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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: LIN 03 036 51932 Office: NEBRASKA SERVICE CENTER Date: JUN 20 2003

IN RE: Petitioner: [redacted]
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)

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

JUN2003_01A8101

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an otolaryngology medical practice. The beneficiary is an otolaryngologist. 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 medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as an otolaryngologist.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained national or international acclaim.

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, and the appeal documents.

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.
>
> (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 C.F.R. § 214.2(o)(5)(i)(A) requires, in pertinent part that:

> 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 Sweden. The record reflects that he received his medical degree in 1989 at the Lund University in Sweden. He completed a twenty-one month internship in general surgery and plastic surgery at Lund University. He performed a five-year residency in head and neck surgery at Lund University. He completed a two-year fellowship at the University of Michigan's Department of Otolaryngology and another post-doctoral fellowship in tumor biology. Following completion of his fellowships, he has worked as a

member of the faculty at the University of Lund. The record reflects that he was last admitted to the United States on August 28, 2002 as a non-immigrant visitor under the visa waiver program.

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 has sustained national or international acclaim.

On appeal, counsel for the petitioner asserts that the director erred in weighing the evidence, and that the beneficiary satisfies at least three of the 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).

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

For criterion number one, the evidence establishes that the beneficiary was awarded the Tegger Foundation award and the Swedish Cancer Foundation Award for post-doctoral studies. The record indicates that the beneficiary received the Tegger Foundation Award for his thesis in cancer research and that he intended to use the cash award to pay for his post-doctoral studies.

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 the field of endeavor. Moreover, only students compete for such awards. As the petitioner did not compete with nationally or internationally recognized experts in the field, the awards cannot be considered evidence of the beneficiary's national or international acclaim. The petitioner failed to demonstrate that these were awards for excellence in the field of endeavor.

The beneficiary also received the Swedish Tekniboro Development Award from the Foundation for Technology Transfer in Lund, Sweden for a new surgical method of resecting solid tumors in 1999. The nature and scope of

this award are not established in the record; the petitioner has not documented that this is a nationally recognized award for excellence in the field.

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 Swedish Society of Medicine, the Lund Society of Medicine, the Swedish Medical Association, the Southern Swedish Oncology Society, the Swedish Society for Otorhinolaryngology, Head and Neck Surgery, the Scandinavian Society for Head and Neck Oncology, and the American Association for Cancer Research, 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.

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 translations.

For criterion number three, the petitioner submits the following:

1. Newspaper article dated November 10, 1998 from the *Skanska Dagblad*, a Swedish daily newspaper, reporting on the beneficiary's receipt of the Tegger Foundation Award, and summary translation.

2. A printout from the *Science Citation Index*, showing that the beneficiary's published articles have been cited 254 times in articles published by others in professional journals.

3. Evidence that the beneficiary's work has been cited in a reference book for otolaryngologists.

4. A copy of an article that appeared in a 1998 edition of the official journal of the Swedish Society of Medicine stating that the beneficiary was selected to be the main

medical author of a medical TV series, and summary translation.

The summary translations of the newspaper article and the journal article do not conform to the regulatory requirement that the translations be accompanied by a certified full English translation and may not be considered. 8 C.F.R. § 103.2(b)(3). Even accepting the translations at face value, these two articles are not extensive documentation of the alien's work as reported in major media.

The director determined that having one's work cited is not equivalent to having articles written about the alien and his work in major media or trade publications as envisioned in the statute. The AAO concurs. Citations are not about the alien or his work, rather, they are references to his work.

The evidence is insufficient to demonstrate that the beneficiary satisfies this criterion. The evidence does not demonstrate that the beneficiary has sustained acclaim in his field of endeavor.

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.

For criterion number four, the evidence shows that the National Academy of Sciences selected the beneficiary to review a manuscript and that the beneficiary has served as an active reviewer of peer manuscripts for Clinical Cancer Research since 2002. The director determined that the beneficiary satisfies this criterion. The AAO concurs.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.

For criterion number five, the beneficiary has published the results of his research. The record shows that his research has had an impact on his field because his work has been cited extensively. The beneficiary's fourteen published articles have been cited 254 times.

The petitioner also provided evidence of an approved patent

granted to the beneficiary for a new tumor resection technique. The granting of a patent documents 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 technique is a significant contribution in relation to others in the field.

The petitioner provided the Bureau with numerous testimonials about the value of the beneficiary's work. [redacted] Clinical Professor of Radiology and Director of MRI at the University of Michigan Medical Center, wrote that the beneficiary has obtained national and international recognition for his work with head and neck cancers. Prof. [redacted] cites the beneficiary's receipt of scholarships, awards and his publications as evidence of such recognition. Dr. [redacted] Professor and Chair of the Department of Otolaryngology, wrote that the beneficiary "is developing a strong reputation for his work." Dr. [redacted] Chairman of the Department of Surgery at the William Beaumont Hospital, affiliated with the petitioning organization, states that the beneficiary "provides truly unique skills." Dr. [redacted] Senior Principal Investigator at the Van Andel Research Institute's Laboratory of Cancer Genetics, writes that he has collaborated with the beneficiary on genetic research and that the beneficiary "has been instrumental in our collaborations, which have resulted in groundbreaking discoveries." Prof. [redacted] at the University of Bergen writes that the beneficiary is "well known for his clinical and surgical competence and as a basic researcher. His PhD degree in Lund with his thesis 'Prognostic markers in squamous cell carcinoma of the head and neck' is an often referred contribution to head and neck oncology."

In review, the record does not show that the beneficiary's 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 frequency with which his work has been cited, while demonstrating an impact on the filed, is considered under a separate criterion below. The record does not show that the beneficiary's research is of major significance in relation to other similar work being performed.

The nature of scientific research is to expand the body of knowledge of science. The beneficiary's contributions are original and noteworthy, but they are best described as adding to our body of knowledge incrementally rather than as a scientific breakthrough. 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 authored fourteen articles that have been published in peer-reviewed publications. His published work has been cited extensively. The director determined that the beneficiary satisfies this criterion. The AAO concurs, in part, because the citation history provided by the petitioner is evidence that the beneficiary's work has had a major impact on his field of endeavor.

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

The petitioner did not submit evidence relating to this criterion.

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, the petitioner provided the Bureau with the prevailing wage for otolaryngologists in the geographical area where the petitioner is located. The director determined that the beneficiary satisfies this criterion. This portion of the director's decision shall be withdrawn. Although the survey submitted indicates that the beneficiary would receive 50% more than the prevailing wage for otolaryngologists in the geographical area of the petitioner, the survey submitted is geographically too restrictive. This criterion must be indicative of national acclaim in the field. The petitioner has offered to pay the beneficiary an annual salary of $200,000. The petitioner should have submitted wage survey information for all otolaryngologists on a nationwide basis. The

petitioner should have provided more than just the average (mean) wage. To evaluate whether the salary is high, the Bureau needs to compare it to the median and highest wages offered nationwide to otolaryngologists. The beneficiary does not satisfy this criterion.

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 C.F.R. § 214.2(o)(3)(ii).

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.