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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

[redacted]

File: LIN 02 140 52434 Office: NEBRASKA SERVICE CENTER Date: FEB 11 2003

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)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 health science center. The beneficiary is a medical researcher. The petitioner seeks O-1 classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i)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 one year as a researcher in its Department of Internal Medicine at an annual salary of $39,500.

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 his field of endeavor.

On appeal, the petitioner submits a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in his field.

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, brief, and additional documentation.

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 in these proceedings.

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 citizen of China. The record reflects that he received a degree in medicine at the Third Military Medical University in 1983, followed by a master of science degree at that institution in 1986. The beneficiary was employed at the Third Military Medical University and at Chengdu General Hospital as a resident until 1989, when he began employment as an attending physician. In 1994, the beneficiary was promoted to Deputy Physician in Chief and Associate Professor, and also matriculated at the Fukuoka University School of Medicine. The beneficiary was conferred a doctoral degree at Fukuoka University in 1997 and was subsequently employed there as a postdoctoral researcher until 1999. Since 1999, the beneficiary has been employed with the petitioner as a Visiting Research Associate in the Pulmonary and Critical Care Medicine Section in the Department of Internal Medicine. The record reflects that he was last admitted to the United States on April 24, 1999, in J-1 classification as an 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 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 is a highly trained and respected medical researcher, 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, the petitioner asserts that the beneficiary meets four 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). 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 beneficiary was the recipient of a "Young Investigator Award" issued by the Asian Pacific Society of Respirology in 1996 as well as a third prize issued by the PLA[1] in 1994 for distinguished research work in adult respiratory distress. The beneficiary was pursuing his post-doctoral degree in Japan when he received both of these awards.

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

For criterion number two, while the beneficiary is a member of the European Respirology Society, the Asian Pacific Society of Respirology, and the American Thoracic Society, 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, no evidence was submitted.

For criterion number four, the beneficiary reviewed manuscripts submitted for professional journals on an ad hoc basis. His service as judge of the work of others in this capacity does not demonstrate sustained acclaim 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

[1] The petitioner failed to state the full name of the PLA or provide it in a translation of the award certificate.

performed. The petitioner provided the Service with numerous testimonials about the value of the beneficiary's work. Dr. Adam Wanner and [redacted] Agusti wrote that the beneficiary is "a capable investigator." Dr. Hunninghake and [redacted] both wrote that the beneficiary's research "holds important promise." [redacted] wrote that the beneficiary is "an outstanding scientist who has already been extremely productive during his time in the United States and gives promise of making more major contributions to our basic medical knowledge in the immediate future."

The petitioner submitted nine testimonials, seven of which are virtually identical. These boilerplate letters are issued in support of the visa petition and briefly list the beneficiary's accomplishments. While the references attested to the contents of the letters by signing them, the use of identical boilerplate language seriously diminishes the evidentiary value of these letters.

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.

The beneficiary satisfies criterion number six.

For criterion number seven, the beneficiary has been employed as a research associate, a postdoctoral researcher, a deputy physician in chief, an assistant professor, a resident and an intern at respected institutions. While employment with such 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 department head or lead researcher on major projects.

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 her 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.