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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: **SEP 03 2010**  
SRC 07 272 52573

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:  
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

*U. Deadrick*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant 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 sustained.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submits a brief and additional evidence. Not all of counsel's assertions are persuasive. Moreover, the reference letters in the record provide mostly general accolades and rely heavily on the claim that there exists a shortage in the petitioner's medical specialty, an issue under the jurisdiction of the Department of Labor. *New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998). Nevertheless, we are persuaded that the record of proceeding, including the documentation submitted on appeal, establishes the petitioner's eligibility for the classification sought.

## **I. Law**

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the following ten categories of evidence.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

*Id.* at 1119.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (recognizing the AAO's *de novo* authority).

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<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

## II. Analysis

### A. Evidentiary Criteria

The petitioner has submitted qualifying evidence that meets the plain language requirements of the regulatory categories of evidence discussed below.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The record reflects that the petitioner has refereed articles for the *New England Journal of Medicine*, *Transplantation* and *Alimentary Pharmacology and Therapeutics*. This evidence qualifies under the plain language requirements in the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

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

The petitioner submitted evidence that he has authored several published articles. Thus, he has submitted qualifying evidence that meets the plain language requirements set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The petitioner claims to have played a leading or critical role for the [REDACTED] Chief of the Division of Transplantation at [REDACTED] Medical Center, explains that the petitioner has served as the Medical Director of Liver Transplantation at the center since 2003. The record contains a letter from the United Network for Organ Sharing (UNOS) advising [REDACTED] that UNOS' Membership and Professional Standards Committee approved the center's proposal to make the petitioner the primary transplant physician for their liver transplant program; thus, the center remained in compliance with UNOS membership criteria. Thus, the petitioner's appointment to his position at [REDACTED] had to be approved by this national network in order for the center to remain in compliance.

On appeal, the petitioner submits a letter from [REDACTED] of UNOS, asserting that there are only 131 primary liver transplant physicians in the United States currently listed with UNOS. As such, we are persuaded that the petitioner serves a critical role for [REDACTED] Medical Center. The petitioner submitted evidence that the center is ranked 18<sup>th</sup> in the nation for digestive disorders by *U.S. News and World Report*. On appeal, [REDACTED] Department of Surgery at the University of California, San Francisco, asserts that [REDACTED] Medical Center "provides the highest level of clinical care to patients referred for liver transplantation" as evidenced by publicly available data for one and three year survival statistics on the Scientific

Registry of Transplant Recipients' website, [www.ustransplant.org](http://www.ustransplant.org). Thus, we are satisfied that the center, which is affiliated with the Harvard Medical School, enjoys a distinguished reputation.

Less significant but still notable, the petitioner has also served as a member of the Medical Advisory Steering Committee for the New England Division of the American Liver Foundation since 2002. [REDACTED] states that the petitioner has helped direct the division's staff to create an effective advocacy program. [REDACTED] concludes that the petitioner has "provided immeasurable benefit to this organization and to the patients who contact us." The petitioner submitted official materials for the division establishing that the petitioner is one of 12 members of the division's steering committee. We are satisfied that the petitioner's critical role for the division by serving on this committee constitutes relevant evidence under 8 C.F.R. § 204.5(h)(3)(viii).

In light of the above, the petitioner has submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

#### *Summary*

In light of the above, the petitioner has submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Next, we will review the evidence in the aggregate as part of our final merits determination.

#### ***B. Final Merits Determination***

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). See *Kazarian*, 596 F.3d at 1115.

[REDACTED] *New England Journal of Medicine*, explains that the journal is the most prestigious and highly rated medical journal in the world. [REDACTED] further asserts that the petitioner is one of 20 leading experts worldwide who reviews papers dealing with cirrhosis, liver failure and liver transplant. Thus, the petitioner has established that the journal relies on a small, exclusive panel of peer reviewers in the context of liver transplant. Less significant but still notable, [REDACTED]

[REDACTED] asserts that the petitioner's reviews are "consistently rated 4 out of 4 for their clarity, depth, and insight into the scientific papers submitted to our journal," placing him in the top five percent of reviewing ability for the journal. In addition, the petitioner's publication record is supported by evidence that, as of the date of filing, he had been consistently well cited, with a large number of total citations. Finally, regarding the petitioner's critical roles, while the petitioner did not submit evidence that the New England Division of the American Liver Foundation enjoys a *nationally* distinguished reputation, the petitioner did establish that [REDACTED] does enjoy a distinguished reputation at the national level. In light of the above, the evidence submitted under 8 C.F.R. § 204.5(h)(3)(iv), (vi) and

(viii) is consistent with national or international acclaim, the statutory standard in this matter. Section 203(b)(1)(A) of the Act.

### **III. Conclusion**

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has submitted evidence qualifying under three of the evidentiary criteria and established a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and "sustained national or international acclaim." His achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefit sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained and the petition is approved.