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U.S. Department of Justice

Immigration and Naturalization Service

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

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

[redacted]

File: LIN-01-148-54222 Nebraska Service Center Date: MAY 01 2002

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)

IN BEHALF OF PETITIONER: [redacted]

Public Copy

INSTRUCTIONS:
This is the decision 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.

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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a research program operated by a medical college at an affiliated teaching hospital. The beneficiary is a medical doctor and a neurological researcher in the area of brain injury. The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in science, in order to employ him in the United States for a period of three years as a resident physician at a salary of $39,000 per year.

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

On appeal, counsel for the petitioner submitted a written brief asserting that the center director failed to consider all the evidence submitted and arguing that the beneficiary is one of the top researchers in his field.

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 with extraordinary ability in science as defined in these proceedings.

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 twenty-nine-year-old native and citizen of the United Kingdom. His resume reflects that he earned a Bachelor of Science degree in medical science from the University of Edinburgh in 1994. He then earned a medical degree (M.D.) from that institution in 1998. He was last admitted to the United States on August 13, 2000, as an F-1 student. His Form I-20-ID reflects that he was authorized to attend a doctorate program in physiology at the Virginia Commonwealth University from August 24, 1998 to August 24, 2003. Counsel submitted proof that the beneficiary has published 35 professional articles, 17 of which were as first author. The beneficiary also authored chapters in three medical textbooks in his field.

After reviewing the evidence submitted in support of the petition, the center 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) or that he has had the requisite "sustained acclaim" in the field of endeavor required by the statute.

In the brief on appeal, counsel argues, in pertinent part, that the record shows that the beneficiary has authored professional publications, has served as the judge of others in being invited to review submissions to professional journals in the field, and has made original scientific contributions by conducting original research applying MRI technology to brain injury research. In rebutting the decision of the center director, counsel argues:

> Indeed, rather than focus on [the beneficiary's] extraordinary achievements, the Service seems blindly overcome by the fact that [the beneficiary] is currently involved in a medical residency program. It is apparently the Service's view that a person involved in a "residency" program cannot, by definition, be an accomplished researcher. This assumption is wrong, and shows a misunderstanding of the distinction between (1) achievements as a <u>researcher</u> and (2) the ability to treat patients as a <u>clinician</u>.

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). Nor has it been established that the beneficiary satisfied at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B). The record is sufficient to show that the beneficiary has satisfied numbers 4 and 6 above. However, the record is insufficient to show that the beneficiary has satisfied number 5 as contended by counsel.

Counsel furnished a letter from [redacted] Professor, Virginia Commonwealth University, dated June 12, 2000, opining that the beneficiary's work, particularly in the application of MRI data "substantially altered scientific thinking" about research pertaining to brain injury.

8 C.F.R. 214.2(o)(3)(iii)(B)(5) requires that the original scientific work be of "major significance in the field." The opinion of a single professional in the field, even one of [redacted] stature, is insufficient to establish that the beneficiary's original scientific research is of major significance to the field of medical science. While the term "major significance" is not defined in the regulations, the criteria is contemplated as one in which there is no dispute as to the significance of the contribution to the field. By definition, any publication in a major scientific journal must have "significance" in order to be considered for publication. Contributions of "major significance" must be shown to be substantially above the norm of published professional research.

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 proof of "sustained" national or international acclaim and proof 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.

Counsel's argument that the Service must distinguish between the beneficiary's achievements as a medical researcher and his current training as a physician is acknowledged. However, as a researcher, the record does not show that 35 publications in the specialization of neurology and the invited submission of 3 book chapters is sufficient to establish that the beneficiary is one of the of a "small percentage" at the "very top" of the field as contemplated by the regulations. Publication in scientific research is the norm in the professions, and is not sufficient to satisfy the burden of proof necessary for O-1 classification. Moreover, contrary to counsel's argument, the fact that the beneficiary is being offered a staff position, as opposed to a lead position, at a relatively

modest salary tends to indicate that the beneficiary is not recognized as one of the few "at the very top" of the field of medical science research.

The Service does not dispute the claim that the beneficiary is an able and recognized researcher in his field of specialization and that his employment with the petitioner would be a benefit to the United States. However, the petitioner has not established that the beneficiary is eligible for O-1 classification to engage in that work. The denial of this petition is without prejudice to the petitioner pursuing classification of the beneficiary under alternate provisions of the Act.

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 appeal is dismissed.