



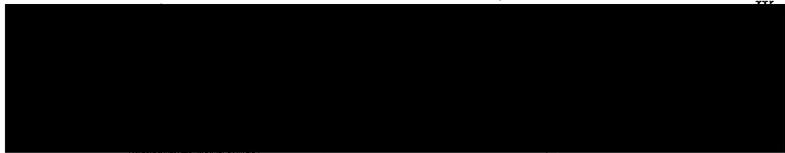
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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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



FEB 28 2003

File: LIN 02 243 52670 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
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:



**identifying 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 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 microbiologist. 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 the biological sciences. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a research associate at an annual salary of \$31,776. The petitioner describes the beneficiary's research in lay terms as research on the genetic and biochemical analysis of proteins involved in transcription and RNA processing in the Archaea.

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

On appeal, counsel for the petitioner asserts that the record contains substantial evidence that the beneficiary is an alien with extraordinary ability in the field of the biological sciences.

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

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 science as defined by the statute and 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 Scotland. The record reflects that he received a Bachelor of Science degree in microbiology¹ in 1981 from the Heriot-Watt University, located in Edinburg, Scotland. In 1989, the beneficiary completed his doctoral studies in microbiology at the University of Kent, Canterbury, United Kingdom. The beneficiary has been working with the petitioning organization as a postdoctoral researcher since 1989. The record reflects that he was last admitted to the United States on July 14, 1993, in H-1B classification as a temporary worker.

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 he is "at the very top" of his field of science pursuant to 8 C.F.R. § 214.2(o)(3)(ii). The director acknowledged the facts presented that the beneficiary has technical skill in his field, but concluded that the record failed to show that the beneficiary has been recognized as an alien 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 an alien 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

¹ Graduating with honors.

demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

No evidence was submitted in relation to criteria numbers one, two and four.

For criterion number three, the petitioner asserts that the beneficiary satisfies this criterion by virtue of having his work cited and referenced. Citations and references are not published material about the alien or his work. The beneficiary does not satisfy this criterion.

For criterion number five, the record shows that the beneficiary's research is of major significance in relation to other similar work being performed. The petitioner provided the Service with reference letters about the value of the beneficiary's work. The reference letters were written by independent experts in the beneficiary's field of endeavor. [REDACTED] wrote that the beneficiary "has been key to developing our understanding of the mechanisms controlling gene expression in the Archaea."

[REDACTED] wrote that the beneficiary's "extensive characterization of [the archaeon *Haloferax volcanii*], contributed significantly to the development of this model organism, which is currently being used by numerous scientists to understand crucial cellular mechanisms in organisms of this domain of life."

[REDACTED] wrote that the beneficiary's "work...is of particular importance in the field of Archaeal Molecular Biology ...[and may] point the way to novel methods of understanding and potentially influencing gene expression in other organisms."

[REDACTED] wrote that the beneficiary's "outstanding publication and abstract records have garnered him an international reputation in both methanogenic and halophilic molecular biology." The Director of the Canadian Institute for Advanced Research Program in Evolutionary Biology wrote that the beneficiary's research group at the petitioning organization is "the premier group in the molecular biology of archaea worldwide and [the beneficiary] appears to be the keystone of that group, in terms of experimental approaches." [REDACTED] from Tel Aviv University wrote that the beneficiary "has contributed to the establishment of new genetic tools that enable in-depth study of the various components of the gene expression apparatus." The beneficiary satisfies this criterion.

For criterion number six, the beneficiary has co-authored nine articles that have been published in peer-reviewed scholarly journals and co-authored two book chapters. His research work has been presented in the form of twenty abstracts. The petitioner provided a citation history of five of his works. One article was cited on sixty-one occasions. The beneficiary satisfies this criterion.

For criterion number seven, the petitioner asserts that the beneficiary will serve as a leading member of a research team on a group of related studies and that the beneficiary has been an integral and essential member of their research team. "His work has been at the foundation of our continued success in winning financial support from the Department of Energy Biosciences research program." While employment with esteemed institutions is evidence of a degree of recognition, such staff, associate or assistant positions are not considered employment in a "critical or essential capacity" as would a university dean or provost. The beneficiary does not satisfy this criterion.

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 also must establish that the beneficiary is "at the very top" of his 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.

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.