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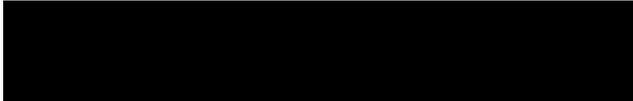
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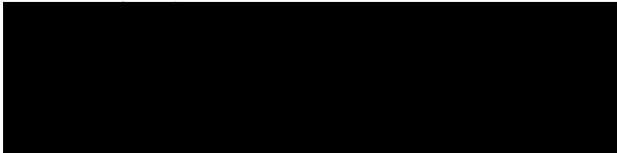
FILE: SRC 04 112 51533 Office: TEXAS SERVICE CENTER Date: JAN 09 2006

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)

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 Texas Service Center Director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an information technology firm and seeks 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 science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of two years as a public health analyst.

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

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, and an appeal with a 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.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who has arisen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iii). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a public health analyst to develop a stroke registry with the National Center for Chronic Disease and Health Promotion. The regulation at 8 C.F.R. § 214.2(o)(3)(iii) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, nationally or internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines eight criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner submitted evidence that it claims meets the following criteria:

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

The petitioner did not initially allege or submit evidence of the beneficiary's receipt of a national or internationally recognized prize or award for excellence. However, the beneficiary indicated on her curriculum vitae that she had received two awards: the National Institute of Neurologic Diseases and Stroke postdoctoral fellowship and an award from the Centre for Clinical Epidemiology and Biostatistics at the University of Newcastle. The director determined that these awards did not constitute nationally or internationally recognized awards for excellence within the meaning of the regulation.

In response to the director's request for evidence (RFE) dated March 24, 2004, counsel stated that "given the prestige of the National Institute of Neurologic Diseases and Stroke, this institution should certainly be considered to be a nationally recognized institution, and as such, the fellowship that [the beneficiary] received there, fulfills the category as being a nationally recognized award." [Emphasis in original.] Counsel also stated that the same

should apply to the beneficiary's fellowship with the Center for Clinical Epidemiology and Biostatistics, noting that in his letter submitted in support of this petition, [REDACTED] currently Professor of Public Health at the University of Manchester, wrote, "The award to perform a PhD and work with me . . . was an unusual occurrence . . . On only two occasions during my 17 years at the Center, did we make PhD scholarship awards to recognized outstanding talent and promise to help develop our research strengths." The petitioner submitted no other evidence regarding these "awards" received by the beneficiary.

Fellowships and scholarships awarded by a specific college or university and limited to students at that particular institution are not nationally or internationally recognized prizes or awards in the field. A fellowship is granted generally to fund future research rather than to award an achievement in the field. While the fellowship committee will take the recipient's accomplishments into account, such consideration ensures that the fellowship funds will advance the project and is not an award for excellence in the field. The beneficiary was also awarded a scholarship to study for her PhD by the Center for Clinical Epidemiology and Biostatistics at the University of Newcastle. A scholarship does not measure a recipient's standing in the field, but is limited to students in an academic endeavor. Academic training is not the field of endeavor, but preparation for entry into the field of endeavor. Thus, scholarships do not qualify as awards under this criterion.

The evidence does not establish that the beneficiary is the recipient of a nationally or internationally recognized prize or award for excellence in her field of endeavor. The beneficiary does not satisfy this criterion.

*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.*

To establish that the beneficiary meets this criterion, the petitioner submitted a copy of a February 17, 2004 e-mail from the press department of BioMed Central, asking the beneficiary to approve a press release regarding her findings on the use of statins for stroke patients which were to be published in an article in *BMC Medicine*. The petitioner submitted evidence that the press release was reported on such online sites as innovations-report.com, healthday.com, wtnh.com, 4woman.gov, ivanhoe.com, and healthandage.com. The petitioner also submitted a copy of a May 2002 "e-letters" page from the online *British Medical Journal* responding to an article that had been published on the website that had been co-authored by the beneficiary. The article reported on a study of the perceptions of stroke by the public and patients with a stroke history that had been published on the website. The petitioner also submitted copies of May 2002 online articles from heartcenteronline.com, worldhealth.net, merck.praxis.md, CBCFHealth.org, and vida e saúde, which report the results of this study. The petitioner also submitted a copy of a document entitled "Healthline News Brief," apparently a compilation of newsworthy headlines published by "Reuters Health." However, the petitioner provided no other identifying information regarding the document. Another article from elmundosalud.com is not accompanied by an English translation.<sup>1</sup>

The petitioner submitted no evidence that these online websites constitute major media. The record contains no evidence of the web traffic to these sites or that these sites are relied upon by those in the medical or medical research professions. Additionally, the information regarding the beneficiary's work on statins, although reported on several online media sites, is the result of a publicity statement about a single article. Furthermore, the

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<sup>1</sup> The regulation at 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

publicity about two articles in a four-year period and spanning a career of over 11 years following the beneficiary's receipt of her bachelor of nursing degree is not indicative of sustained acclaim in her field of endeavor.

The petitioner submitted evidence that the beneficiary's work was cited or noted in the publications of others. However, citation to the beneficiary's work is not published material about the beneficiary or her work, and is the subject of another criterion discussed below.

The evidence does not establish that the beneficiary meets 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.*

According to counsel, the beneficiary meets this criterion based on her review of an article published in the journal *Ethnicity & Disease*, which is "an international journal on ethnic minority population differences in disease patterns." The petitioner submitted evidence that, in July 2002, the beneficiary reviewed a manuscript prior to its publication in *Ethnicity & Disease*. The petitioner submitted no evidence that the beneficiary was chosen to review this article based on her outstanding reputation in her field. Further, a single instance of peer review is not indicative of sustained acclaim.

The evidence does not establish that the beneficiary meets this criterion.

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

Counsel asserts that the beneficiary meets this criterion based on her "involvement in the development of new initiatives that are aimed at reducing and preventing secondary occurrence of stroke, and stroke complications." Counsel cites five studies by the beneficiary to support his statements.

The first is the beneficiary's development and analysis of a stroke registry that "led to the development of new protocols and strategies in stroke prevention for Asan Medical Center and the surrounding community." In his February 19, 2004 letter of recommendation, [REDACTED] professor of neurology and chairman emeritus at The University of Texas Health medical school, stated that the registry provided "essential information to find the risk factors (cause) of stroke, develop new treatment and to conduct a new intervention study for prevention of stroke." However, the petitioner submitted no documentary evidence of any new protocols or strategies for the treatment and prevention of stroke as a result of her analysis or that her analysis was considered to be of major significance to her field of study.

Counsel states that the beneficiary also meets this criterion based on two studies conducted during her work at the Asan Medical Center. One was a five-year study of the "perspectives of stroke in Seoul, South Korea." The evidence indicates that the beneficiary was second author on a paper published in a June 1997 volume of the journal *Stroke* reporting on the results of this study. The second study was on "type A behavior and stroke," the results of which were published in a 1998 volume of the journal *European Neurology*. Although the petitioner submitted evidence that the second study was cited in the published works of others, the documentation provided reflects that the references to the beneficiary's work were minimum. The petitioner submitted no evidence that these studies and published reports were of major significance to the field.

The fourth study cited by counsel to establish that the beneficiary meets this criterion occurred during the beneficiary's pursuit of her PhD. According to counsel:

She found that the public did not always perceive stroke symptoms as such, because they were often presented and understood in different ways. From this study, [the beneficiary] was able to develop educational material on stroke that focused on the general public and on stroke patients, and enabled healthcare professionals to monitor their effectiveness.

The results of the beneficiary's study were published in the May 4, 2002 volume of the *British Medical Journal*. The evidence reflects that the beneficiary's conclusions as the result of her study were published in the online journals *British Medical Journal*, *HeartCenterOnline*, *WorldHealth.net*, and *Merck Medicus*. The petitioner also submitted evidence that the published article was cited in at least three other published articles. However, a review of those articles indicates, that while the beneficiary's study revealed some important public misperceptions, it was not unique or cited as being one of major significance to the field.

The results of the fifth study named by counsel as evidence that the beneficiary meets this criterion, the beneficiary's study of the effects of statins in stroke patients, had not been published at the time the petition was filed. In response to the RFE, the petitioner submitted evidence, as discussed previously, that the findings of this study were published in several online journals. While the articles indicate that the findings may be of significance in the treatment of stroke patients, the prospect of a finding of major significance is not evidence that the beneficiary has made a contribution of major significance to the field and therefore does not establish that the beneficiary meets this criterion.

As further evidence that the beneficiary meets this criterion, the petitioner submitted several letters of recommendation from those in the beneficiary's field of endeavor.

In his letter of February 23, 2004, [REDACTED] professor of public health at The University of Manchester, stated that the beneficiary "is a scientist of extraordinary ability. Her scientific achievements in the field of quantitative and qualitative research methods related to stroke are both highly original and extremely substantial," and that her contribution is "matched by a very small percentage of individual in the field." Dr. [REDACTED] stated:

[The beneficiary] has contributed several original contributions in these areas of the development, and particularly the application, of quantitative and qualitative research methods and has a broad range of knowledge and techniques (univariate, multivariate, and survival analysis) in statistical analysis. Furthermore, she has shown that the methods can be applied with confidence to the important conditions of stroke.

[REDACTED] does not identify the beneficiary's "original contributions" or state how they are of major significance to the field. Further, [REDACTED] who worked with the beneficiary at the Center for Clinical Epidemiology and Biostatistics at a medical school in Australia, does not indicate the significance of the beneficiary's work in his own research. In a March 26, 2004 letter, [REDACTED] that the beneficiary's "further work in this field will allow us to be able to understand the causes and outcome of stroke in members of the population." Again, however, [REDACTED] not identify any present contribution by the beneficiary that is considered to be of major significance to the field.

In his letter of February 18, 2004, [REDACTED] "Professor of Neurology and Director of the National center for the Study of Central Nervous System Zinc at University of Ulsan College of Medicine in Seoul, Korea," who worked with the beneficiary at the Asan Medical Center, stated:

In the United States, [the beneficiary] . . . focused on the factors that may affect stroke outcome. Statins and certain blood parameters have been found as such factors. This field of is of paramount important, and thus I think her present and future contribution will be judged to be vitally important.

After my many years here at Asan Medical Center/University of Ulsan College of Medicine, I am in a position to judge [the beneficiary] to be among the brightest and most talented researchers/scientists I have encountered. I am certain that if she remains in the United States, she will continue to make major contributions to medical research that will lead to benefits to the health care of the American public.

As with [REDACTED] anticipates that the beneficiary's contributions will become "vitally important," however, he does not identify any specific contribution of major significance that the beneficiary has currently made.

[REDACTED] states in his letter of February 19, 2004, that the beneficiary's "epidemiological studies are crucial to providing clues on appropriate interventions;" however, he provided no other information as to the crucial use of the beneficiary's studies in other research or treatment for stroke or stroke prevention. [REDACTED] states that the beneficiary's study into the use of statins in stroke patients "is an important investigation," but provides no evidence that the study itself is of major significance or has led to any significant breakthroughs in stroke research or treatment.

The petitioner also submitted a February 21, 2004 letter from [REDACTED] professor and chair of the department of neurology at the University of Ulsan, and co-author of papers with the beneficiary. [REDACTED] while praising the beneficiary as a "capable and intelligent person," does not state that she has made any contribution of major significance to the field. In a second letter dated March 21, 2004, [REDACTED] describes the beneficiary as a "world-class epidemiologist" who will "continue to make significant contributions in the field of stroke epidemiology." However [REDACTED] again did not state or identify any significant contributions by the beneficiary.

The petitioner submitted two letters written by [REDACTED] chief of the stroke branch, National Institute of Neurological Disorders and Stroke, National Institutes of Health (NIH). The first letter dated March 25, 2004, served as the petitioner's required consultation. [REDACTED] states that he knows the beneficiary from her professional publications as well as from her work in his branch of the NIH, and that he rates her among the top 5% of all researchers he has worked with or observed during his career. In his letter of March 25, 2004, Dr. [REDACTED]

Statins inhibit 3-Hydroxy-3methylglutaryl coenzyme A (HMG-CoA) reductase and are widely used for the treatment of hypercholesterolemia. [The beneficiary] reviewed over 400 patients records and analyzed data using SAS (Statistical Analysis System) to generate hypotheses. She discovered in her study that patients having pre-treatment with stains (lipid lowering drugs) have better outcomes. The research provided information that prescribing statins to patients soon after they have suffered a stroke will aid their recovery. This is a novel concept that is counterintuitive and has important implications for the clinical care of stroke patients. Her findings have been included in the top reviews in the field.

In his March 29, 2004 letter, [REDACTED] stated:

The unique insights and specialized abilities that [the beneficiary] has brought to the field of stroke epidemiology include a broad range of knowledge and techniques in statistical analysis (univariate, multivariate, and survival analysis) using SAS (Statistical Analysis System). The study that [the beneficiary] has been analyzing was able to deliver significant information on the use of statins and stroke outcome. [The beneficiary] has made significant accomplishments toward improving the outcome of stroke victims. Furthermore, [the beneficiary] is doing work in the area of stroke prevention and treatment, which is clearly in the national interest of this country.

Nonetheless, [REDACTED] does not indicate that the beneficiary has made a contribution of major significance to the field of stroke epidemiology, and can only hypothesize as to the ultimate significance of her findings of statins in the treatment of stroke patients.

The evidence does not establish that the beneficiary meets this criterion.

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

According to counsel's cover letter accompanying the petition, the beneficiary has published ten scholarly articles and presented five abstracts. Counsel also indicated that another article authored by the beneficiary had been accepted for publication and that she was working on two others.

The petitioner submitted evidence that seven articles authored or co-authored by the beneficiary had been published in journals such as the *British Journal of Medicine, Stroke, BMC Public Health, Cerebrovascular Diseases*, and *European Neurology*. The petitioner also submitted evidence that *BMC Medicine* accepted for publication an article describing the results of the beneficiary's study on the use of statins in stroke patients. Counsel asserts that these journals, particularly the *British Journal of Medicine, Stroke* and *European Neurology*, set high standards for publication and only publish those articles that are "seen as making a contribution to the advance of knowledge in the field." However, all published articles in professional journals are presumed to be of original work and designed to advance knowledge in the field. Further, while the petitioner submitted evidence that the beneficiary's work has been cited by others, as discussed above, the evidence does not establish that the citations to the beneficiary's work were more than acknowledgements that a particular study had been done.

In her curriculum vitae, the beneficiary stated that she also presented abstracts, oral or poster presentations of her work at two international congresses. The petitioner submitted evidence that the beneficiary had participated in sessions of the 4<sup>th</sup> World Stroke Congress in November 2000. However, the petitioner submitted no evidence of the beneficiary's presentations at any other assembly.

The petitioner's evidence reflects that the beneficiary has published seven scholarly articles; however, publication is expected in the research field. The petitioner's evidence does not establish that the beneficiary's publication of articles exceed that which is normally expected in her field of research or that her work is relied upon by others in her field of endeavor.

The petitioner has not demonstrated that the beneficiary's work has had a major impact on her field of endeavor. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

Although the petitioner did not allege that the beneficiary met the following two criteria, the director addressed them in her decision and the counsel responded to them in his brief. Therefore, we will address them on appeal.

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

In her decision, the director concluded that the evidence did not establish that the position of public health analyst was employment in a critical or essential capacity, as for example, if it was a position similar to that held by Dr. Hallenbeck.

On appeal, counsel does not dispute this finding but states:

The proffered position seems to have unduly influenced the officer's views, to the extent that h/she is making an unnecessary comparison to [REDACTED] who holds the position of Chief of Stroke Branch at the national institute of Neurological Disorders and Stroke (NINDS) of the National Institutes of Health (NIH). This is not the question herein.

Counsel appears to conclude that the director determined that the beneficiary must be seeking entry into the United States to fill a position of O-1 caliber. There is no indication in the decision that the director concluded that the position was required to be that of an O-1. It is clear from the decision that the director was merely applying the evidence to each criterion to determine if the petitioner established that the beneficiary met that particular criterion.

The evidence does not establish, and the petitioner does not allege, that the beneficiary meets 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 director also concluded that the proffered salary of approximately \$72,000 per year was not indicative of a "high salary" in the neurology field.

On appeal, counsel asserts that the closest occupation to public health analyst in the U.S. Department of Labor's *Occupational Outlook Handbook* is that of epidemiology, and that, according to the handbook, 50% of epidemiologists earned an annual salary between \$44,900 and \$66,510. Counsel further asserts that it is "clear from her salary of \$72,000 that [the beneficiary] is therefore in the upper echelons of salary in this field."

Assuming, *arguendo*, that counsel is correct about related occupations, the excerpt from the 2004-2005 edition of the *Occupational Outlook Handbook* submitted on appeal reflects that the top 10% of epidemiologists earn "more than \$85,930." This does not, then, indicate that the beneficiary's earnings will be among those who are at the very top of her field.

The evidence does not establish that the beneficiary meets 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 her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not 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.