



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF H-J-L-

DATE: DEC. 16, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a researcher, designer and developer of instructional technology, seeks classification as an individual of "extraordinary ability." *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A); 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals who can demonstrate extraordinary ability through sustained national or international acclaim and achievements that have been recognized in the area of expertise through extensive documentation. The Director determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitate proof of a one-time achievement or evidence that meets at least three of ten regulatory criteria. On appeal, the Petitioner submits a brief as well as copies of previously provided materials.

I. LAW

Subparagraph (A) of section 203(b)(1) of the Act makes an immigrant visa available to a non-citizen:

- (i) [who] 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) [who] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) [whose] entry into the United States will substantially benefit prospectively the United States.

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. 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 sustained acclaim

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and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the Petitioner does not submit this evidence, then she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th 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 our proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that U.S. Citizenship and Immigration Services (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

The issue at hand is whether the Petitioner has demonstrated extraordinary ability. She does not list or document a one-time achievement (that is, a major, internationally recognized award), but maintains that she has provided evidence that satisfies three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Below we address the criteria claimed by the Petitioner.

A. Evidentiary Criteria¹

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 Director found the Petitioner satisfied this criterion. The Petitioner provided evidence that she has peer-reviewed articles for the [REDACTED]

[REDACTED] We therefore agree that the Petitioner has met the plain language of this criterion.

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

The Director found the Petitioner did not meet this criterion. He acknowledged submission of a letter of support from Professor [REDACTED] an associate professor at the [REDACTED] [REDACTED] citations to the Petitioner’s articles; and her role as a panelist,

¹ 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.

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keynote speaker, and session chair. However, the Director ultimately concluded that the evidence did not demonstrate contributions of major significance in the field. After reviewing the record in its totality, we agree that the Petitioner has not satisfied this criterion.

The regulation requires a showing not only that the Petitioner's contributions are original, but also that they are of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). As noted by the Petitioner on appeal, in making this assessment, we evaluate whether the Petitioner has met the preponderance of the evidence standard, which requires she demonstrate that the issue in question is "probably true." *Chawathe*, 25 I&N Dec. at 376.

On appeal, the Petitioner refers to eighteen articles she authored as proof of the significance of her contributions to the field. In earlier submissions, the Petitioner claimed 97 total citations to these articles, of which 87 are independent. She provided the [REDACTED] citation print-out showing that her three most-cited articles had 41, 17, and 8 citations respectively. The Petitioner notes on appeal that recent changes to the USCIS Adjudicator's Field Manual provide the following guidance on how to consider scholarly publications when assessing contributions of major significance:

For example, peer-reviewed presentations at academic symposia or peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the alien's work as authoritative in the field, may be probative of the significance of the alien's contributions to the field of endeavor.

USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 8* (Dec. 22, 2010), <http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>. We agree that a researcher's citation record is probative and evaluate the Petitioner's citations below.

The Petitioner relies on her total number of citations in the aggregate. More probative of a wide influence is the number of citations for an individual article. The record does not contain evidence to place the number and content of the citations in the context of other contributions of major significance in the Petitioner's field. For example, the Petitioner did not provide statistics on citations in her field or an example of how other authors have cited her work such that the level of influence is apparent.

The Petitioner also submitted certificates of publishing for two books: [REDACTED] published in 2008, and [REDACTED] published in 2014. The Petitioner cited the books' respective circulations of 2,000 and 4,000 as evidence of their impact. These quantities appear to be the number of volumes in the initial run of publication. The Petitioner does not provide any further information regarding the

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use or dissemination of these works. As a result, their publication does not demonstrate their significance for the field at large.

The record contains additional evidence that the Petitioner has been successful in her field. She has peer-reviewed numerous articles for several different academic journals. She received funding as the principal investigator for grants in 2008-09. She has served as the Editor-in-Chief for the [REDACTED] [REDACTED] from [REDACTED]. While these engagements show the Petitioner is active, they do not themselves constitute contributions of major significance, and the Petitioner does not explain how they have impacted the field as a whole or are otherwise indicative of someone who has made such a contribution.

Lastly, the Petitioner provided the letter of recommendation from [REDACTED] who stated that she first noted the Petitioner's work in 2012 while attending a conference.² She described the Petitioner's accomplishments as follows:

Major findings included that the students in a [REDACTED] rated their receptive learning ability higher than their critical and creative learning abilities. To me, the most interesting finding of her research was that while U.S. students' perceptions of their critical learning abilities increased significantly over the years, Korean students' perceptions changed relatively little over time. I think that [the Petitioner's] research contributed to the field of education by providing insights in terms of the impact of culture, epistemological belief, and instruction on critical and creative learning in higher education.

[REDACTED] did not further explain how these findings add to the body of knowledge already in existence, or why they are significant in the field. While [REDACTED] credited her improved course evaluations to consultations with the Petitioner, this assistance does not rise to the level of a contribution of major significance to the Petitioner's field. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). [REDACTED] explained the Petitioner's development of distinct conceptualizations for education and her expertise in integrating technology through the use of "scaffolding" and other teaching strategies for online distance education. [REDACTED] did not, however, explain how these conceptualizations and strategies have already impacted distance learning. Letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *See Kazarian v. USCIS*,

² [REDACTED] included a section entitled "[The Petitioner's] Potential and the U.S. National Interest." While section 203(b)(2) of the Act allows USCIS to waive the labor certification process in the national interest for advanced degree professionals and foreign national with exceptional ability, that is not the benefit the Petitioner seeks with this petition.

580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).³ For these reasons, the evidence provided by the Petitioner does not meet the plain language requirements of this criterion.

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

The Director found the Petitioner satisfied this criterion. The Petitioner authored eighteen scholarly articles published in academic journals. We therefore agree that she has met the plain language of this criterion.

B. Summary

As indicated above, the Petitioner has satisfied only two of the regulatory criteria. As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must establish that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the submissions 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 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), (3); *see also Kazarian v. USCIS*, 596 F.3d at 1119-20. Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not shown she enjoys the level of expertise required for the classification sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. § 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has not met that burden.

³ In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

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ORDER: The appeal is dismissed.

Cite as *Matter of H-J-L-*, ID# 14855 (AAO Dec. 16, 2015)