



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **FEB 22 2013**

Office: TEXAS SERVICE CENTER

FILE: [Redacted]

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, specifically as a researcher and statistician in the field of health science, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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. Counsel asserts that the director failed to consider all the evidence of record in support of the visa petition and that the petitioner established eligibility by submitting sufficient qualifying evidence under five of the ten regulatory categories and demonstrated that he is an alien with extraordinary ability. Considering the evidence in the aggregate, including the evidence submitted on appeal, the petitioner has established eligibility for the benefit sought by a preponderance of the evidence.

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 101st 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 ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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.¹ 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.* at 1121-22.

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)).

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 this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

¹ 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).

(b)(6)

II. ANALYSIS

A. Evidentiary Criteria

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. 8 C.F.R. § 204.5(h)(3)(iv).

The director determined that the petitioner met this criterion. Upon review of the evidence of the record and the director's decision, the AAO affirms the director's conclusion that the petitioner satisfied this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The director determined that the petitioner failed to satisfy the plain language requirements of this criterion. After a thorough review of the evidence of record, including the testimonial letters submitted along with the response to the director's Request for Evidence (RFE), the AAO determines that the petitioner submitted sufficient documentation establishing his original contributions of major significance in the field of health science. The documentation of record indicate several areas where his research and findings made an impact on national or international health policy. For instance, his research has consistently garnered frequent citation. More specifically, his original work as presented in his article, [REDACTED] received attention from the World Health Organization/Pan American Health Organization (WHO/PAHO) and the European Public Health Association (EUPHA); these international organizations either recommended or distributed the article to its member organizations. Another example of the petitioner's original contributions is his report finding that the death rate for women in British Columbia from heart disease is decreasing at a slower rate than for men. The Canadian Heart Health Strategy and Action Plan used the petitioner's findings as a starting point for solutions to improve women's heart health and a popular Canadian magazine on women's health interviewed the petitioner and included his findings as part of a feature article on women's heart disease. In addition, the record indicates that the Canadian government has used the petitioner's work on life expectancy as one of the major official references for research relating to that area. In light of the above and evidence of other original work not discussed here, the petitioner has satisfied the requirements of this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The director also determined that the petitioner satisfied the requirements of this criterion. The AAO, upon review of the submitted evidence and the director's decision concludes that the petitioner satisfied this criterion.

(b)(6)

B. Final Merits Determination

The petitioner has submitted relevant, probative evidence to satisfy the regulatory requirement of three types of evidence. Because the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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” 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)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20.

The petitioner is a researcher and statistician whose work has impacted health policy and initiatives nationally and internationally. Specifically, the [REDACTED] and the [REDACTED] recognized the importance of the petitioner’s work and some of his original findings have identified new areas of health concerns and follow-up research. The petitioner’s findings relating to women’s health and disparities in health outcomes resulted in interviews in a popular women’s health magazine and a radio program. The petitioner also has been invited to be a judge of the work of others, including the preparation of a 1,000 to 1,500-word book review over a period of three months, in light of his reputation and his publications. Not only has the petitioner authored scholarly articles, those articles are consistently frequently cited. In his current position, his employer, the [REDACTED], a national organization of health care professionals, hired him after a national and international search as a result of the petitioner’s well-established international acclaim in the area of health science research. According to Dr. [REDACTED], Senior Vice President of the [REDACTED] in light of the organization’s rising profile within the U.S. health care system, specifically sought an individual with the extensive experience and pre-existing working relationships to create and implement the national strategic research direction on behalf of the organization. While USCIS will not infer national or international acclaim from affiliation with national organizations, Dr. [REDACTED] claim is consistent with the remaining evidence.

While not all of the petitioner’s evidence carries the weight imputed to it by counsel, consistent with *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm’r. 1994), the AAO finds the evidence of record sufficient to establish that the petitioner has demonstrated his eligibility for the classification sought. Specifically, upon careful review of the record, it is concluded that the petitioner has demonstrated by a preponderance of the evidence that he is within the small percentage of individuals who have risen to the very top of the field of health science as a statistician and researcher. The evidence submitted indicates that the petitioner has sustained national or international acclaim and that his achievements have been recognized in the field of health science. As a result, the petitioner qualifies as an alien of extraordinary ability.

(b)(6)

Page 6

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

The petitioner has established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may be approved.

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.