



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **APR 10 2015**

Office: TEXAS SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary:



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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
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 petition will be approved.

The petitioner seeks classification for the beneficiary as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The beneficiary is a pediatric endocrinologist. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a brief. For the reasons discussed below, we are satisfied that the evidence, in the aggregate, adequately establishes the beneficiary's eligibility for the classification.

#### 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) sets forth a multi-part analysis. First, a petitioner can demonstrate the petitioner's sustained acclaim and the recognition of the petitioner's achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. See *Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). See also *Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9<sup>th</sup> Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

## II. ANALYSIS

### A. Evidentiary Criteria<sup>1</sup>

Upon review of the entire record, we find that the petitioner's submitted evidence, including evidence of the beneficiary's service as a manuscript reviewer for multiple journals, his authorship of chapters in several significant medical textbooks, and authorship of scholarly articles, meets three of the regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv), (v), and (vi). Accordingly, the petitioner has satisfied the initial evidentiary requirements necessary to qualify the beneficiary as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

### B. Summary

The petitioner has satisfied the antecedent regulatory requirement of three types of evidence.

### C. Final Merits Determination

**The** documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor. In accordance with the *Kazarian* opinion, we will conduct a final merits determination that considers all of the evidence in the context of whether or

<sup>1</sup> We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

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 1119-20. For the reasons discussed below, we conclude that the petitioner has made such a showing. Accordingly, the appeal will be sustained.

The beneficiary has risen to work in the number one ranked specialized endocrinology program in the country at [REDACTED] in addition to serving as an instructor at the number two ranked post-graduate pediatrics program at [REDACTED]. He has produced numerous chapters in textbooks that provide his field with a greater understanding of the complexities related to regulating water balance in the body and fluid management disorders. The Associate Chief and Clinical Director of the nation's highest rated endocrinology program penned a support letter extolling the beneficiary as "one of the top physicians" in his field. He also indicated the chapters that the beneficiary authored are the "definitive reference around the world" for trainees and experienced practitioners, and that there are only a handful of physicians around the world that can match the beneficiary's knowledge and experience in managing and preventing childhood obesity and type II diabetes. The submitted evidence in the aggregate, including evidence not mentioned herein, is sufficient to demonstrate the beneficiary's sustained national or international acclaim in the sciences and that his achievements have been recognized in his field of expertise. Moreover, the submitted documentation shows that the beneficiary is among that small percentage who have risen to the very top of the field of endeavor.

### III. CONCLUSION

We are persuaded that the evidence is sufficient to establish that the beneficiary has demonstrated his eligibility for the classification sought. Specifically, upon careful review of the record, we conclude that the petitioner has demonstrated by a preponderance of the evidence that the beneficiary is within the small percentage of individuals who have risen to the very top of his field. The evidence submitted establishes that the beneficiary has sustained national or international acclaim, his achievements have been recognized in his field, he seeks to continue working in the same field and his entry will substantially benefit prospectively the United States.

In visa petition proceedings, it is the petitioner's burden to establish the beneficiary's eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

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