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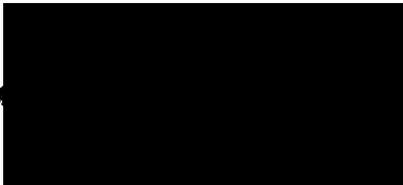
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUN 24 2005

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

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 the beneficiary has earned sustained national or international acclaim at the very top level.

This petition, filed on March 28, 2003, seeks to classify the beneficiary as an alien with extraordinary ability as a physician specializing in anesthesiology and critical care medicine. At the time of filing, the beneficiary was working as a staff physician at The Miriam Hospital in Providence, Rhode Island.

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, international recognized award). Barring the alien's receipt of such an award, the regulation 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. The petitioner has submitted evidence pertaining to the following criteria.

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

On appeal, counsel asserts that Delhi University entrance and exit examination test results related to the beneficiary's medical studies and training are adequate to satisfy this criterion. According to the beneficiary's resume, he "stood 2<sup>nd</sup> among more than 2,000 medical graduates appearing for an entry examination to post-graduate training in internal medicine" conducted by Delhi University in 1986 and "stood 1<sup>st</sup> among 35 post-graduate trainees in Internal Medicine taking the exit examination (Boards)" at Delhi University in 1988.

Test results from candidates at a particular university, however, do not constitute "nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Furthermore, information listed on the beneficiary's resume (which represents a claim by the alien rather than evidence) does not meet the petitioner's burden of proof. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record contains no first-hand evidence of the actual test results to support the claims made in the beneficiary's resume.

In respect to rankings from universities and other learning institutions, Citizenship and Immigration Services (CIS) views such results as local or institutional honors rather than nationally or internationally recognized prizes or awards for the reason that they are limited to the candidates applying to or graduating from those institutions. It is further noted that the individuals taking these examinations were limited to recent medical graduates and post-graduate trainees. We cannot artificially restrict the beneficiary's field to exclude all those medical professionals who have long since taken their graduate and post-graduate medical examinations. In this case, there is no evidence indicating that the beneficiary has received any national or international award for which he would have faced competition from throughout his field, rather than his approximate age group within that field.

*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.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Furthermore, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted the beneficiary's medical certifications from the American Board of Anesthesiology, the National Board of Echocardiography, the Royal College of Surgeons in Ireland, and the Royal Colleges of Physicians in the United Kingdom. Without such certifications, however, the beneficiary would not have

been permitted to practice medicine in those specialties. We cannot conclude that such certifications, which represent standard requirements for entry into a particular medical specialty or profession, are adequate to demonstrate “outstanding achievement” in the medical field. We acknowledge the low percentage of board-certified anesthesiologists in the United States who also hold a Certificate of Special Competence in Critical Care, but the issue here is outstanding membership requirements rather than the number of certifications held.

The record contains no evidence of the bylaws or the official membership requirements of the above organizations to show that they require outstanding achievements of their members. The petitioner has not shown that the beneficiary was admitted to membership in these organizations based on his outstanding achievement in the medical field rather than his successful completion of a medical examination or training program. The record contains no evidence to establish that these organizations require outstanding achievements of their members, as judged by recognized national or international experts, in the same manner as highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The petitioner submitted a letter from Dr. [REDACTED] Instructor in Anesthesiology, Harvard Medical School, and Staff Anesthesiologist at Harvard's affiliated hospital, Beth Israel Deaconess Medical Center, who states:

At [REDACTED] [the beneficiary] was responsible for training, supervising, and evaluating the work of residents and fellows in anesthesiology in the Anesthesia & Critical Care Medicine Program at Harvard. He also served as an instructor for the Advanced Trauma and Life Support Course whereby he taught surgeons, emergency medicine physicians and paramedics.

A letter from [REDACTED] Anesthesiologist-in-Chief, Miriam Anesthesiologists, Inc. (MAI), states: “In connection with his current employment at MAI, [the beneficiary's] responsibilities include training and judging the work of residents and fellows training in Anesthesia and Critical Care Medicine at Miriam.”

As previously noted, the regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the beneficiary's participation as a judge must be evaluated in terms of these requirements. For example, evaluating accomplished physicians as a member on a national panel of experts is of far greater probative value than evaluating medical residents in training at one particular hospital. While a course instructor or a supervisor of medical residents and fellows in anesthesiology does evaluate the work of his pupils or trainees at a particular location, this evaluation process is inherent to serving in such positions. Involvement in such a process does not, however, elevate the instructor or supervisor above almost all others in the field at the national or international level or demonstrate widespread acclaim. In this instance, the beneficiary's duties involved evaluating medical trainees, or those who enrolled in the Advanced Trauma and Life Support training course, rather than established professionals in his particular specialty. We find no evidence to demonstrate that the beneficiary has formally judged the work of board-certified anesthesiologists or critical care physicians who have long since completed their residency or fellowship programs.

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

The petitioner submitted five letters of support from individuals from The [REDACTED] Hospital and the [REDACTED] Medical Center.

[REDACTED] states:

While at Harvard, [the beneficiary] did a critical review of blood utilization during cardiac surgery at Beth Israel. This led to new protocols in blood product utilization and reduction in bleeding by optimal selection drugs to reduce bleeding during cardiac surgery. While a Fellow in Critical Care Medicine at Beth Israel, [the beneficiary] started a research project utilizing closed loop feedback control of cardiovascular drugs employing a continuous cardiac output catheter and computers to make a hemodynamic diagnosis and administer corrective therapy on the fly. In simple terms, this is automatic diagnosis of the problem with circulation and its automatic correction by computer driven drug delivery pumps in very unstable patients who are in the Intensive Care Unit or the Operating Rooms. This technology is truly futuristic and will play a very important role in medicine in years to come. Impressed by his vision and ideas, the health care giant [REDACTED] donated equipment and grants worth \$50,000 to [the beneficiary].

[REDACTED] states:

In particular, [the beneficiary's] research contributions have included development of a new procedure for reducing blood loss during cardiac surgery. Specifically, [the beneficiary] developed a cost-effective protocol for the drug Aprotinin, called "[REDACTED] EACA"), which prevents the dissolution of blood clots. As a result of [the beneficiary's] innovative study, [REDACTED] implemented a new policy for the use of EACA, as an alternative for patients unable to afford Aprotinin treatments.

\* \* \*

[The beneficiary] also conducted research regarding closed loop feedback control of the cardiovascular system using continuous cardiac output catheters, computer controlled infusion devices for administration of volume, vasoactive agents and inotropes and digital PID (proportional, integral and derivative) controllers. This research led to the development of a simulator which acquires real-time hemodynamic data from bedside monitors in the Operating Room and the ICU. This device delivers lifesaving drugs and fluids to patients through computer aided automation, thereby resulting in a more efficiently run and safer ICU.

The record, however, contains no evidence showing that the beneficiary's specific medical innovations are widely utilized outside of Beth Israel Deaconess Medical Center or his current employer. Without extensive documentation showing that the beneficiary's work is nationally or internationally recognized throughout the greater field as a contribution of major significance, we cannot conclude that he fulfills this criterion.

We note that all of the letters of support were written by individuals from hospitals where the beneficiary has worked. This fact indicates that while the beneficiary's work is valued by those close to him, others outside his immediate circle are largely unaware of his research and do not attribute the same importance to his work. With regard to the personal recommendation of individuals from institutions where the beneficiary has trained and worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the beneficiary has earned sustained acclaim outside of his affiliated institutions. If the beneficiary's reputation is limited to those institutions, then he has not achieved national or international acclaim regardless of the expertise of his colleagues. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

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

The petitioner submitted evidence of the beneficiary's authorship of a single article entitled "Non-Operating Room Emergency Airway Management and Endotracheal Intubation Practices: A Survey of Anesthesiology Program Directors" appearing in *Anesthesia & Analgesia* and the *Year Book of Emergency Medicine 1998*.

Regarding this article, [REDACTED] letter states: "This article was extensively cited which is an indicator of its importance." We concur with [REDACTED] observation that extensive citation by others in one's field is a reliable indicator of an article's importance.

For this reason, we do not find that publication of a scholarly article is presumptive evidence of sustained national or international acclaim; we must also consider the greater scientific community's reaction to that article. When judging the influence and impact that the beneficiary's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that others have relied upon the beneficiary's findings. Frequent citation by independent researchers, however, would demonstrate widespread interest in, and reliance on, the beneficiary's work. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater scientific community, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed.

[REDACTED] claims that the beneficiary's article was extensively cited, but the record contains no evidence to support his assertion. For example, the petitioner has not provided a citation index for the beneficiary's article or copies of the numerous articles that cite his findings. Without first-hand evidence showing extensive independent citation of the beneficiary's article, we cannot conclude that he fulfills this criterion.

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

In order to establish that the beneficiary performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a letter from [REDACTED] Anesthetist-in-Chief, Department of Anesthesia, Beth Israel Deaconess Medical Center, and Associate Professor of Anesthesia, Harvard Medical School, stating:

I am, by this letter, offering you the post of attending faculty in anesthesia . . . for a period of three years commencing July 1, 1998. In this post you will be conducting patient care, teaching, and research. This carries a concurrent appointment of Instructor in Anesthesia at Harvard Medical School.

Either you or the department may terminate, without cause, your employment at any time by providing the other with 90 days written notice.

The petitioner also submitted a letter from the Office of the Secretary, Harvard University, dated March 10, 1999, reflecting that the beneficiary's Instructor in Anesthesia position was a one-year, temporary appointment. The letter notes: "Such terms and conditions include, but are not limited to, the continuing availability of funds from sources outside the University . . ."

On appeal, counsel asserts that the beneficiary has performed in a leading or critical role for Beth Israel Deaconess Medical Center and Harvard Medical School. We concur with the director's observation that these establishments enjoy a distinguished reputation, but the evidence of record is not adequate to demonstrate that the beneficiary performed in a leading or critical role, particularly since his position at both institutions was a temporary appointment.

The record contains no evidence detailing the extent to which the beneficiary has exercised substantial control over personnel or research decisions executed on behalf of the organizations for which he has worked. Furthermore, there is no indication that the beneficiary's roles as an attending anesthesiologist at [REDACTED] or as a temporary Instructor in Anesthesia at Harvard Medical School were any more important than that of the other faculty members serving in the same department as the beneficiary (including tenured professors or permanent staff). This criterion, like all of the criteria, is intended to separate the beneficiary from the majority of his colleagues in the field. Therefore, when determining the beneficiary's eligibility, it is entirely appropriate to compare the beneficiary's role to that of his colleagues. In this case, it is immediately apparent that the importance of the role of individuals such as [REDACTED] far exceeds that of the beneficiary. For the above reasons, we find that the petitioner's evidence falls short of establishing that the beneficiary has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

[REDACTED] states: "[The beneficiary] is presently paid a base annual salary of \$200,000 by MAI, and is eligible for total compensation of approximately \$275,000." [REDACTED] statement regarding the beneficiary's annual compensation is unsupported by objective documentation (such as payroll records or income tax forms) showing the beneficiary's actual earnings as of the petition's filing date. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 158, 165.

The petitioner also submitted evidence from the U.S. Department of Labor showing that the median Level 2 Wage for anesthesiologists in Rhode Island was \$145,350. The petitioner, however, must demonstrate that the beneficiary's salary places him at the top of his field at the national level, not simply in the top half at the local level. Local prevailing wage figures from the Department of Labor do not meet this standard. We find no evidence showing that the beneficiary is among the highest-paid in his field at the national or international level.

Documentation accompanying the petition indicates that the beneficiary in this matter was formerly the beneficiary of three approved O-1 nonimmigrant visa petitions. The approval of an O-1 nonimmigrant visa petition on behalf of a given alien does not in any way compel CIS to approve a subsequent visa petition under section 203(b)(1)(A) of the Act on behalf of that same alien. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition. Furthermore, there is no statute, regulation, or binding precedent that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act when the alien already holds an O-1 nonimmigrant visa.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate the beneficiary's receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the beneficiary has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.