D8

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: SRC 02 225 51325 Office: TEXAS SERVICE CENTER Date: JAN 09 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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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 CFR 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 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a medical center associated with the University of Texas at Galveston. The beneficiary is a physician and a research scientist specializing in rickettsial disease. 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 science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a research scientist at an annual salary of $50,000.

The director denied the petition finding that the petitioner failed to establish that the beneficiary has sustained recognition as being among a small percentage at the very top of the field of science.

Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, it has not been signed by the petitioner. Therefore, this decision will be furnished to the petitioner alone.

On appeal, counsel for the beneficiary submitted a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in her 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 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 in these proceedings.

8 CFR 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 CFR 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 CFR 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 native and citizen of Colombia. The record reflects that he received his medical degree in January 1995 in Bogotá, Colombia. In 1994, he completed an internship at the Institute of Human Genetics in Bogotá. He performed his mandatory social service at the immunology section of the National Cancer Institute in Bogotá. From 1996 until 2001, he was a resident at the University of Texas Medical Branch located in Galveston, Texas. At the time of filing this petition, the beneficiary was employed by the petitioner as an infectious disease pathology fellow. The record reflects that he was last admitted to the United States on May 22, 2000, 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 CFR 214.2(o)(3)(ii). The director acknowledged the facts presented that the beneficiary is a very good and accomplished researcher, but concluded that such accomplishments were insufficient to satisfy the criteria of 8 CFR 214.2(o)(3)(iii). The director concluded that the record failed to show that the beneficiary was recognized as a scientist of extraordinary ability whose achievements have been recognized in the field through extensive documentation.

On appeal, counsel for the beneficiary asserts that the director erred in denying the petition, and that the beneficiary meets criteria numbers one, two, four, five, six and seven.

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 CFR 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 CFR 214.2(o)(3)(iii)(B).

For criterion number one, the petitioner indicated that the beneficiary received the Stowell-Orbison Award for Pathologists-in-Training from the United States and Canadian Academy of Pathology, Inc. in 2002. The beneficiary received the College of American Pathologists (CAP) Foundation Scholars' Award in 2001 that partially funded the beneficiary's research with the petitioner. The petitioner provided the Service with a testimonial indicating that these two awards are "the most prestigious and coveted prizes among scientists in the area of pathology research." However, the record indicates that the latter is a grant awarded on the basis of the scientific merit of the research proposal and the potential of the applicant to add knowledge. The petitioner failed to indicate how many scholars received these awards each year. It is clear from the name of the awards that they are reserved to students or fellows. The petitioner failed to demonstrate that these awards are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The beneficiary received numerous other research grants including the George Dock Scholar Award, the Edward S. Reynolds Experimental Pathology Graduate Scholarship Award, the Pathology Education Award, the Robert L. Harrison Award and the Excellence in Research Award from the petitioner's Department of Pathology. Again, the petitioner failed to demonstrate that these awards are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

For criterion number two, while the beneficiary is a member of the Honor Society of Phi Kappa Phi at the University of Texas Medical branch, the petitioner failed to provide evidence that this society is an association that requires 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 two manuscripts for possible publication at the behest of the petitioner. Selection to review two manuscripts for publication by his employer does not indicate that the beneficiary enjoys national or international acclaim. This evidence would be more persuasive if it were an invitation from an independent academic or professional journal to review a manuscript, as the result of the beneficiary's distinguished reputation in the field. Given

the relatively low number of times that beneficiary has served as a judge of the works of others in the field, and the source of the two invitations to do so (e.g. from his employer), the petitioner has not established that the beneficiary satisfies this criterion.

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 beneficiary asserts that the fact that the beneficiary received "several important research awards" or grants is evidence that he has made a significant contribution in his field. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). In review, the evidence fails to show that beneficiary has sustained national or international acclaim and recognition for his original scientific contributions of major significance in the field of science.

For criterion number six, the beneficiary has published two articles in peer-reviewed professional journals and has authored a half-dozen abstracts. It is expected that researchers publish the results of their research in peer-reviewed journals, and publication of two such articles does not constitute extensive documentation of sustained acclaim through publication of scholarly articles. Such evidence would be more persuasive if the beneficiary's two articles had been extensively cited by others in the field. The petitioner has not submitted any citation history for these articles, which would tend to indicate acclaim.

For criterion number seven, counsel for the beneficiary asserts that the beneficiary has been offered employment in a critical research position at a distinguished institution. This criterion requires evidence that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. It is not sufficient to claim that the beneficiary will be employed in a critical position in the future. Counsel further asserts that the beneficiary has been employed in a critical capacity as a "key component" on a research team for several years. Employment as a member of a research team is not considered employment in a "critical or essential capacity" as would a department head or lead researcher on major projects. Counsel's assertions are not persuasive. The petitioner has failed to establish that the beneficiary satisfies this criterion.

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 his field of endeavor. 8 CFR 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, and 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.