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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]

JUN 17 2003

File: LIN 03 016 53543 Office: NEBRASKA SERVICE CENTER Date:

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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a teaching hospital affiliated with [redacted]. The beneficiary is a physician. The petitioner seeks a O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(o)(i), as an alien with extraordinary ability in medical science in order to employ him temporarily in the United States for a period of three years as an attending physician in the division of infectious diseases.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being one of a small percentage at the very top of his 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 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 41-year old citizen of Egypt. The record reflects that he received a bachelor degree of medicine and surgery in 1987 at the Tanta University School of Medicine, Egypt. In 1991, he received a master degree in orthopedic surgery and trauma from the same institution. He completed a one-year internship then a three-year residency at the Tanta University School of Medicine. In the years 1991 to 1995, the beneficiary served first as a medical coordinator at the Royal Embassy of Saudi Arabia in Washington, D.C., and then as medical representative of the Embassy at the Cleveland Clinic Foundation. The beneficiary completed a research fellowship at Case Western Reserve University (CWRU) in Cleveland, Ohio in the Division of Infectious Diseases, Special Immunology Unit. He subsequently completed a three-year fellowship in infectious diseases at the same institution in 2003. The record reflects that he was last admitted to the United States on September 26, 1997 as an exchange visitor (J-1).

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 medical science pursuant to 8 C.F.R. §214.2(o)(3)(ii).

On appeal, counsel for the petitioner asserts that the beneficiary satisfies six of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

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).

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

As evidence that the beneficiary satisfies this criterion, the petitioner states that the beneficiary received an award for his internship performance from the Tanta University School of

Medicine.[1] The petitioner states further that the beneficiary received an award in recognition of his contributions as a medical coordinator at the Saudi Arabia Medical Office at the Cleveland Clinic Foundation. Finally, the petitioner asserts that the beneficiary was presented with a joint award from the Metro Health Medical Center and the Case Western Reserve University in 2001.

Academic study is not a field of endeavor. As such, awards for academic work cannot be considered awards in a field of endeavor. Only interns compete for awards for internship performance. Similarly, the beneficiary's joint award for second place from the petitioner and Case Western Reserve University cannot be considered a nationally or internationally recognized award for excellence in the field. The contestants were limited to house staff working for the petitioner and Cleveland University hospitals and research fellows at Case Western Reserve University.

The petitioner asserts that the beneficiary's receipt of an award from the Saudi Arabian Embassy is a nationally or internationally recognized prize or award for excellence in the field of endeavor. The petitioner failed to submit any documentary evidence to corroborate its assertion.

The petitioner failed to establish that the beneficiary satisfies criterion number one.

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.

For criterion number two, while the beneficiary is a member of the American Medical Association, the American College of Physicians-American Society of Internal Medicine, the Infectious Diseases Society of Ohio, the American Society of Tropical Medicine and Hygiene and the American Society of Microbiology, and the Infectious Diseases Society of America, 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. Membership in these professional medical societies indicates that the beneficiary has completed the rigorous study and training required to be a competent physician in the field. These societies and associations do not require outstanding achievements of their members, over and above the required medical training for the chosen field.

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

[1] The 1988 Best House Officer award.

title, date and author of such published material, and any necessary translations.

No evidence was submitted to claim criterion number three.

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.

No evidence was submitted to claim criterion number four.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance 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 numerous testimonials about the value of the beneficiary's work. Dr. [redacted] Director of Allogeneic Transplant Program, CWRU, wrote that the beneficiary's "research results will change the current guidelines by which transplant patients receive their prophylactic antimicrobials." Dr. [redacted] Associate Professor of Medicine, University Hospitals of Cleveland, wrote about the beneficiary's "outstanding research efforts" in the areas of antibiotic resistant bacterium, the genetic basis of HIV nephropathy, and infectious complications of bone marrow transplant recipients. Almost all of the testimonials' authors state that the beneficiary's work is novel and outstanding. The testimonials are all conclusory and fail to demonstrate how the beneficiary's research has specifically impacted his field. At best, the testimonials indicate that the beneficiary's work *will* significantly impact the field in the future. In review, the evidence fails to show that beneficiary has sustained national or international acclaim and recognition for major achievements in the field of medicine.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

For criterion number six, the beneficiary has published articles but the record des not show that the publication of these articles sets him above others in the field, or that he has demonstrated extraordinary ability by sustained national or international acclaim of his work. He has not submitted evidence that his work has been extensively cited by other researchers. It is expected that researchers and physicians publish their findings. To establish eligibility under this criterion, however, the research

must be shown to have affected the field in a way that sets the beneficiary above others in the field, or is otherwise indicative of national or international acclaim. Objective evidence, such as the citation of the beneficiary's work by others, may satisfy the statutory requirement for extensive documentation of extraordinary ability at section 101(a)(15)(O)(i) of the Act.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

For criterion number seven, the beneficiary has been employed as an intern, resident physician, research fellow, and as a fellow in the division of infectious diseases at distinguished hospitals. While employment with such institutions is evidence of a degree of recognition, such staff or assistant positions are not considered employment in a "critical or essential capacity."

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.

For criterion number eight, no evidence of the beneficiary's salary history was provided. The petitioner has offered to pay the beneficiary $109,980 a year for his services. The petitioner provided the Bureau with a salary survey and asserted that the salary offered is close to the 80th percentile of the starting salary for an assistant professor at academic institutions. The director determined that a physician/researcher who has risen to the very top of his field of endeavor would be paid a wage higher than the 80th percentile. The AAO concurs. This salary is not high enough in relation to others in the field to indicate sustained acclaim as required by the statute and regulation.

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.