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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

File: EAC 03 019 53801 Office: VERMONT SERVICE CENTER Date: OCT 8 - 2003

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)

ON BEHALF OF PETITIONER:

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 Citizenship and Immigration Services (CIS) 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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a hospital, 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 an anesthesiologist at an annual salary of \$175,000.

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 record contains substantial evidence that the beneficiary is an alien with extraordinary ability in the field of medicine. Counsel further asserts that CIS is harboring a prejudice against the beneficiary's nationality because CIS approved another petition for an alien of a different nationality.

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 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 39-year old native and citizen of Pakistan. The record reflects that he received his degree in medicine from the University of Karachi. In the years 1990 to 1997, the beneficiary practiced medicine in Pakistan. The beneficiary conducted a residency in internal medicine at the Maimonides Training Medical Center in Brooklyn, New York beginning in July 1997. He completed

a second residency in anesthesiology at Loyola University Medical Center in Chicago. He went on to complete a fellowship in ambulatory anesthesiology at the same institution.

The record reflects that he was last admitted to the United States on March 27, 1999, 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 concluded 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 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 fellowship at Loyola University Medical Center in Chicago, Illinois, is a nationally or internationally recognized prize or award 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 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.

For criterion number two, the petitioner claims that the beneficiary's membership in the American Medical Association, the American Society of Anesthesiology, the American Society of Ambulatory Anesthesia, and the American Society of Regional Anesthesia and Pain Medicine satisfies this criterion. The petitioner failed to establish that these organizations require outstanding achievements of their members, beyond licensure.

For criterion number three, no evidence was submitted.

The petitioner asserts that the beneficiary satisfies criterion number four by virtue of his work as a teacher and an instructor during his residency. As an educator, the beneficiary was not judging the work of experienced professionals in the field, but was performing his job. Further, in order to fulfill the regulatory criterion, the petitioner must establish that the beneficiary's selection to judge the work of others resulted from his national or international acclaim. The petitioner failed to establish that the beneficiary was chosen to judge the work of other medical researchers on the basis of his acclaim in his field.

For criterion number five, while the beneficiary has co-authored one report on his research, the record does not show that his research is considered of "major significance" in relation to other similar work being performed. The petitioner provided CIS with testimonials about the value of the beneficiary's work and his personal qualities. Dr. W. Scott Jellish of Loyola University Medical Center wrote that the beneficiary "has reached a high level of expertise in acute pain management that surpasses the majority of his peers and puts him at the top of his field." Dr. Ana Lucia Pappas of Loyola wrote that the beneficiary possesses "superior talent and knowledge." Dr. Julius Pallowski of Loyola wrote that the beneficiary made a contribution to postoperative pain management in children undergoing ear, nose, and throat surgery." Dr. Sreenivassa Dharmavaram of Loyola wrote that the beneficiary "has demonstrated his skill" and "performs at the top of his field." Dr. Steven Edelstein of Loyola wrote that the beneficiary "became a master of regional techniques in the pediatric population." While the testimonial authors all speak highly of the beneficiary, the evidence falls short of establishing that the beneficiary's work has been adopted by other researchers or

otherwise influenced the field of medicine. 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 medicine.

For criterion number six, the beneficiary was and is a co-investigator on an on-going research project. It is expected that medical scientists will conduct research. It does not follow that all scientists who conduct research enjoy sustained acclaim in their field. The beneficiary has not published the results of his research. The material submitted by the petitioner does not significantly distinguish the beneficiary from others in his field.

The petitioner does not assert that the beneficiary satisfies criterion number seven.

For criterion number eight, no evidence of the beneficiary's salary history was provided, nor were salary surveys supplied to CIS 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.