey. The beneficiary performed a fourteen-month research fellowship at the Louisiana State University (LSU) Eye Center in New Orleans, Louisiana from April 1998 through June 1999. He then completed a twelve-month residency in internal medicine at the Alton Ochsner Medical Foundation, New Orleans, Louisiana in June 2000. From 2000 to 2003, the beneficiary participated in a residency in ophthalmology at Tulane University. The record reflects that he was last admitted to the United States on April 26, 1998 in J-1 classification as an exchange visitor and that 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).

On appeal, counsel for the petitioner asserts that the director erred by failing to consider all the evidence that was submitted in support of the petition. Counsel further asserts that the director ignored letters written by experts in the beneficiary's field that recognize the beneficiary as being among the small percentage that has risen to the very top of the field.

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 virtue of his selection for a competitive fellowship at Tulane University and for a competitive slot in medical school. The petitioner submitted evidence that the beneficiary was the recipient of two Awards of Excellence for Outstanding Paper.

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. Selection for a competitive slot at an esteemed institution is not a nationally or internationally recognized prize or award for excellence in the field of endeavor. The beneficiary was competing with fellow students for these slots.

The petitioner's alumni association voted awards of excellence for outstanding papers given during the Annual T.S. O'Brien Professorship and Annual Tulane Eye Alumni Day in 2000 and in 2001. The petitioner failed to establish that these are nationally or internationally recognized awards for excellence in the field of endeavor. It appears that the beneficiary competed only with students, physicians and alumni of Tulane University. As such, the award is not a nationally or internationally recognized award for excellence in the beneficiary's field of endeavor.

In response to the request for evidence, counsel for the petitioner states that the beneficiary recently received a Physicians Recognition Award from the American Medical Association. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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 Association of Research in Vision and Ophthalmology (ARVO), the American Academy of Ophthalmology, the American Society of Cataract and Refractive Surgery, the Contact Lens Association of Ophthalmologists, the Louisiana State Medical Society, the New Orleans Academy of Ophthalmology, the Peyman Alumni Association, the Society of Pakistani Ophthalmologists in North America and the Association of Pakistani Physicians of North America, there is no evidence that any of these are associations which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. While licensure or board certification may be required for membership in one or more of these associations, these requirements establish the minimum threshold for the specialty rather than set outstanding achievements as the requirements for entry into the association.

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, no evidence was submitted.

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.

The petitioner asserts that the beneficiary satisfies criterion number four by virtue of his work as a teacher and mentor. The beneficiary's work evaluating students is not indicative of the beneficiary's sustained acclaim. He evaluated the work of others as an integral part of his job. It does not follow that every professor is an alien of outstanding ability. To establish eligibility under the criterion, the petitioner must establish that the beneficiary has been selected to serve on a panel or as a judge of his peers because of his national or international standing in the field. 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 numerous testimonials about the value of the beneficiary's work. All of the testimonials' authors indicated that the beneficiary made contributions with his research on the photodynamic therapy for macular degeneration and research on squalamine derived from shark cartilage in the regression of iris neovascularization. Dr[redacted] wrote that the beneficiary's "research, findings and publications have made a major impact on the way we treat patients with age-related macular degeneration." Dr[redacted] failed to state how the beneficiary's work has made a major impact on his field. Dr[redacted] stated that the beneficiary made a contribution by researching "the toxicity of various therapeutic agents injected in the eye while performing vitrectomy surgery. This data helps us in determining therapeutic does to use in human eyes that have been shown to portray similar toxicity profile to the animal models." Dr.[redacted]oes not indicate that the beneficiary's research has made significant changes in the way vitrectomy surgery is performed. The testimonials, while expressing high praise for the beneficiary, are conclusory rather than specific in detailing the beneficiary's contributions and fail to demonstrate how the beneficiary's research has impacted his field. 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.

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 ten articles and submitted three articles for publication. He authored eleven abstracts, presentations and posters. 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.

For criterion number seven, the petitioner asserts that the beneficiary was and is a lead researcher on his projects. The petitioner failed to establish that the research projects have a distinguished reputation. A research project is not an organization or establishment within the meaning of this criterion. The petitioner failed to establish that the beneficiary satisfies 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.

The petitioner did not assert that the beneficiary satisfies criterion number eight. The petitioner has offered to pay the beneficiary an annual salary of $25,000, which has not been shown to be a high salary in relation to others in the profession.

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.