U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: LIN 02 279 53788 Office: NEBRASKA SERVICE CENTER Date: FEB 27 2003

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.

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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a university. The beneficiary is a physician. The petitioner is seeking 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 medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a clinical instructor and researcher at an annual salary of $115,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being one of a small percentage at the very top of the field of medical science.

On appeal, counsel for the petitioner submits a brief asserting that the director erred in failing to give "due weight" to the evidence provided.

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, an appeal and brief.

Section 101(a)(15)(O)(i) of 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 medical science as defined by the regulations.

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 in this matter is a native and citizen of the Philippines. The record reflects that she received her degree in medicine in 1994 from the Ramon Magaysay Memorial Medical Center in the Philippines. From 1997 to 1998, the beneficiary conducted her internship in internal medicine at the Rush-Presbyterian-St. Luke's Medical Center. The beneficiary completed a residency in physical medicine and rehabilitation at the same institution in 2001. She recently completed a fellowship in spinal cord injury medicine at the University of Texas Southwestern Medical Center. The record reflects that she was last admitted to the United States on May 7, 2002, in J-1 classification as an exchange visitor and that she is subject to the two-year foreign residency requirement.

After reviewing the evidence submitted in support of the petition, the director found the beneficiary ineligible for O-1 classification based on finding the sum of the evidence insufficient to demonstrate that she is "at the very top" of her field of science pursuant to 8 C.F.R. § 214.2(o)(3)(ii). The director acknowledged the facts presented that the beneficiary has an impressive record, but concluded that the record failed to show that the beneficiary has been recognized as a physician of extraordinary ability whose achievements have been recognized in the field through extensive documentation.

On appeal, counsel for the petitioner asserts that the director erred in finding the evidence insufficient to find that the beneficiary is a physician of extraordinary ability.

There is no evidence that the beneficiary has received a major,

internationally recognized award equivalent to that listed at 8 C.F.R. §214.2(o)(3)(iii)(A). Neither is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. §214.2(o)(3)(iii)(B).

For criterion number one, the petitioner asserts that the beneficiary's receipt of a scholarship and two research grants are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work, scholarships and fellowships cannot be considered awards in the field of endeavor. Moreover, only students compete for such awards. As the beneficiary did not compete with nationally or internationally recognized experts in the field, the awards cannot be considered evidence of the beneficiary's national or international acclaim.

Regarding the beneficiary's research grants, research grants simply fund a scientist's work. The past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

For criterion number two, while the beneficiary is an affiliate member of the American Academy of Physical Medicine and Rehabilitation and the Physiatric Association of Spine, Sports and Occupational Rehabilitation, and a full member of the American Paraplegia Society and the International Spinal Cord Society, there is no evidence that these are associations which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. Counsel for the petitioner asserts that the beneficiary is a full member of the American Spinal Injury Association (ASIA). According to the ASIA's website, a prerequisite for membership is to make a significant contribution to the advancement of basic science or clinical treatment of spinal injury.[1] However, the petitioner failed to provide documentation to establish that the beneficiary is a full member of the ASIA or that the beneficiary satisfies this criterion.

For criterion number three, the petitioner asserts that an article published in a *Biomechanics Magazine* that briefly describes the beneficiary's work on shoe lifts satisfies this criterion. This article describes results of research presented at the American

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[1] http://www.asia-spinalinjury.org.

Academy of Physical Medicine and Rehabilitation in November 2000, and is not primarily about the beneficiary and her work. The petitioner failed to establish that this magazine article is evidence of the beneficiary's sustained national or international acclaim and recognition for achievements in the field of expertise.

As evidence of the beneficiary's work as a judge of the work of others in the same or in an allied field of specialization, the petitioner asserts that the beneficiary served as a chief resident for one year. The director determined that although this is a creditable achievement, it does not equate to judging the clinical or research work of others in the same or an allied field. The petitioner asserts that by virtue of serving as a reviewer of manuscripts submitted to the Archives of Physical Medicine and Rehabilitation, the beneficiary satisfies this criterion. The record indicates that the beneficiary assisted [redacted] in reviewing such manuscripts. Selection to review manuscripts for publication by her employer does not indicate that the beneficiary enjoys national or international acclaim. This evidence would be more persuasive if it were an invitation from an independent academic or professional journal to review a manuscript, as the result of the beneficiary's distinguished reputation in the field. The petitioner has not established that the beneficiary satisfies this criterion.

For criterion number five, while the beneficiary has published and presented the results of her research, the record does not show that her research is considered of "major significance" in the field. By definition, all professional research must be original and significant in order to warrant publication in a professional journal. The record does not show that the beneficiary's research is of major significance in relation to other similar work being performed. The petitioner provided the Service with testimonials about the value of the beneficiary's work. One former supervisor wrote that the beneficiary's research on shoe wedges and lifts to improve hemiparetic stance and weight bearing in stroke patients "is of real significance for the management of patients with stroke." [redacted] Siegel wrote that the beneficiary is "eminently qualified and trained." Dr. Alexander Aruin wrote that the beneficiary's work on the angled shoe wedge "has been a valuable contribution to the rehabilitation of patients who have had a stroke." [redacted] wrote that the beneficiary "holds great potential as a young investigator" and that her "research work gained recognition when it was selected to be presented in the Annual Meetings of the American Academy of Physical Medicine and Rehabilitation and published in the official journal, Archives of Physical Medicine and Rehabilitation." While the beneficiary's achievements may be notable for a young physician, the evidence fails to establish that the beneficiary has sustained national or international acclaim and recognition for major achievements in

the field of medicine.

For criterion number six, the beneficiary has co-authored five articles and abstracts in her field. It is expected that medical scientists will publish articles discussing their research. It does not follow that all scientists who publish articles in peer-reviewed journals enjoy sustained acclaim in their field. No citation history of her works has been submitted. Published articles by the beneficiary that have been cited by others would more meaningfully establish that the beneficiary enjoys a measure of influence through her publications. The material submitted with the petition does not significantly distinguish the beneficiary from others in her field.

For criterion number seven, the petitioner asserts that by virtue of being offered the position of assistant professor of medicine and because the beneficiary is one of only 294 formally trained spinal injury medicine specialists in the United States, the beneficiary has been employed in a critical or essential capacity for organizations having a distinguished reputation. The beneficiary has been employed as an intern, resident and a fellow at prestigious medical institutions. While employment with esteemed institutions is evidence of a degree of recognition, such staff or assistant positions are not considered employment in a "critical or essential capacity" as would a department head or lead researcher on major projects.

For criterion number eight, no evidence of the beneficiary's salary history was provided, nor were salary surveys supplied to the Service so that the current salary offer could be evaluated.

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 evidence of "sustained national or international acclaim" and evidence 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 order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). In order to meet these criteria in the field of science, the alien must normally be shown to have a significant history of scholarly publications, have held senior positions at prestigious institutions, or hold regular seats on editorial boards of major publications in the field. The beneficiary's achievements have not yet risen to this level.

On appeal, counsel for the petitioner asserts that the director is bound by an unpublished decision of the AAO. Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in the cited case. Moreover, unpublished decisions are not binding in the administration of the Act. *See* 8 C.F.R. § 103.3(c).

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.