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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]

File: SRC 02 229 54654 Office: TEXAS SERVICE CENTER Date: FEB 28 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a medical school. The beneficiary is a physician. 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 medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as an assistant professor at an annual salary of $88,500.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained national recognition and has not risen to the very top of his field.

On appeal, counsel for the petitioner asserts that the director erred in evaluating the evidence. Counsel indicated that she would submit a brief within thirty days of filing the appeal. No brief has been received to date.

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 medical 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 of Ramallah, Israel, and a citizen of Jordan. The record reflects that he received his medical degree in 1993 in Amman, Jordan. He completed one internship in Jordan and a second in Israel. He completed a pediatric residency in Israel in June 1996. He completed a three-year pediatric residency and subsequently a three-year fellowship in pediatric infectious diseases at the Univeristy of Florida Health Science Center (the petitioner). The record reflects that he was last admitted to the United States on August 17, 2000, in J-1 exchange visitor classification. The record shows that the beneficiary 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 he is "at the very top" of his field of science pursuant to 8 C.F.R. § 214.2(o)(3)(ii). The director determined that the record failed to show that the beneficiary was 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 weighing the evidence.

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 provided evidence that the beneficiary has received numerous awards. The beneficiary received the American Medical Association (AMA) Physician Recognition Award. According to the evidence on the record, this award requires the recipient to complete between 50 to 150 hours of activities such as presenting at conferences, publishing articles, reading journal articles and consulting with colleagues. This is not an award for excellence in the beneficiary's field.

The beneficiary received the 2000 Ambulatory Pediatric Association Fellows Award, and seven additional awards during his residencies in the United States. Only fellows or residents competed for these awards. As the beneficiary did not compete with national or internationally recognized experts in the field, the awards cannot be considered evidence of the beneficiary's national or international acclaim.

For criterion number two, while the beneficiary is a member of the Infectious Diseases Society of America, the Pediatric Infectious Diseases Society, the American Academy of Pediatrics and the Jordanian Medical Association, 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.

For criterion number three regarding published material in professional or major trade publications about the beneficiary, relating to his work, the petitioner submitted the following list:

(a) A commentary in *The Pediatric Infectious Disease Journal Newsletter* that cites to the beneficiary's research;

(b) A citation to the beneficiary's research in the *Johns Hopkins Antibiotic Guide News*;

(c) The *OPAT Outcomes Registry Newsletter*, mentioning an article that the beneficiary co-authored;

(d) The website[1] of medical professionals founded by the Institute of Antimicrobial Chemotherapy of the Smoensk State Medical Academy, Scientific Research Center of Monitoring of Antimicrobial Resistance of the Ministry of Health of the Russian Federation and the Interregional Association for Clinical Microbiology and Antimicrobial Chemotherapy;

(e) Commentary in the *Infections in Medicine* journal referring to an article co-authored by the beneficiary.

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[1] http://www.antibiotic.ru.

The beneficiary's work listed above is cited in a letter to the editor of a newsletter and in a Johns Hopkins publication. Citations are not articles about the alien or his work. One of the beneficiary's articles is briefly reviewed in a third publication. In review, the evidence is insufficient to establish that the beneficiary has sustained national or international acclaim and recognition for his achievements in the field of expertise.

No evidence was provided in relation to criterion number four.

The director determined that the beneficiary satisfies criterion number five. This portion of the director's decision shall be withdrawn. While the beneficiary has published results of his research, the record does not show that his 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 seven testimonials about the value of the beneficiary's work. According to a representative of the petitioner:

> [The beneficiary's] research in the field of HIV deals with the potential metabolic complications of medications used in the treatment of HIV-infected children and adolescents. The outcome of his work continues to enrich the knowledge available in this relatively new area of HIV care. The anticipated results of his research will lead to a better understanding of the effects of HIV medications on children's growth and metabolism.

[redacted] wrote that the beneficiary "continues to improve the health of all the children of Jacksonville." [redacted] wrote that the beneficiary's "contributions in the fields of nosocomial infection and HIV management have distinguished him as one of the strongest fellows in the state." [redacted] wrote that the beneficiary's "contributions to the care and knowledge of HIV infection in children and adolescents have been at the cutting edge in the fight against this infection." These testimonials are all conclusory and fail to demonstrate how the beneficiary's research has impacted his field. In review, the evidence fails to show that beneficiary has sustained national or international acclaim and recognition for major achievements in the field of medicine.

The director determined that the beneficiary satisfies criterion number six. The AAO concurs.

No evidence was submitted in relation to criteria numbers seven and 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 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.