U.S. Department of Justice

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Immigration and Naturalization Service

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*Office of Administrative Appeals*
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Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: SRC 02 186 52971 Office: TEXAS SERVICE CENTER Date: JAN 10 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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:

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is a public institution for research and postsecondary instruction. The beneficiary is a researcher and assistant professor specializing in materials science. 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, in order to employ him in the United States for a period of three years as an assistant professor at an annual salary of $48,000.

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 science.

On appeal, the petitioner submits a three-page letter arguing that the beneficiary satisfies four of the eight criteria listed at 8 C.F.R. 214.2(o)(3)(iii)(B) and that he qualifies for the classification sought.

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 the sciences 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 and citizen of Poland and was last admitted to the United States on December 16, 2001, in J-1

classification as an exchange visitor. The record reflects that the beneficiary was awarded a Ph.D. in physics (specializing in physics of magnetic materials) from the Institute of Physics of the Polish Academy of Sciences, Warsaw, Poland, in 1991. He began his research experience in 1991 as a research associate in the Department of Physics of Magnetic Materials, Institute of Physics of the Polish Academy of Sciences, Warsaw, Poland. From 1992 to 1993, he was a visiting scientist at the Physikalisch Technische Bundesanstalt, Braunschweig, Germany. In 1994, he became an assistant professor at the Department of Physics of Magnetic Materials at the Polish Academy of Sciences. From 1997 to 2000, he was a senior postdoctoral researcher at the Advanced Materials Research Institute at the University of New Orleans, Louisiana. In 2000, he was a visiting scientist at the Deutsches Elektronen Synchrotron Center, DESY-Hasylab, Hamburg, Germany. He has been employed as a senior research associate at the University of Colorado at Colorado Springs, Department of Physics since 2000.

The director determined that even though the beneficiary is an accomplished researcher and scientist, he had not demonstrated the type of sustained national and international recognition of his accomplishments necessary for O-1 classification. The director also found that the record was insufficient to demonstrate that the beneficiary is recognized as one of the small percentage recognized as being at the very top of the field of science pursuant to 8 C.F.R. 214.2(o)(3)(ii).

On appeal, the petitioner asserts that the beneficiary satisfies the regulatory criteria to qualify for O-1 status and that the petitioner provided sufficient evidence to show that the beneficiary has achieved sustained acclaim and is at the very top of his field. The petitioner asserts that the beneficiary satisfies at least four of the regulatory criteria.

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* the criteria is not equivalent to satisfying the criteria.

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 that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." Section 101(a)(1)(O)(i) of the Act. 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).

For criterion number one, there is no evidence that the beneficiary has been the recipient of a nationally or internationally recognized prize or award for excellence in the field of endeavor. The petitioner asserted that by virtue of receipt of two competitive grants, the beneficiary received nationally and internationally recognized prizes for excellence in his field of endeavor. The petitioner received first prize in a competition by the Polish Acoustic Society. The director noted that no mention was made as to what the criteria was for receiving these awards and how many others in his field have received the same awards. The petitioner failed to demonstrate that the grants awarded were nationally or internationally recognized prizes for excellence in the beneficiary's field of endeavor. Grants are generally funds to work in an area of endeavor, rather than an award for an accomplishment in the field.

For criterion number two, no evidence was submitted.

For criterion number three, the petitioner has not submitted published material in professional or major trade publications or other major media about the alien. While the petitioner's articles have been cited numerous times, citations to someone's work do not constitute articles about the individual.

For criterion number four, the beneficiary has recently reviewed two papers that were being considered for publication in the Iowa State University's *Institute of Electrical and Electronic Engineers Transactions on Magnetics Transactions*. The petitioner states that the beneficiary has reviewed more than 20 different articles to determine their suitability for publication. The beneficiary served as a session chairman where he was responsible for leading session discussions and reviewing papers at international conferences in Magnetism and Magnetic Materials in San Jose, California in 1999 and in San Antonio, Texas in 2001. The beneficiary satisfies this criterion.

For criterion number five, the petitioner provided testimonials from eight professors that claim that the beneficiary's research is considered of "major significance" in the field. However, the record does not show that the beneficiary's research is of major significance in relation to other similar work being performed. One testimonial states that the beneficiary's "pioneering work on superparamagnetism in non-crystalline magnetic alloys . . . helped result in the development of today's high capacity computer drives." The petitioner failed to demonstrate *how* the beneficiary's work constitutes an original contribution of major significance.

For criterion number six, the beneficiary has published 56 research articles in professional journals. The record indicates that other scientists have cited the beneficiary's articles more than 90 times. Frequent citations to an author's work demonstrate that the author has enjoyed some degree of influence on the field

of research. The petitioner has established that the beneficiary minimally satisfies this criterion.

For criterion number seven, no evidence was submitted.

For criterion number eight, while there is no evidence of the beneficiary's salary history, the current offer of $48,000 cannot be considered a "high salary" in the field of science in the absence of salary surveys of other similarly employed workers.

The petitioner has established that the beneficiary satisfies two of the regulatory criteria. In order to establish extraordinary ability in the field, however, the alien must satisfy at least three of the criteria listed at 8 CFR 214.2(o)(iii)(B).

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.