



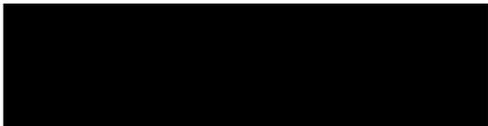
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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File: SRC 02 240 50457

Office: TEXAS SERVICE CENTER

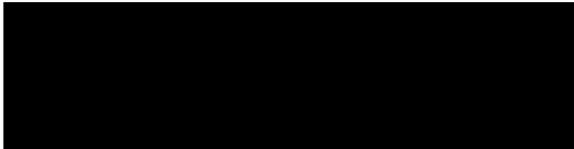
Date: JAN 24 2003

IN RE: Petitioner:  
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)

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 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 school. The beneficiary is a physician. The petitioner seeks a continuation of 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 one year as an assistant professor of surgery, and as the initial director of a new wound care, burn management, and trauma center.

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 the wound and burn care management field.

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.

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 by the regulations.

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 citizen of Israel. The record reflects that he received his medical degree in 1991 in Brussels, Belgium. He completed a nine-month fellowship in orthopedic, general surgery and emergency medicine with the Edinburgh Medical Missionary Society in Nazareth, Israel. He completed a residency in general surgery at St. Luke's Roosevelt Hospital Center (teaching hospital of Columbia University). He completed a fellowship in burn and plastic surgery at the State University of New York at Stony Brook, New York in 1998, and then took a position as a research scientist at the Living Skin Bank, State University of New York at Stony Brook, New York. He was a resident in plastic surgery at the Providence Hospital in Southfield, Michigan. He performed two clinical rotations, one at the Yonsei University Medical Center in Seoul, Korea and another at the William Beaumont Hospital and Somerset Surgery Center in Michigan. He completed another research fellowship in plastic surgery at the Providence Hospital, Southfield, Michigan, and most recently has been employed as an assistant professor of surgery at the East Tennessee State University (the petitioner) in Johnson City, Tennessee. The record reflects that he was last admitted to the United States on May 13, 2002, in O-1 classification as an alien of extraordinary ability. The record also reflects that the beneficiary is subject to the two-year foreign residency requirement due to his prior status as a J-1 exchange scholar.

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 has an impressive record, but concluded that the record failed to show that the beneficiary has been recognized as a physician of extraordinary ability whose achievements have been recognized in

the field through extensive documentation.

On appeal, counsel for the petitioner asserts that the director erred in weighing the evidence, and submits additional evidence. Counsel for the petitioner also asserts that the director's decision is contrary to Service precedent and policy, including six prior favorable determinations from three Service centers.

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 asserts that the beneficiary's receipt of a two-year fellowship and a one-year research scientist appointment and research grants are nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner competed with other students for the two-year fellowship and not with professors or surgeons who had already completed their training and enjoyed acclaim and recognition for their achievements in the field of medical science. The petitioner failed to establish that the one-year research scientist appointment and the research grants are internationally or nationally recognized prizes or awards for excellence in the field. The appointment and research grants are more in the nature of performance contracts, rather than awards. The petitioner failed to establish that the beneficiary satisfies criterion number one.

For criterion number two, while the beneficiary is a member of the American Burn Association, the Plastic Surgery Research Council and the American College of Surgeons, 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, the petitioner provided the Service with a citation to the beneficiary's work, a press release that mentions the beneficiary's presentation of a medical product, and three articles about a charitable contribution to an institution where the beneficiary was employed. These published materials are not about the beneficiary as required by the regulation. The petitioner failed to establish that the beneficiary satisfies criterion number three.

For criterion number four, the beneficiary was selected to serve as a judge of the work of others by peer reviewing for a professional journal, the *European Journal of Plastic Surgery*. The director determined that the beneficiary had performed peer review on an ad hoc basis, and that the petitioner had failed to

show that the beneficiary was selected on the basis of his acclaim, and concluded that the beneficiary failed to satisfy this criterion. On appeal, the petitioner provided the Service with additional documentation in the form of a letter from the editor-in-chief of the *European Journal of Plastic Surgery* indicating that the beneficiary was selected to perform peer review on the basis of his accomplishments in the field. The beneficiary has peer reviewed at least four manuscripts submitted for consideration for publication in 2000. In review, the petitioner has established that the beneficiary satisfies this criterion.

For criterion number five, the petitioner asserts that the beneficiary has made numerous contributions of major significance in his field. The petitioner asserts that the beneficiary is expert in the use of cultured epithelial autografts and that he was the first to use it to correct a genetic defect on a newborn child born without skin on her abdomen and chest. According to the petitioner, the beneficiary provided key research in the development of a new frozen cultured epithelia allograft and researched new treatments for keloid scars. The petitioner also asserts that the beneficiary received national recognition for his research on the development of a prefabricated flap for vaginal reconstruction. The beneficiary is currently conducting research on trachea reconstruction, the use of Mitomycin-C (a chemotherapeutic agent) to treat keloids, and a comparative histological research study of the use of skin graft with conventional bolster dressing versus the use of a vacuum assisted closure. The record does not show that the beneficiary's research is of major significance in relation to other similar work being performed. The petitioner provided the Service with numerous testimonials about the value of the beneficiary's work. One wrote that the beneficiary "is an extraordinary researcher in the development of alternative therapies for burn wounds in addition to being a superb physician and surgeon knowledgeable in cellular biochemistry, cell culture, and graft production." Another wrote that the beneficiary "is an extraordinarily talented person. If he is permitted to continue his research, not only will he make a major contribution in elucidating the cause of keloids, but his research will have broad applications in the other areas of wound healing." These testimonials speak to the beneficiary's expertise, ability and potential rather than to the significance of his contributions. The record does not contain contemporaneous corroborating evidence such as news articles or articles in professional journals about the beneficiary's research. The petitioner fails to demonstrate how the beneficiary has made a significant contribution to his field of endeavor. 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.

For criterion number six, the beneficiary has published thirteen

articles and nine abstracts. Publication of scholarly articles is not conclusive evidence of sustained acclaim. The record contains no evidence that independent researchers have cited the petitioner's work. As such, we cannot conclude that the beneficiary's publication history is indicative of national or international acclaim.

For criterion number seven, no evidence has been submitted.

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.

Counsel for the petitioner argues that because the beneficiary has been approved for O-1 classification on six prior occasions, he must be approved again.<sup>1</sup> The Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See Matter of Church of Scientology International, 19 I&N Dec. 593, 597 (Comm. 1988). Neither the Service nor any other agency must treat acknowledged errors as binding precedent. Sussex Engineering, Ltd. v. Montgomery 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied* 485 U.S. 1008 (1988). The Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, 44 F. Supp. 2d 800 (E.D.La. 2000), *aff'd* 248 F.3d 1139 (5<sup>th</sup> Cir. 2001), *cert denied* 122 S.Ct. 51 (2001).

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

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<sup>1</sup> The record indicates that three different petitioners have successfully sought O-1 classification on behalf of the beneficiary. The beneficiary presumably received extensions. No new evidence need be submitted for extensions unless requested by the director. 8 C.F.R. 214.2(ii)(12).

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.