U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

D-86

[redacted]

FILE: SRC 04 028 50326 Office: TEXAS SERVICE CENTER Date: JUL 9 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and was appealed to the Administrative Appeals Office (AAO). The AAO denied the appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the prior decisions of the AAO and the director will be affirmed.

The petitioner is a health care provider, 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 attending transplant surgeon.

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 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.

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 41-year old citizen of Israel and Romania. The record reflects that he received his medical degree in 1987 from th[redacted] Bucharest, Romania. He completed an internship in internal medicine at the [redacted] Hospital. He then completed a three-year residency program in surgery at the [redacted] Israel. He completed a fellowship program in the department of liver transplantation at the [redacted] Rochester, Minnesota. He most recently completed a fellowship in transplant surgery/islet cell transplantation at the [redacted] Medical Center, Dallas, Texas. The record reflects that he was last admitted to the United States on June 26, 2000, in J-1 classification as an exchange visitor subject to the two-year foreign residency requirement.

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, counsel for the petitioner asserts that the beneficiary has received two nationally or internationally recognized prizes or awards for excellence: the Israeli Ministry of Health Award for Excellence in Service and the [redacted] Medical Center [redacted]

The petitioner submitted a letter from [redacted] Washington D.C., that states he trained at the [redacted] Medical Center and is "well aware of the existence of the Ministry of Health Award for Excellence in Service." [redacted] further stated that the "selection process is very competitive" and "award winners are selected each year from more than 1000 physicians, based on peer recommendations."

The petitioner submitted a letter written by [redacted] Professor of Surgery and Deputy Director of the [redacted] srael that states:

> The Ministry of Health confers this award each year to employees in the public health service who have excelled in the line of duty for a minimum of two years.
>
> The nominees are evaluated by a multi-disciplinary committee of senior staff members, and the award is in recognition of both professional and personal performance and dedication.
>
> The competition is open to all of approximately 1500 employees at our medical center, and the fact that it was awarded to Dr. Onaca was indeed a sign of the high esteem in which he

> was held by superiors and peers, the members of the medical team, and by the patients and their families.

It is noted that there is a possible discrepancy between the letter of Dr. Adar and Dr. Millo. Dr. Adar indicated that this competition is open to "all of approximately 1500 *employees* at our medical center;" whereas Dr. Millo stated that award winners are selected from 1000 *physicians*. In any event, the evidence clearly indicates that the award is an institutional award, limited to employees at one medical center and as such, is not a nationally or internationally recognized award for excellence in the field of endeavor.

The beneficiary received a [redacted] in the amount of $75,000 for his work in pancreatic islet cell transplantation from the Baylor University, an affiliate of the petitioner. On motion, counsel for the petitioner asserts that the relevant regulation does not specifically require that the award given only be an award to honor or recognize past achievement; "there may be dual intent," i.e., funding for a meritorious proposal and to honor an individual's reputation and past achievements.

Counsel's argument is not persuasive. It is clear that the committee that reviews grant proposals is primarily concerned with the merit of each proposal. The AAO has consistently found that grants are not awards for excellence within the meaning of the regulation. The beneficiary does not meet 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, the beneficiary is a member of the American Society of Transplantation (AST), the Texas Medical Association (TMA), the American Society of Transplant Surgeons (ASTS), and the Mayo Medical Alumni Association.

On motion, counsel for the petitioner asserts that the beneficiary's membership in ASTS and the Mayo Medical Alumni Association satisfies this criterion.

Counsel asserts that membership in ASTS satisfies this criterion because membership is limited to those who are actively engaged in or show a strong academic or research commitment to transplantation. Counsel further asserts that prospective members must be sponsored by at least three members, have studied at an ASTS approved institution and have at least three publications in the transplantation literature. Finally, an application has to be approved by the ASTS membership committee, the ASTS council and by a two-thirds vote of the general membership. Although the petitioner has shown that the requisites for membership are rigorous, the petitioner has not established that the ASTS is an association that requires *outstanding achievements* of their members, as judged by recognized national or international experts in the discipline.

Counsel asserts that membership in the Mayo Medical Alumni Association satisfies this criterion because "being accepted into the Mayo fellowship in the first place is extraordinary." Although a Mayo fellowship is competitive, the petitioner has not established that acceptance into a Mayo fellowship program is an extraordinary achievement or that membership in the Mayo Medical Alumni Association 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.

On motion, counsel for the petitioner asserts that a 461-word article published in the *Hepatitis Weekly* satisfies this criterion. The article is titled: "Liver Transplantation: The MELD Score Correlates with Post-Transplant Mortality in Liver Recipients." The article quotes the beneficiary. In this instance, a single article is insufficient

to satisfy this criterion because it is not indicative of national or international acclaim. On motion counsel submits an article published after 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). The beneficiary does not satisfy this criterion.

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.

No evidence was submitted in relation to criterion number four.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.

For criterion number five, counsel for the petitioner asserts "the MELD score work of [redacted] can be considered the most important contribution to the success of liver transplantation. This is evidence [sic] by the fact that he has received national and international recognition for his work as seen in the following [10] citations." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Ten citations to a person's work, in and of themselves, are not evidence of the originality or significance of an individual's contribution. It is the nature of scientific research to build upon the work of other researchers, and citations to other scientists are common in the field. While large numbers of citations by one's peers may reflect the communities' reaction to the research as original and of major significance, ten citations are not sufficient evidence of the major impact this work has had on the field.

Counsel further asserts that the beneficiary made an original scientific contribution of major significance in his field because he was involved in the maintenance of a unique international liver transplant tumor registry. Counsel cites a statement from the founder and manager of the tumor registry [redacted] as supporting evidence. [redacted] wrote: [redacted] is involved in the maintenance of the International Liver Transplant Tumor Registry, a multi-center database involving 57 transplant centers in 10 countries across four continents. This is the only registry of its kind in the world. Currently the registry manages data on 1244 patients."

The evidence fails to demonstrate how the beneficiary has been making an original contribution of major significance by virtue of his involvement in the maintenance of the International Liver Transplant Tumor Registry. While the work may be important to the field, the petitioner failed to describe what maintenance of the registry entails and why this is an original contribution of major significance.

In review, the evidence fails to show that beneficiary satisfies this criterion.

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

The petitioner established 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.

On motion, the petitioner quotes the AAO decision: "[a]lthough the petitioner's assertion that the beneficiary played a critical role in the development of Baylor's islet cell laboratory is persuasive, the petitioner failed to establish that its new islet cell laboratory has a distinguished reputation apart from Baylor University Medical

Center (BUMC)." Counsel for the petitioner asserts that since the islet cell laboratory is so new, it has not yet established a distinguished reputation in its own right; however, counsel argues that as a part of the Baylor Research Institute (BRI), the laboratory should derive the same distinguished reputation as BMU and BRI. Counsel's reasoning is not persuasive. The regulation clearly requires evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. The petitioner states that the beneficiary has played a critical role at Baylor's islet cell laboratory; therefore, to qualify, it must establish that the islet cell laboratory is a distinguished department in its own right.

On motion, counsel for the petitioner asserts that the beneficiary played a critical role at Mayo Clinic. Counsel offered no new evidence or new arguments on motion. Prior analysis will not be repeated here.

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, counsel asserts that the AAO used an incorrect standard in evaluating the proffered wage. Counsel states: "[b]ecause Dr. Onaca in many respects is the only physician who will be doing the type of work mentioned in the petition . . . we do not believe a national salary level would be indicative of whether his salary is high for the particular work involved. For this reason we submitted the consultant opinion explaining that the offered salary of $140,000 exceeds the average salary for the position."

The AAO has consistently determined that this criterion must be indicative of national or international acclaim; hence, the petitioner should have submitted wage survey information for all transplant surgeons on a nationwide basis. To evaluate whether the salary is high, AAO needs to compare it to the median and highest wages offered nationwide to transplant surgeons.

On motion, counsel states that the petitioner has raised its salary offer from $140,000 to $170,000. 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).

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 prior decision of the AAO is affirmed, and the petition is denied.