U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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42[illegible] Street, N.W.
Washington, D.C. 20536

[redacted]

OCT 30 2003

File: LIN 03 132 50193 Office: NEBRASKA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

[redacted]

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 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.

Elizabeth O'Brien
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a medical school, 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 assistant professor of neurology and research scientist.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained national or international acclaim.

On appeal, counsel for the petitioner submits a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in his field and that he meets at least three of the eight criteria set forth in 8 C.F.R. § 214.2(o)(3)(iii).

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, and the appeal documents. Subsequent to filing the appeal, counsel submitted additional evidence.

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 to be addressed 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.

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 32-year-old native and citizen of Hungary. The record reflects that he graduated summa cum laude with honors at the University Medical School of Debrecen in 1995 in Hungary. He pursued postgraduate studies in biomedical engineering in 1996 to 1997 at the Technical University of Budapest and Semmelweiss University Medical School. He completed a residency in internal medicine and another in neurology at the Medical College of Ohio in Toledo. He spent one year as the Neurology Chief Resident at the Mayo Clinic in Rochester, Minnesota. Beginning in July 2001, the beneficiary completed a neuroimmunology fellowship at the Mayo Clinic. The record reflects that he was last admitted to the United States on June 4, 2001 as a J-1 non-immigrant

exchange visitor.

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 has sustained national or international acclaim.

On appeal, counsel for the petitioner asserts that the director erred in weighing the evidence, and that the beneficiary satisfies at least three of the criteria set forth at 8 C.F.R. §214.2(o)(3)(iii)(B).

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).

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 evidence states that the beneficiary was awarded a grant, numerous travel awards, student awards and a fellowship. 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 petitioner 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 grant, 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 is not an award to honor or recognize past achievement.

The petitioner failed to demonstrate that these were awards for excellence in the field of endeavor.

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 International Society of Magnetic Resonance in Medicine, the American Academy of Neurology, the American Medical Association, and the Hungarian Medical Association of America, 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.

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 translations.

For criterion number three, the petitioner submits the following:

1. An article from *MS Connection*, a publication of the National Multiple Sclerosis Society's Minnesota Chapter titled "Local Researchers Awarded National MN Society Grants."

2. A letter written by Dr. Moses Rodriguez, Head of the Department of Neurology and Immunology at the Mayo Clinic, that states it was the beneficiary's novel research that enabled Mayo Clinic to secure a $33,000 pilot grant from the National Multiple Sclerosis Society.

3. A letter from Dr. Moses Rodriguez stating that the beneficiary should have been given sole credit for the development of his novel MRI research technique that is being patented.

The director determined that the above-captioned article was not about the alien, even if he played a role in his employer's success in obtaining a research grant. The beneficiary was not named in the two-paragraph article. Further, letters are not published material. The beneficiary does not satisfy this criterion.

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.

For criterion number four, the evidence shows that the beneficiary has reviewed manuscripts for several scientific publications on an ad hoc basis. He has reviewed a total of five submissions for peer-reviewed journals. The Act requires extensive documentation of a beneficiary's achievements. The evidence submitted is insufficient to indicate that the beneficiary enjoys sustained acclaim resulting in his selection to serve as a manuscript reviewer or panelist. The petitioner failed to establish that the beneficiary satisfies this criterion.

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

According to the evidence on the record, the beneficiary was a member of a research team that developed a new magnetic resonance spectroscopy technique that has a patent pending. 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 failed to demonstrate that the beneficiary's patent-pending technique is a significant contribution in relation to others in the field.

The petitioner provided CIS with numerous testimonials about the value of the beneficiary's work. Dr. Moses Rodriquez, Department of Neurology and Immunology, Mayo Clinic, wrote that:

> [The beneficiary] is solely to be credited for the development of his novel MRI research, [that has resulted in a patent application for a technique entitled] cell-selective NMR immuno-miscroscopy. [The beneficiary has also developed] a novel MRI technique that allows scientists to look at the ingredients of an arbitrarily defined volume of interest such as a . . . MS lesion.

Dr. Christopher Karp, Director of the Molecular Immunology Section at the Children's Hospital Research Foundation at the University of Cincinnati, wrote that:

> [The beneficiary] has led a major advance in the

> analysis of disease . . . through the designing and optimization of magnetic resonance techniques that allow the visualization of immunological cells of interest in the central nervous system of animals. This work is quite novel, and represents a major advance for the field.

Dr. John Noseworthy, Chair, Department of Neurology at the Mayo Clinic, wrote that:

> [The beneficiary] has developed a new magnetic resonance imaging technique that makes it possible to visualize any immune cell of interest in the central nervous system of experimental animals. No comparable technique has been implemented in live animals before. He has also performed several magnetic resonance imaging pulse sequences that can capture the central nervous system of live animals at microscopic resolution.

The nature of scientific research is to expand the body of knowledge of science. The beneficiary's contributions are original and noteworthy, but they are best described by his colleagues as adding to the body of knowledge incrementally rather than as a scientific breakthrough. The record does not contain corroborating objective evidence indicating that the beneficiary's achievements are of major significance. In review, the evidence fails to show that beneficiary has sustained national or international acclaim and recognition for major achievements in the field of medical science.

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 authored three articles that were published in peer-reviewed journals.[1] The beneficiary has co-authored one of fifty-five chapters in the *Textbook of Clinical Neurology, 2nd edition*. In review, no citation history was provided that might have indicated that the beneficiary's work has had a major impact on his field of endeavor; the evidence is insufficient to establish that the beneficiary satisfies

[1] Two of these articles were published after the filing date. The petitioner must establish eligibility at time of filing. 8 C.F.R. § 103.2(b)(12).

this criterion.

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

While the beneficiary has been employed at the Mayo Clinic that enjoys a distinguished reputation, the petitioner failed to establish that the beneficiary was employed in a critical or essential capacity there.

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, the petitioner provided a copy of a contract between the petitioner and the beneficiary indicating that the former would pay the latter $117,000 per year. Evidence has been submitted to show that the beneficiary will be paid at the median range for assistant professors in the midwestern region of the United States. The director determined that the petitioner failed to present evidence that the beneficiary would be paid substantially more than other assistant professors in the United States. The AAO concurs. The survey submitted is geographically too restrictive. The petitioner should have submitted wage survey information for all medical school assistant professors on a nationwide basis. The petitioner should have provided more than just the median wage. To evaluate whether the salary is high, AAO needs to compare it to the median and highest wages offered nationwide to medical school assistant professors. The beneficiary does not satisfy this criterion.

Finally, counsel refers on appeal to two unpublished appellate decisions. Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in the two unpublished decisions. Moreover, unpublished decisions are not binding in the administration of the Act. *See* 8 C.F.R. § 103.3(c).

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.

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.