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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

D8

FILE: EAC 03 019 53280 Office: VERMONT SERVICE CENTER Date: DEC 03 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and 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 medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as an instructor.

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 her field of endeavor.

On appeal, counsel for the petitioner submits a brief asserting that the beneficiary satisfies seven of the criteria enumerated for O-1 visa classification. Counsel further asserts that the director abused his discretion by disregarding the evidence presented.

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.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary in this matter is a 32-year old native and citizen of Nigeria. The record reflects that she received her medical degree in 1995 at the University of Ibadan in Nigeria. She completed a one-year rotating internship at the University College Hospital in Ibadan, Nigeria in 1996. She performed a two-month observership at the Connecticut Children's Hospital, Hartford, Connecticut and a one-month externship at the John Dempsey Hospital, University of Connecticut. Between June 1998 and July 2001, she performed a pediatric internship and residency at the Howard University Hospital, Washington, D.C. She recently completed a fellowship in neonatology at the University of Maryland, Baltimore, Maryland. The record reflects that the beneficiary was last admitted to the United States on June 4, 2002, in O-3 classification.

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 she has received the following awards:

- She graduated as valedictorian of her medical school class at the University of Ibadan.
- College of Medicine Prize 1993.
- 1993 Faculty of Medicine Prize from the Faculty of Clinical Science at the University of Ibadan.
- Most Outstanding Student Prize in the departments of pediatrics and child health, obstetrics and gynecology, internal medicine and preventive medicine.
- House Officer of the Year Award during the petitioner's rotating internship at the University College Hospital, Oyo State, Nigeria.
- Outstanding Pediatric Intern Award from Howard University and the Washington D.C. General Hospital.
- Chairman's Award from Howard University's Pediatrics Department during her graduate medical education.
- The Ashok Bhatnager Research Award 2000.
- Ross Pharmaceutical's Charles S. Ireland Research Award 2000.
- She graduated first in her class of 120 medical students at the University of Ibadan, Nigeria.
- Resident of the Year in 1995.
- Highest test scores at the University of Ibadan.
- Selection for a competitive neonatal fellowship at the University of Maryland.
- K.O. Akinlabi Prize Scholarship for Obstetrics and Gynecology.
- The beneficiary is board certified in pediatrics and passed her U.S. medical licensing examinations with high marks.
- The petitioner was awarded a neonatal fellowship at the Univeristy of Maryland, Baltimore in 2000.
- The beneficiary was invited by the American Board of Pediatrics to write questions for upcoming Board exams.

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

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 Academy of Pediatrics, the American Medical Association, the American Pediatric Society, and the Society for Pediatric Research, 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.[1]

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 regarding 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 as a neonatal fellow and certified neonatal resuscitation physician, the beneficiary instructed, supervised, evaluated and assisted residents and medical students during their performance of medical procedures. She was not judging the work of her peers, but rather, of her subordinates. The beneficiary's work evaluating others in this capacity is not indicative of the beneficiary's sustained acclaim. She evaluated the work of others as an integral part of her job. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

The petitioner further asserts that the beneficiary judged the work of others as an editor of *Dokita*, a well-respected medical journal, from 1991-1994. The petitioner failed to provide any corroborating evidence to establish that the beneficiary served as an editor. 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).

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 her research, the record does not show that her 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

[1] A review of the organizations' websites confirms that membership does not require outstanding achievements of their members, as judged by recognized national or international experts in the field of endeavor.

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 testimonials about the value of the beneficiary's work. [redacted] wrote that the "[beneficiary] is an extraordinary physician . . . [with] profound knowledge . . . great insight . . . superior work ethic . . . exceptional communication skills . . . great people skills . . . [and a] wonderful gentle sense of humor." [redacted] wrote that "[the beneficiary] has established an international reputation during her studies in Nigeria, Wales and here in the United States." Rose [redacted] wrote that the"[the beneficiary] is competent . . . skilled . . . well trained . . . demonstrated excellence in all areas of academia . . . [and] made contributions as a teacher." In review, the evidence fails to show that beneficiary has sustained national or international acclaim and recognition for major achievements in the field of medicine. 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.

For criterion number six, the beneficiary has published six articles and several abstracts. The record contains no evidence that independent researchers have cited the beneficiary's work. In the absence of a citation history, the AAO cannot conclude that the petitioner's publication history is indicative of national or international acclaim.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

The beneficiary has been employed as a resident, a fellow, an intern, a physician, and an instructor at esteemed medical institutions. 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." 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 $43,443. The petitioner did not assert that the beneficiary satisfies this criterion. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

As comparable evidence, the petitioner submitted independent expert letters that recite the beneficiary's academic awards, class rankings and test scores. The experts highlight the beneficiary's exceptional skills and demonstrated excellence in all areas of academia. The petitioner also states that because the beneficiary was invited to contribute questions for the certifying exam for pediatricians nationwide, she demonstrated national acclaim. The petitioner failed to provide evidence demonstrating how the beneficiary was selected to submit questions for the board examinations. Before the CIS and AAO will consider comparable evidence under 8 C.F.R. § 214.2(o)(3)(iii)(C) only if the criteria in paragraph (o)(3)(iii)(A) and (B) of section 214.2(o) do not readily apply to the beneficiary's occupation. The petitioner failed to establish that the criteria in paragraphs (o)(3)(iii)(A) and (B) do not readily apply to the beneficiary's occupation.

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.