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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: SRC 02 275 51007 Office: TEXAS SERVICE CENTER Date: JUL 29 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)

ON BEHALF OF PETITIONER:

[redacted]

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 bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a semiconductor manufacturer. The beneficiary is an engineer. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking continuation of 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 one year as an engineer at an annual salary of $122,700.

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

On appeal, counsel for the petitioner submits a brief asserting that the record contains substantial evidence that the beneficiary is an alien with extraordinary ability in the field of engineering.

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 science as defined by the statute and 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.

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 36-year old citizen of Spain. The record reflects that he received a degree in electrical engineering at the Universidad Politecnica de Madrid in 1991 and completed a Ph.D. at Columbia University in 1996. From 1996 to 1999, the beneficiary performed a fellowship at the Beckman Institute, University of Illinois at Urbana-Champaign. Subsequent to completing his fellowship, the beneficiary has been employed Nanovation Technologies and the petitioner. The record reflects that he was last admitted to the United States on December 30, 2001, in O-1 classification.

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 the beneficiary is "at the very top" of his field of engineering pursuant to 8 C.F.R. § 214.2(o)(3)(ii). The director acknowledged that the beneficiary has an impressive record, but concluded that the record failed to show that the beneficiary was recognized as an engineer 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 finding the evidence insufficient to find that the beneficiary is an engineer of extraordinary ability.

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 petitioner asserts that the beneficiary's receipt of fellowships, and scholarships are nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Counsel emphasized that the beneficiary was the recipient of two extremely prestigious

fellowships, the Beckman and La Caixa. On appeal, counsel submits informational material regarding both fellowship programs.

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 beneficiary did not compete with national or internationally recognized experts in the field, the awards cannot be considered evidence of the beneficiary's national or international acclaim.

For criterion number two, no evidence was submitted.

For criterion number three, the petitioner submits two published articles, only one of which mentions the beneficiary by name. The first article is titled "1996 Beckman Institute Fellow Develops New Type of Spectrometer" and was published in the Fall/Winter 1997-1998 edition of the *Beckman News*. The second article is titled "Researchers Unveil Multispectral Channel Photodetector," and was published in the February 1998 edition of *Photonics Spectra*. On appeal, counsel asserts that the *Beckman News* is a major professional trade publication. 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 petitioner failed to demonstrate how the beneficiary has sustained national or international acclaim for achievements in his field by these two published items.

The petitioner asserted that the beneficiary satisfied criterion number four because he served as a judge of others while working on one of his inventions, the Quantum Dot Spectometer. As an inventor, the beneficiary was not judging the work of experience professionals in the field, but was performing his job. Further, in order to fulfill the regulatory criterion, the petitioner must establish that the beneficiary's selection to judge the work of others resulted from his national or international acclaim. The petitioner failed to establish that the beneficiary was chosen to judge the work of other engineers on the basis of his 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 performed. The petitioner provided the Bureau with testimonials about the value of the beneficiary's work. Prof. [redacted] Duke University, wrote that the beneficiary "invented a revolutionary new technology, the quantum dot spectrometer (QDS)," and stated that "the QDS will

eventually revolutionize multispectral communications, memory and imaging applications. While [the beneficiary] has demonstrated the basic functionality of this device, however, further work is necessary to bring it to a marketable level." Prof. [redacted] State University of New York at Stony Brook, wrote that "the contributions [the beneficiary] has already made will substantially benefit the welfare of the United States." The evidence falls short of establishing that the beneficiary's work has been adopted by other researchers or otherwise influenced the field of engineering. In review, the evidence fails to show that the beneficiary has sustained national or international acclaim and recognition for major achievements in his field of endeavor.

The petitioner also provided evidence of an approved patent granted to the beneficiary alone and of four patents granted to the beneficiary as a co-inventor. A patent is evidence that an invention or innovation is original, but not every patented invention or innovation constitutes a significant contribution in one's field. The petitioner failed to demonstrate that the beneficiary's patented techniques are a significant contribution in relation to others in the field.

The director determined that the beneficiary satisfies criterion number six. This portion of the director's decision shall be withdrawn. While the beneficiary has co-authored nine articles and numerous abstracts in his field, it is expected that engineers will publish articles discussing their research. It does not follow that all engineers who publish articles in peer-reviewed journals enjoy sustained acclaim in their field. No citation history of the beneficiary's works has been submitted. Published articles by the beneficiary that have been cited by others would more meaningfully establish that the beneficiary enjoys a measure of influence through his publications. The material submitted by the petitioner does not distinguish the beneficiary from others in his field.

The petitioner asserts that the beneficiary meets criterion number seven by virtue of his employment by the petitioner as a design manager and by being a member of the Executive Committee of the Silica Business Unit. Since 1999, the beneficiary has been employed by the petitioner as a design manager and as senior design engineer. The evidence is insufficient to establish that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

For criterion number eight, no evidence was submitted.

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.

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.