D8

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

MAR 27 2001

File: EAC-00-200-50694 Office: Vermont Service Center Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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

IN BEHALF OF PETITIONER: Self-represented

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Unit

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is a university. The beneficiary is a university lecturer specializing in the field of philosophy of science. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in science in order to employ him in the United States as an assistant professor for a period of three years.

The director denied the petition finding that the petitioner failed to establish that the beneficiary met the regulatory standard for an alien with extraordinary ability in science.

On appeal, a representative of the university argues that they believe the beneficiary qualifies for the O-1 category. It was stated that the beneficiary has received two awards, has presented papers at prestigious international conferences, and has published original work. Additional documentation is submitted.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (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 of extraordinary ability.

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.

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.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

> Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary is a native and citizen of Israel. The record indicates that he is in the United States, but the petitioner did not demonstrate his current immigration status.

The determination of "extraordinary ability" for the purpose of this type of visa petition proceeding is necessarily a subjective one. The director found the beneficiary ineligible for O-1 classification based on finding insufficient documentation to show that he is "at the very top" of his field pursuant to 8 C.F.R. 214.2(o)(3)(ii).

After careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objections. There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). The petitioner submitted documentation showing that the beneficiary received a Rothschild Fellowship to support his graduate studies at the University of Pittsburgh in 1997/1998 and a post-doctoral scholarship from the "British Council" in April of 1997. The post-doctoral fellowships, however, are not the type of significant award contemplated by the regulation. They do not bear the same evidentiary weight of an award such as the Nobel Prize.

Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B). It must be noted that these provisions are only documentary requirements and merely addressing them does not establish eligibility for the benefit sought.

The petitioner submitted documentation reflecting that the beneficiary has published eight professional papers since 1993, letters from the petitioning university's faculty and from the faculty of other universities supporting the visa petition, and proof of the fellowships. The receipt of the fellowships and the publication of original research address two of the regulatory criteria. However, the record is insufficient to show that the beneficiary has satisfied three or more of the requisite criteria. Of the applicable criteria, and as noted by the director, the offer of a position as assistant professor at a salary of $47,000 is not the type of "critical or essential" position or the type of "high salary" contemplated by the regulations. The record does not show that the beneficiary's research or publications to date constitute

contributions of major significance in his field. Nor has it been shown that the beneficiary has been employed in a critical or essential capacity for organizations with distinguished reputation.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for extraordinary ability classification the statute requires proof of "sustained" national or international acclaim and a demonstration 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 addition, the regulations specifically state that O-1 classification is available only to a "small percentage" of scientists who have arisen to the "very top" of their field of endeavor. The record shows that the beneficiary has studied at prestigious universities, received a Ph.D. in philosophy from Cambridge University in 1996, and now seeks a teaching position at a United States university. The record does not establish that the beneficiary is one of a small percentage of scientists who have risen to the very top of the field of philosophy of science.

Therefore, it must be concluded that the petitioner has failed to overcome the director's objection. It has not been established that the beneficiary has extraordinary ability in the sciences within the meaning of section 101(a)(15)(O) of the Act or that he seeks entry to the United States in order to continue work in the area of extraordinary ability.

The denial of this petition is without prejudice to the beneficiary pursuing any other immigration benefit for which he may be eligible.

The burden of proof in these proceedings rests solely with the petitioner. § 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.