



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

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

MATTER OF E-C-

DATE: AUG. 1, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a human resources assistant, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those 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 Director, Nebraska Service Center, denied the petition. The Director concluded that the Petitioner did not meet any of the regulatory criteria, of which a Petitioner must satisfy at least three. The Director dismissed a subsequent motion stating that the Petitioner had not met the requirements of a motion to reopen or a motion to reconsider.

The matter is now before us on appeal. The Petitioner submits a brief which states that “the examining officer reached the incorrect conclusion.”

Upon *de novo* review, we will dismiss the appeal.

I. LAW

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

(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,

- (i) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (ii) the alien's 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 implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim 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 he or 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) (including items such as awards, published material in certain media, and scholarly articles).

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 documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also; Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011); *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 U.S. Citizenship and Immigration Services (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

On appeal, the Petitioner argues that her Form I-485, Application to Register Permanent Residence or Adjust Status, should not have been denied. The AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status under section 245(a) of the Act. 8 C.F.R. § 245.2(a)(5)(ii). Further, as stated by the Director in his decision, "USCIS regulations do not provide for an appeal to this decision." Therefore, we will limit our discussion to the requested classification.

The Petitioner contends that she qualifies as an individual of extraordinary ability based on her work in the human resources department of an international agricultural organization. The Petitioner did not indicate, and the record does not establish, that she has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3). Therefore, she must demonstrate her eligibility under at least three criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria¹

As previously stated, the Director determined that the Petitioner did not meet any of the evidentiary criteria. Specifically, the Director found that, contrary to statements in counsel's cover letter, the Petitioner did not submit materials regarding the criteria relating to membership or judging. 8 C.F.R. § 204.5(h)(3)(ii) and (iv).

The Director also discussed the Petitioner's documentation under the criteria regarding original contributions, leading or critical role, and high salary and concluded that the submitted evidence was insufficient. 8 C.F.R. § 204.5(h)(3)(v), (viii), and (ix). The Director found that the submitted reference letters discussed "her work ethic, wages and personal attributes," but did not "give any examples of how the beneficiary has made what could be considered an original contribution of major significance" or attest that her role was leading or critical, and that documentation of her salary was not sufficient to establish a high salary in relation to others. On appeal, the Petitioner does not contest any of the Director's findings or offer additional arguments. Upon review of the record, we affirm the Director's findings. The remaining two claimed criteria are discussed below.

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.

Although the Director concluded that the submitted evidence under this criterion did not mention the Petitioner's name, the record does include a copy of two company newsletters which thank her for "arranging course logistics" for its new employee orientation.

Generally, in order for published material to meet this criterion, it must be about the Petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. A company newsletter is not published material consistent with the plain language of the regulation as it is not independent, journalistic coverage, nor is it a professional or major trade publication or other major media. Accordingly, the Petitioner has not satisfied this criterion.

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

The Petitioner, through counsel, stated in the initial filing that she "has a global reputation with cited publications on diversified topics in teaching, development and economic impact, and dissemination of agricultural technology and information." The Petitioner submitted multiple articles, but the

¹ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

Director stated that the Petitioner did not author any of the submitted material, nor did she provide any evidence of citations.

A review of the record indicates that, while the Director is correct regarding the initial evidence submitted, the Petitioner is listed as the author of a short piece in her former employer's newsletter regarding a new employee orientation. Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this instance, there is no documentary evidence demonstrating that the Petitioner's work was peer-reviewed, contains any references to sources, or was otherwise considered "scholarly." In addition, the Petitioner has not established how a company newsletter is a professional or major trade publication or other major media, as required by the regulation. Therefore, we find the evidence insufficient to meet this criterion.

III. CONCLUSION

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings 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 individual "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*, 596 F.3d at 1119-20 (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). 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 established 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. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of E-C-*, ID# 17454 (AAO Aug. 1, 2016)