

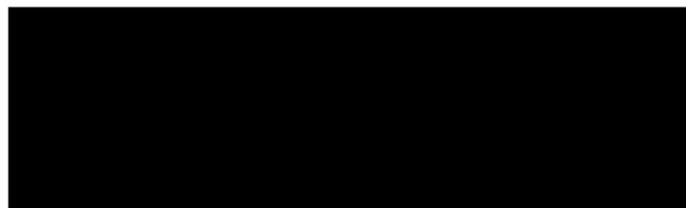
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Dg

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 14 2010

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O).

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

In order to demonstrate that membership in an association meets this criterion, a 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. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In its initial letter dated May 28, 2009, the petitioner stated that the beneficiary "is a member of five important nationally recognized scientific societies which includes membership in the prestigious American Society of Nephrology, the leading organization of kidney scientists and doctors." The beneficiary's resume lists his membership in this society as well as the American Physician Scientists Association, the International Society for Stem Cell Research, the International Stem Cell Forum, and the American Association of Physicians of Indian Origin. The petitioner submitted proof of the beneficiary's membership in each of these associations.

In the RFE issued on August 28, 2009, the director requested evidence of the minimum requirements and criteria used to apply for membership in these associations and any conditions or requirements of membership as well as evidence that the associations rely on national or international experts who make determinations regarding membership. The petitioner's response to the RFE did not further address this criterion.

The director determined that the evidence submitted was insufficient to meet this criterion, as the petitioner failed to provide any evidence that the aforementioned associations are ones which require outstanding achievements of their members as judged by recognized national or international experts in the field. The AAO concurs with this determination and notes that the petitioner has not contested the director's finding that the petitioner did not submit evidence to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

2. *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*

In general, in order for published material to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), it must be primarily "about" the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>3</sup>

The beneficiary co-authored a scholarly article titled [REDACTED] which was published in the March 7, 2009 issue of the [REDACTED]. The petitioner noted that this article describes "a novel method to regenerate the liver after it is damaged irreversibly by disease such as

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<sup>3</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the [REDACTED], but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

consider his work a 'breakthrough' in the use of omentum for medical therapy. Considering the significance of this work, the American Society of Gastroenterology selected [the beneficiary] for an oral presentation of his liver regeneration research in the Digestive diseases week 2009 Annual Meeting – an outstanding honor for a scientist considering that only 5% of submitted works are chosen for oral presentations in that Meeting.

To further advance the liver regeneration work and make the use of omentum more convenient, [the beneficiary] has developed a method of culturing stem cells taken from the omentum-liver fusion site. It will now be possible to use cells from the Petri dish to bring about repair and regeneration of the injured liver (stem cell therapy). This novel approach was recognized by the stem cell research community and [the beneficiary] was selected to present this work at several national conferences (American Society of Clinical Investigation, American Federation of Medical Research-Midwest section, Central Society of Clinical Research).

Dr. [REDACTED] goes to discuss the beneficiary's original research in use of omentum for kidney regeneration, noting that "other peers in the field soon realized the immediate clinical applicability of [the beneficiary's] procedures." He notes that the beneficiary was invited to describe his research findings in the medical journal *Translational Research*, "whose mission is to rapidly translate technologies from 'bench-to-bedside.'" Dr. [REDACTED] concludes by stating that the beneficiary's "contributions have resulted in new approaches to treat diseases previously considered incurable."

Dr. [REDACTED] Associate Clinical Professor in the Department of Medicine at the University of [REDACTED], discusses the beneficiary's study of kidney disease in African American HIV patients, published in the *Journal of [REDACTED]* and presented at the 2008 Annual Meeting of the American Society of Nephrology. Dr. [REDACTED] states that "following publication of his findings, doctors now have a greater understanding for diagnosing early kidney disease in this patient sub-population so it can be aggressively treated." He further indicates that "the subsequent adoption of these findings has led to considerable improvement in the outcome for HIV patients at risk of kidney disease." Dr. [REDACTED] further discusses the beneficiary's work in kidney research:

[The beneficiary] has shown that the omentum has the propensity to recognize and fuse with an injured kidney and thereby delivering stem cells and growth factors to the injured kidney. In complex experiments using a model of Heymann nephritis he has shown that new kidney tissue is formed using the stem cells from the omentum. . . .These findings have had tremendous impact on the nephrology community because now it opens up the possibility of stem cell treatment for kidney diseases. [The beneficiary] is one of the very few stem cell researchers in the United States who has performed such complex and cutting-edge research in the field.

Finally, the petitioner submitted a letter from [REDACTED] Chief Medical Officer, [REDACTED] Health and Hospitals System. Dr. [REDACTED] indicates that the beneficiary, working with Dr. [REDACTED] conducted two separate clinical studies to evaluate the prevalence of kidney disease among the center's HIV patient population. Dr. [REDACTED] states:

Ultimately, the evidence in the aggregate does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. The beneficiary is a junior scientist who relies primarily on three manuscript reviews in the widespread peer-review process, his limited publication record, the praise of experts in his field, and the affirmation of his colleagues that he is important to the laboratory where he now works in an inherently subordinate position.

As noted by the petitioner, many of the beneficiary's references' credentials are impressive. For example, Dr. [REDACTED] has held the position of Director of Dialysis at [REDACTED]. He is an Associate Editor of [REDACTED], a member of the editorial board of the *American Journal of Nephrology*, and has served as a referee for seven scientific journals. Dr. [REDACTED] at the [REDACTED]. He is editor-in-chief of [REDACTED]: *A Current Survey of World Literature*, associate editor of the *American Journal of Nephrology*, and, according to his resume, has published 249 peer-reviewed articles.

Dr. [REDACTED] is currently the [REDACTED] Division of Nephrology-Hypertension at [REDACTED]. Executive Director and President of the [REDACTED], a Professor of Medicine at the University of [REDACTED] and Medical Director of the [REDACTED]. According to his resume, he is an elected fellow of the [REDACTED] College of Physicians [REDACTED] and the American Society for the Advancement of Science. He is a regular medical correspondent for the *British Medical Journal*, the North American editor for the *International Journal of Artificial Organs*, co-editor of *Kidney, A Current Survey of World Literature*, a member of the editorial board of *ASAIO Transactions*, and co-editor of *The Oxford Illustrated Medical Companion, 3<sup>rd</sup> Edition*. His resume lists 142 scientific publications and numerous books and book chapters.

Dr. [REDACTED] is [REDACTED] with the petitioning organization. He serves on the editorial board of the *American Journal of Nephrology*, and *Kidney: A Survey of World Literature*, and is a regular reviewer for seven scientific journals, in addition to reviewing grants for the National Kidney Foundation of Illinois. Dr. [REDACTED] resume lists 84 peer-reviewed publications.

Dr. [REDACTED] is Professor [REDACTED] at [REDACTED]. As noted above, he has been a member of the editorial boards of seven scientific and medical publications. According to his resume, he has received awards from the National Kidney Foundation, American Kidney Fund and American Association of Kidney Patients. Dr. [REDACTED] was also the founding president of the International Society for Hemodialysis, and has held executive committee membership and chair positions for the [REDACTED] American Society of Nephrology and other organizations. He has published 251 articles and edited several books.

While the petitioner need not demonstrate that there is no one more accomplished than the beneficiary in order to establish that he is qualified for the classification sought, it appears that the very top of the beneficiary's field of endeavor is well above the level he has attained. In contrast to these references, the petitioner has not established that the beneficiary's achievements at the time of filing the petition were commensurate with sustained national or international acclaim in the biomedical research field, or that he is among the small percentage at the very top of the field of endeavor.

### **III. Conclusion**

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 a 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.

Nothing in the decision of the AAO should be seen as an attempt to minimize the accomplishments of the beneficiary, particularly since they have been achieved so early in his career, or as a comment on the criteria used by the petitioner to select persons for positions. Indeed, as many of the testimonial letters make clear, the beneficiary shows great promise and potential in the field of stem cell research, and was appropriately described by the petitioner as a "budding expert" in his field. This denial does not preclude the petitioner from filing a new immigrant or nonimmigrant visa petition, supported by the required evidence. As always, the burden remains with the petitioner to establish eligibility for the requested visa classification.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.