

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

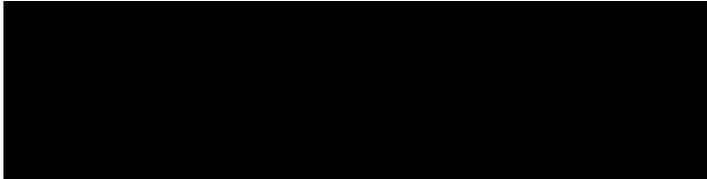
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Dg

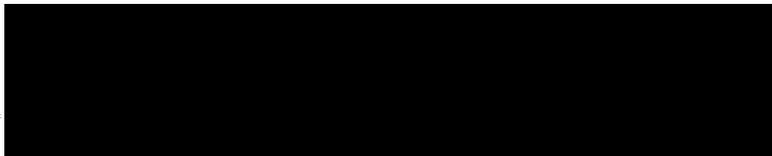


FILE: LIN 03 239 51646 Office: NEBRASKA SERVICE CENTER Date: **MAY 25 2005**

IN RE: Petitioner: [Redacted]
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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

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 major podiatric medicine and surgical center. The beneficiary is a doctor of podiatric medicine. The petitioner seeks to classify the beneficiary as an O-1 nonimmigrant, 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 the medical sciences. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a podiatric physician, surgeon, instructor, and researcher.

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 the field of medical sciences.

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 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 medical science as defined by the statute and the regulations.

The regulation at 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.

The regulation at 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.

The beneficiary in this matter is a citizen of Canada. The record reflects that he received his medical degree in 1997 in Philadelphia, Pennsylvania. He completed a three-year surgical residency at the Northlake Regional Medical Center in Tucker, Georgia. He completed the "Hands-on External Fixation Workshop" in Tucker, Georgia in September 1997, the "Holmium Laser Course" in Atlanta, Georgia in June 1998, the "AO/ASIF Techniques of Stable Fixation and Foot and Ankle Surgery" training in Colorado Springs, Colorado in October 1998, the American College of Foot and Ankle Surgeons "Arthroscopy Course" in Chicago, Illinois in June 1999, and the "Advanced Ilizarov Method Course" in Cancun, Mexico in October 1999.

The record reflects that the beneficiary was last admitted to the United States on January 5, 2003 as an H-1B1 nonimmigrant.

After reviewing the evidence submitted in support of the petition, the director found the beneficiary ineligible for O-1 classification based on a finding that the petitioner failed to establish that the beneficiary meets the requirements of Title 8, Code of Federal Regulations, Part 214.2(o)(3), *supra*.

On appeal, counsel for the petitioner asserts that the director erred in weighing the evidence.

First, 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). Moreover, the record does not persuasively demonstrate 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.

The petitioner asserts that the beneficiary satisfies criterion number one because he has received the following awards:

- The Rapoport Award.

- The David LeBovith Award.
- Admission to the Stirling –Hartford Honorary Anatomical Society.
- Who's Who in American Universities and Colleges.
- Selection for residency program at Northlake Regional Medical Center.

This criterion requires nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Counsel indicates that the "Rapoport Award" is given to a student who is "dedicated to the preservation of human dignity" and that the David LeBovith Award is given to the student "who has demonstrated the highest degree of manual dexterity in the fabrication of accommodative foot orthoses as well as the greatest understanding of the materials used in their construction." These awards were based on the beneficiary's activities as a student and thus do not demonstrate they were awarded in his field of endeavor in medical science. Further, given that the awards were given by the beneficiary's school, there is no indication that either award is nationally or internationally recognized.

Similarly, we do not find that the beneficiary's selection in the Stirling-Hartford Anatomical Society and Who's Who in American Universities and Colleges meets the requirements of this criterion as the beneficiary was selected based upon his work as a student, not in the field of medical science.

Counsel further argues that because of the beneficiary's "scholarly excellence" he was selected for the "most prestigious extended residency program for podiatric physicians in the U.S." Being chosen as a resident at Northlake Regional Medical Center is not a national or international prize or award.

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.

Selection for a competitive slot at an esteemed institution is not a nationally or internationally recognized prize or award for excellence in the field of endeavor. The beneficiary was competing with fellow students for these slots.

The beneficiary does not satisfy this criterion.

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, counsel notes the beneficiary's membership in the American Podiatric Medical Association, the Georgia and Michigan Podiatric Medical Associations, and the American College of Foot and Ankle Surgeons but acknowledges that membership in these societies "is not limited to outstanding individuals." Counsel then argues, however, "while all podiatrists have to be licensed by the state of their practice, a much smaller number are board certified," like the beneficiary.

Counsel states that the beneficiary is a faculty member of the Podiatry Institute and is the “only faculty member located in Michigan” and argues that, “selection to the faculty is itself indicative of outstanding and extraordinary ability, and membership on the faculty is so limited.”

We are not persuaded by counsel’s arguments. The criterion requires the beneficiary to be a member of an association which requires outstanding achievements of its members. Neither board certification nor being a faculty member of The Podiatry Institute is tantamount to membership in an *association* that requires outstanding achievements of its members.

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.

The director determined that no published material about the alien had been submitted in support of the petition; however, evidence of infrequent citations in the Thomson Scientific citation index database of scientific journals was submitted in lieu of published material. The director considered evidence of citations but determined that the criterion had not been met. The AAO has consistently held 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 and regulations. Citations are not *about* the alien or his work, rather, they are references to his work. The beneficiary does not satisfy this criterion.

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.

Counsel argues the beneficiary’s “selection for membership in The Podiatry Institute and his extensive lecturing opportunities within that organization” meet the requirements of this criterion. Counsel further argues that the director, in his decision, added higher evidentiary requirements by requiring a showing that the beneficiary received national or international acclaim through his participation.

While we may not agree with the exact wording in the director’s decision, we do not read the director’s decision as heightening requirements for this criterion. A more rational interpretation of the director’s decision is that the petitioner submitted documentation that related to or addressed this criterion, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to the criterion. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim.

Upon review, we find the record does not reflect that the beneficiary has participated on a panel *as the judge of the work of others*. Although we do not dispute that he participated on panels, the evidence reflects that the beneficiary was a lecturer and presented professional paper presentations. The beneficiary’s participation as a speaker is not tantamount to his participation as a judge of the work of others.

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

For criterion number five, counsel asserts that the beneficiary has made “notable scientific accomplishments in scholarship, publication and lecturing.” Counsel refers to the letters contained in the record highlighting the beneficiary’s selection for and completion of his residency program and the fact that scholarly publications in the beneficiary’s field are a “rarity,” and argues that the petitioner does not have to establish that the beneficiary has achieved sustained national or international acclaim for this individual criterion.

While the record does reflect that the beneficiary has published results of his work, 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, regardless of the number of articles that are published in his field. The infrequent citation rate is not convincing evidence that the beneficiary's work is original of major significance.

The petitioner has also failed to establish that the beneficiary has made an original contribution of major significance with his work at the Holland Foot and Ankle Center. While the work he performs may be important to the individual patient, the petitioner failed to establish how the beneficiary's work at the center is an original contribution of major significance.

As it relates to the beneficiary's experience as a lecturer, the petitioner fails to demonstrate how his lectures are an *original* contribution or of a major significance. The evidence in the record reflects the beneficiary lectures on "important discoveries and innovations" but there is no evidence that these "discoveries and innovations" are those of the beneficiary.

The petitioner has failed to establish that the beneficiary's work is original and of major significance in relation to other similar work being performed.

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

For this criterion, counsel notes that the beneficiary has published two articles. To refute Citizenship and Immigration Services' (CIS) position that the publication of scholarly articles is not automatic evidence of sustained acclaim, counsel argues that because podiatry "is not a field in which individual podiatrists routinely publish", the beneficiary's two publications should be viewed as a "significant achievement" and "not a routine institutional practice in the area of podiatric medicine."

We are not persuaded by counsel's argument. The mere fact that the beneficiary's work has been chosen for publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers would demonstrate more widespread interest in, and reliance on, the petitioner's work. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater research community, then it is reasonable to question how widely that alien's work is viewed as being nationally or internationally acclaimed. In the present case, the petitioner provides no evidence showing that his work has been heavily cited. While the petitioner has clearly co-authored some published articles, the weight of this evidence is diminished by the lack of evidence showing that these articles have influenced his field and does not distinguish him from others in his field.

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 counsel asserts that the director erred by requiring "monumental documentation" of the beneficiary's critical or essential role for the petitioner. Counsel further asserts that the evidence contained in the record adequately demonstrates that the beneficiary has been and will continue to play a critical or essential role for the petitioner and for The Podiatry Institute.

The record contains a letter from [REDACTED] President of the petitioning center, which indicates that the beneficiary "is a key member of our practice group and has the responsibility for 24-hour out-patient and in-patient care of our podiatric patients." While we do not dispute the reputation of the Holland Foot and Ankle Center, and that employment with this center is evidence of a degree of recognition, staff positions such as that held by the beneficiary are not considered employment in a "critical or essential capacity" as would be a director or president.

The beneficiary does not satisfy 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.

The Form I-129 petition indicates that the beneficiary will earn an annual salary of \$155,000 per year. The petitioner provided a copy of an article referring to the U.S. Department of Labor's Bureau of Labor Statistics' 2001 Occupational Employment Statistics Survey of Podiatrists that indicates that the average income of a podiatrist is approximately \$94,000 per year. As the salary indicated by the survey provides only an average, it does not indicate what the highest salaries are in the beneficiary's field. Although we do not dispute that the beneficiary's proposed wage is higher than the *average* salary, we cannot determine that the salary is high compared to other similarly qualified podiatrists and that the salary is therefore indicative of someone at the very top of the field of endeavor.

Moreover, the petitioner has failed to provide a contract or other reliable evidence, as required by the regulation. *See* 8 C.F.R. § 214.2(o)(2)(ii). Without evidence to support that the petitioner's claim of the beneficiary's proffered salary is legitimate, the petitioner has not met 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 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 beneficiary's achievements have not yet risen to this level.

In order to establish eligibility for O-1 classification, the petitioner 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 beneficiary's achievements have 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.