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U.S. Department of Justice

Immigration and Naturalization Service

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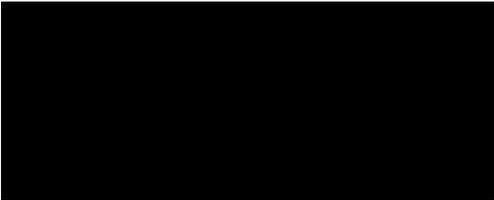
FEB 11 2003

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]  
Beneficiary: [redacted]

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

IN 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 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, Vermont Service Center. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion to reconsider. The motion to reconsider will be granted. The decision of the AAO dated September 17, 2002 will be affirmed.

The petitioner in this matter is a consulting company engaged in cross-cultural education. The beneficiary is a history professor. 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 education, in order to employ her in the United States for a period of three years as an educator at an annual salary of \$50,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary met the regulatory standard necessary for classification as an alien with extraordinary ability in education. The AAO affirmed the director's decision denying the petition.

On motion, counsel for the petitioner submits a brief arguing that the AAO's decision is erroneous and constitutes an abuse of discretion.

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 in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in education as defined by 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.

The beneficiary is a native of the former Soviet Union and a citizen of Russia. She holds the equivalent of a Ph.D. degree in history from Perm State University in Russia. The record reflects that she has published four professional articles in peer-reviewed journals in Russia. The petitioner submitted five letters from professors of history at Russian universities and three letters from professors at universities in the United States.

The beneficiary was employed as an associate professor at Chelyabinsk State University (ChelsU) in Russia. She entered the United States on a J-1 visa to receive further training at the University of Pittsburgh.

After reviewing the evidence submitted in support of the petition, the director found that, although the beneficiary was an excellent youngish scholar, she had not demonstrated the type of sustained national or international recognition of her accomplishments necessary for O-1 classification. The director concluded that the record was insufficient to demonstrate that the beneficiary was recognized as one of the small percentage recognized as being at the very top of the field of education<sup>1</sup> pursuant to 8 C.F.R. § 214.2(o)(3)(ii).

On motion, the petitioner asserts that the beneficiary satisfies five of the regulatory criteria reprinted above.

In reaching a determination for O-1 classification, the Service must take into account the evidence of record as a whole and the standards of the field of endeavor in which the beneficiary is engaged. The evidentiary criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(B) are minimum documentary requirements, and merely addressing them does not necessarily establish that the beneficiary has sustained national or international acclaim in the field of education.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. 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.

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).

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<sup>1</sup> The director characterized the beneficiary's field of endeavor as science. Her field of endeavor is also in education.

Counsel for the petitioner asserts that the beneficiary has received numerous nationally or internationally recognized prizes or awards for excellence in the field of education. The beneficiary was awarded grants for participation in international school programs sponsored by the G. Soros Open Society Institute and by the Urals State University. The beneficiary received a grant from the American Counsel for International Education to pursue a fellowship with the United States State Department sponsored Junior Faculty Development Program (JFDP) in July 2001. She received a Fulbright grant to pursue research at the University of Pittsburgh.

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.

Regarding the beneficiary's Fulbright research grant, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

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

No evidence was submitted to satisfy criteria two and three.

As evidence that the beneficiary participated as a judge of the work of others in the same field of specialization, the petitioner states that the beneficiary was a member of the State Examination Board of the History Faculty and a student advisor at ChelSU. The petitioner states that the beneficiary conducted reviews of graduate students' papers at Chelyabinsk Teacher's University. Judging the work of graduate students is part of the beneficiary's job as an educator, and does not reflect any greater degree of acclaim than other professors enjoy. Similarly, her position on the State Examination Board for the university, while not described in the record, does not appear to have been awarded based on the beneficiary's national acclaim, but by virtue of her status as a history professor at the university. The petitioner failed to establish that the beneficiary has sustained acclaim by virtue of these appointments.

While the beneficiary has published results of her research, the record does not show that her research is considered of "major significance" in the field relative to the work of others in the field.

The beneficiary satisfies criterion number six.

For criterion number seven, while the beneficiary held the position of history department head at ChelSU, the petitioner failed to establish with corroborating objective evidence that this institution has a distinguished reputation, or that the beneficiary served in a critical or essential capacity for the university as a whole.

For criterion number eight, counsel for the petitioner asserts that the U.S. Department of Labor's Online Wage Library reports that the Level 1 wage for a historian is \$32,074 and the Level 2 wage is \$48,256, hence the beneficiary's wage of \$50,000 may be considered high. Counsel's argument is not persuasive. The petitioner seeks O-1 classification for the beneficiary so that she may continue her work as an educator. The petitioner failed to demonstrate that the beneficiary satisfies this criterion.

Sustained national or international acclaim in the field of education is the standard that must be satisfied. The record does not establish that the alien is considered to be one of the small percentage of individuals who have risen to the very top of the field of education or that she has sustained national or international acclaim.

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 decision of the Administrative Appeals Office dated September 17, 2002, is affirmed.