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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

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

[redacted]

File: LIN 02 298 52969 Office: NEBRASKA SERVICE CENTER Date: MAR 12 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

ON 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 bureau of Citizenship and Immigration Services (Bureau) 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 medical health clinic and desires the services of the beneficiary as a medical physicist. 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 science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years at an annual salary of $71,317.

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 science.

On appeal, counsel for the petitioner submits a brief asserting that the beneficiary qualifies as an alien of extraordinary ability in the sciences by meeting three of the criteria set forth in 8 C.F.R. § 214.2(o)(3)(iii).

The record consists of a petition with supporting documentation including the beneficiary's doctoral thesis and his master's thesis, 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 the sciences 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.

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 citizen of Yemen. The record reflects that he received a bachelor of science degree in physics from Sana'a University in Yemen, and a master's degree in physics from Virginia State University. He earned a Ph.D. in physics from the University of Massachusetts Lowell. The beneficiary was a faculty member of the physics department at Sana'a University from 1987 to 1990. He held the position of a medical physicist at Massachusetts General Hospital from August 1997 to December 1998. From May 1999 to September 1999, the beneficiary held the position of a medical physicist at Saint Francis Hospital in Hartford, Massachusetts. Since October 1999, the beneficiary has been employed as a medical physicist in the petitioner's department of oncology. The record reflects that he was last admitted to the United States on June 21, 2002, in J-1 classification as an exchange visitor and that he 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 acknowledged the facts presented that the beneficiary has performed research, given several presentations in his field, been a member of professional associations, and demonstrated technical skill in his field, but concluded that the record failed to show that the beneficiary was 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 establish 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 demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. §214.2(o)(3)(iii)(B).

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

For criterion number one, the petitioner provided the Bureau with evidence that the beneficiary was named outstanding graduate student for the 1998-1999 academic year in the department of radiological sciences at the University of Massachusetts Lowell. The beneficiary received a certificate of achievement for achieving a 3.00 grade point average or better in the fall of 1992 at Virginia State University. These awards were granted to the beneficiary based upon his educational achievements during the time he spent in graduate school. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work cannot be considered awards in a field of endeavor. Moreover, only students compete for such 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. The beneficiary does not satisfy this criterion.

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.

For criterion number two, while the beneficiary is a member of the American Association of Physicists in Medicine, and the Health Physics Society, there is no evidence that these are associations that require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. The petitioner is one of 75,000 members of the Sigma Pi Sigma honor society, and although membership is granted on a lifetime basis, it appears to be an honor society of students, so it cannot be used to satisfy this criterion. The beneficiary does not satisfy this criterion.

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.

No evidence was submitted in relation to criterion number three.

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.

No evidence was submitted in relation to criterion number four.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.

For criterion number five, 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.

Counsel for the petitioner asserts that the beneficiary made a critical contribution of major significance by developing a new technique[1] that the beneficiary patented for unfolding the continuous energy distribution for beta rays by using the Monte Carlo approach. The granting of a patent documents that an invention or innovation is original, but not every patented invention or innovation constitutes a significant contribution in one's field. The petitioner offered no corroborative evidence in the form of articles published in mass media or professional journals hailing the beneficiary's invention as a significant contribution to his field of endeavor.

The petitioner provided the Bureau with testimonials about the value of the beneficiary's work. The chairman of the petitioner's radiation oncology department wrote that the beneficiary made a "key contribution [to the petitioner's organization] mainly for his vital expertise in the Monte Carlo technique." A cohort wrote that the beneficiary "represents a rare combination of familiarity with clinical health issues together with noteworthy engineering and physics expertise." Another wrote that the beneficiary's "continued presence and work in this country will benefit the United States and the field of medical physics by continuing to advance knowledge." A former academic advisor of the beneficiary wrote that the beneficiary is "a gifted physicist and a highly skilled scientist who has made substantial research contributions wherever he has worked." The beneficiary's thesis advisor wrote that the beneficiary's master's thesis was an "important addition to the body of work in muon spin spectroscopy and quasicrystals." A former colleague wrote that the work he and the beneficiary

[1] The beneficiary developed a program for reconstructing the beta energy distribution based on transmission measurements.

performed using muon spin relaxation spectroscopy to investigate the physical properties of quasicrystals triggered further research discoveries. While all of the testimonials' authors value the beneficiary's work, they do not establish that the beneficiary has made original scientific contributions of major significance relative to the work of others in the field.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

For criterion number six, the beneficiary has co-authored four research articles and abstracts in his 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 three of the beneficiary's 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 his publications. A citation history for one of the beneficiary's articles was submitted, and reflects that the beneficiary's article was cited five times. Five citations are not significant. The material submitted by the petitioner does not distinguish the beneficiary from others in his field.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

For criterion number seven, the petitioner asserts that the beneficiary's employment with the petitioner has been critical as the beneficiary is one of only two medical physicists that they have on staff. 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 chief executive officer.

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.

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

In review, the evidence fails to show that the beneficiary has sustained national or international acclaim and recognition for major achievements in the field of physics.

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.

Counsel for the petitioner requested an opportunity for oral argument. Oral argument is limited to cases where cause is shown. It must be shown that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument has been shown. Therefore, the request is denied.

ORDER: The appeal is dismissed.