

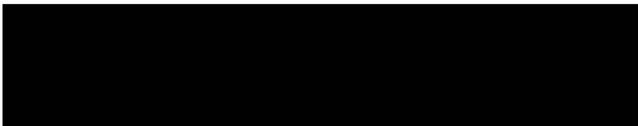
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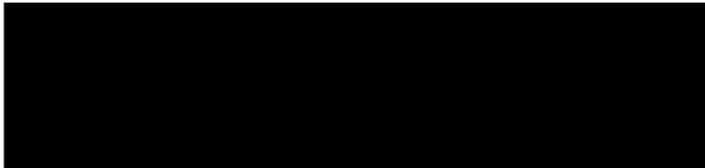


FILE: LIN 07 055 52503 Office: NEBRASKA SERVICE CENTER Date: JUN 11 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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.

fr *Maura Deadrick*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant 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 sustained and the petition will be approved.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director also determined the petitioner had not submitted clear evidence that he would continue work in his area of expertise in the United States.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that he will continue working in his area of extraordinary ability in the United States.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on December 15, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a pediatric cardiologist. At the time of filing, the petitioner was serving as Chief of Cardiac Surgery

Service for Hospital San Juan de Dios, Director and Chief of Pediatric Cardiac Surgery for the Cardioamigos Foundation, Cardiovascular Surgeon at both the Hospital de Clinicas Caracas and the Medical Center of Caracas, and Consulting Surgeon at the University Hospital of Caracas.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. We find that the petitioner's evidence meets at least three of the regulatory criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted evidence showing that he received the Luis Razetti Prize (1984) for his research pertaining to vascular cerebral extracranial illness. The petitioner also submitted evidence (such as media coverage) showing the national significance of this prize. The record also includes evidence showing that the Venezuelan Surgical Society awarded the petitioner the Dr. Francisco Montbrun Prize¹ (1997) and two Dr. Miguel Perez Carreno Prizes (1997 and 1999). As such, the petitioner has established that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submitted articles about him in Venezuelan newspapers such as *El Universal* and *El Nacional*. The director's decision stated that there was no evidence showing these articles had national or international circulation. On appeal, the petitioner submits material printed from the British Broadcasting Corporation's internet site stating that these "leading newspapers in Venezuela" are "two of the largest circulation dailies" in the country. In light of the evidence submitted on appeal, the petitioner has established that he meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In addressing the petitioner's evidence for this regulatory criterion, the director's decision stated:

The criterion is claimed primarily on the basis of the petitioner's role as founder of the Cardioamigos Foundation. [REDACTED] indicates that the petitioner founded this non-profit organization in 2000, and that he is responsible not only for providing surgical services care but also for quality of patient care and administration. Two published articles independently report on the Foundation and

¹ The petitioner's Dr. Francisco Montbrun Award was for his use of a cell-saving surgery technique eliminating the need for blood transfusions.

the additional evidence includes website information. Upon consideration, the evidence is sufficient to establish both the petitioner's individual role and the distinguished nature of the Foundation's reputation in Venezuela.

We concur with the director's observations. In addition, the petitioner submitted reference letters discussing his work for the University Hospital of Caracas, Hospital de Clinicas Caracas, and the Venezuelan Society of Cardiology. The record adequately demonstrates that these organizations have distinguished reputations.

As it relates to the petitioner's leading or critical role within these latter organizations, [REDACTED] Chief of Service and Chair of Cardiovascular Surgery, University Hospital of Caracas, states:

In 2000, [the petitioner] was put in charge of implementing the pediatric cardiac surgery program of the University Hospital of Caracas, reconstructing the infrastructure that is the paradigm in the specialty of pediatric cardiac surgery in Venezuela.

* * *

[The petitioner] was the pioneer in this institute and in the implementation of new surgical procedures in pediatric cardiac surgery such as the use of the injectable bovine "contrega" valve, a bioprosthesis of tremendous use in the reconstruction of the exit tract of the right ventricle in pediatric cardiac surgery, the Ross Operation, among others.

* * *

[The petitioner] has been an important teacher of his craft. The results obtained from his work in this Institute have been presented in several national and international congresses.

[REDACTED], a pediatrician, neonatologist, and cardiologist at Hospital de Clinicas Caracas, states:

[The petitioner] has been able to assemble a highly capable team of surgeons, cardiologists, anesthesiologists, pediatricians, and pediatric intensive care specialists. Our surgical Intensive Care Unit has become, through his effort, the foremost cardiac surgical ICU of the country, incorporating innovations such as inhaled Nitric Oxide and Extracorporeal Membrane Oxygenation for cardiac support.

[REDACTED] President, and [REDACTED] Secretary General, Venezuelan Society of Cardiology, state:

The petitioner is a prominent Cardiovascular Surgeon in Venezuela and famous for his specialty in Pediatric Heart Surgery.

He is the actual president of the Chapter of Cardiovascular Surgery of the Venezuelan Society of Cardiology. He has organized a number of seminars of Cardiovascular Surgery, in addition to

participating as a co-coordinator and speaker at the Annual Cardiology Congress of the Society at various times

[The petitioner] . . . is . . . working as a cardiovascular surgeon in the two most prestigious private institutions in Venezuela: the Medical Center of Caracas and the Caracas Clinicas Hospital.

In light of the above, we concur with the director's finding that the petitioner's evidence meets this criterion.

In this case, we find that the petitioner's evidence satisfies at least three of the regulatory criteria 8 C.F.R. § 204.5(h)(3).

The remaining issue is whether the petitioner has established that he is coming to the United States to continue work in his area of expertise. The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States."

In an affidavit accompanying the petition, the petitioner states: "My permanent presence in the United States will permit me to apply my skills in some of the economically and medically neediest areas, participate in conferences and events in my field, and expand my research."

The director requested further evidence "establishing details about where, when and how [the petitioner] will continue work in the field of pediatric cardiology in the United States."

In response, the petitioner submitted a March 16, 2007 letter stating:

. . . I submit this letter as my statement of intent to continue work in the United States in my field of expertise, specifically pediatric cardiac care.

Specifically, I intend to pursue research in the field of pediatric cardiac vascular conditions through my many contacts and colleagues at major American Universities, medical research firms, and pharmaceutical companies, including Merck. I also intend to continue to provide my services to aid in the development of new cardiac vascular products through companies like Medtronic USA Inc., for which I have been training surgeons throughout Latin America in use of the company's products and techniques for more than a decade.

As the enclosed letter from Medtronic's Mr. _____ indicates, the company intends to continue to utilize my services when I am in the United States, specifically to train Latin American Surgeons in the application of new products and techniques that it releases over the next few years. I expect the company will also seek out my services in other ways, including for research purposes. I remain valuable to Medtronic because of my deep knowledge of many of its cardiac vascular products and techniques.

* * *

[I]t is reasonable to assume that working in my field of expertise, for example as a researcher and trainer, in the United States will provide a significant benefit to the country

In support of his statement, the petitioner submitted material reflecting that Merck is a sponsor of his Cardioamigos Foundation. The petitioner also submitted a March 14, 2007 letter from [REDACTED] Cardiac Surgery Director, Latin American Operations, Medtronic USA, Inc., Miami, Florida, stating:

[W]e really appreciate your effort in providing a very valuable evaluation, analysis and information for Contegra® Pulmonary Valves conduit for Pediatric applications.

* * *

Over the past 15 years . . . you have trained Cardiac Surgeons such for [sic] unique technique of implantation that has sa[v]e[d] so many children.

* * *

As discussed in the past Medtronic recently launched Percutaneous Trans Catheter Pulmonary Valves Conduit technology “PTCV” in Europe, Canada and it is under investigation device in United States. Approximately 500 of such devices have been implanted I want to assure you that you are going to be one of the first physicians that will be trained in Latin America in such technique. So subsequently Medtronic will be able to use your experience and seek your support in training and education

A March 15, 2007 letter from [REDACTED], General Manager, Service & Medical International LLC, North Miami Beach, Florida, states:

[The petitioner] has been of invaluable help in the implementation of innovative cardiac techniques, specifically in the field of pediatric cardiac surgery, including research and training of colleagues, both in the fields of cardiac surgery and perfusion techniques

We are counting on [the petitioner] to continue his association with our enterprise in order to further promote research and training in pediatric cardiac surgery.

The director’s decision cited the petitioner’s March 16, 2007 letter and the March 14, 2007 letter from [REDACTED] of Medtronic USA. The director’s decision then stated:

Upon consideration, the record continues to lack clear evidence that the petitioner is coming to the United States to continue to work as a pediatric cardiologist. The Service acknowledges that conducting medical research and training other physicians are possible related duties. However, distinguishing between professions within a given field is consistent with the reasoning of the court in *Lee v. Ziglar*, 237 F. Supp.2d 914 (N.D. III. 2002). In this case, the record reflects that the petitioner

is primarily a practicing cardiovascular surgeon. According to the Occupational Outlook Handbook (U.S. Dept. of Labor, 2002-03 Edition at p. 262), physicians and surgeons “diagnose illnesses and prescribe and administer treatment for people suffering from injury or disease Surgeons are physicians who specialize in the treatment of injury, disease, and deformity through operations Surgeons, like primary care and other specialist physicians, also examine patients, perform, and interpret diagnostic tests, and counsel patients on preventive healthcare.” The record continues to lack clear evidence that the petitioner will continue to work as a pediatric cardiologist and the petition will be denied on that ground.

The statute requires that the petitioner “seeks to enter the United States to continue work in the area of extraordinary ability.” See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii). As previously noted, the implementing regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise.” In this case, the documentation submitted by the petitioner indicates that his area of expertise includes cardiovascular surgery training and research. Further, the documentation does not support the director’s conclusion that the petitioner’s plans for employment in the United States reflect his entry into a different profession within his field. Thus, the present matter is distinguishable from *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002). In addition, in the cited matter, the alien’s acclaim rested on his achievements as a baseball player. The alien in that matter had not demonstrated significant achievements as a baseball coach, the job he was seeking in the United States. Conversely, in the present case, in addition to the petitioner’s acclaim as a pediatric cardiovascular surgeon, he has also demonstrated significant achievements as a surgical instructor and researcher, his areas of intended employment. For example, the record reflects that petitioner has earned nationally recognized awards based on his research and surgical innovations, authored research publications, lectured on his specialty at numerous medical conferences as a recognized national expert, trained cardiovascular surgeons at distinguished institutions where he has worked (such as the University Hospital of Caracas), and trained surgeons from foreign countries (such as those from the Institute of Pediatric Cardiology in Uruguay). With regard to the petitioner’s training of surgeons in Venezuela, a November 7, 2006 letter from [REDACTED], [REDACTED], Professor of Surgery, Emeritus, Harvard Medical School and Surgeon-in-Chief, Children’s Hospital in Boston, states: “[The petitioner] has also been central to the effort of training pediatric cardiac surgeons in Venezuela. His pupils are now working in different areas of the country, guaran[teeing] the future of pediatric cardiac surgery in Venezuela.” Therefore, the petitioner’s plans for training others in his field and pursuing research in the field of pediatric cardiac vascular conditions are consistent with his area of expertise. Further, the petitioner’s plans to continue his work in the United States are corroborated by the letters from Medtronic USA, Inc. and Service & Medical International LLC.

Pursuant to the statute and regulations, the petitioner qualifies for classification sought. While not all of the petitioner’s evidence carries the weight imputed to it by counsel, the totality of the evidence establishes an overall pattern of sustained national acclaim and extraordinary ability. The petitioner has also established that he seeks to continue working in the same field in the United States. Therefore, the petitioner has overcome the stated grounds for denial and thereby established eligibility for immigrant classification under section 203(b)(1)(A) of the Act.

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The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.