



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

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

MATTER OF J-Z-

DATE: NOV. 14, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a college lecturer in accounting and business management with a significant publication history, seeks classification as an individual of extraordinary ability in business. *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 of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied at least three of the regulatory criteria as required.

The matter is now before us on appeal. In his appeal, the Petitioner submits additional evidence and maintains that the Director erred by misapplying factors for one criterion to a different criterion.

Upon *de novo* review, we will sustain 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,
- (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.

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) *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

II. ANALYSIS

At the time of filing, the Petitioner was a lecturer in the accounting department of [REDACTED] having completed his postdoctoral research at [REDACTED] in [REDACTED]. He received his Ph.D. in accounting from [REDACTED]. The record includes reference letters, evidence of participation as a peer-reviewer of manuscripts and grant applications, several published articles, citation records, and confirmation of his duties for the [REDACTED].

The Director accepted that the Petitioner met two criteria as a judge of the work of others and author of published material. 8 C.F.R. § 204.5(h)(3)(iv), (vi). The Director denied the petition after concluding that the Petitioner did not satisfy a third criterion. Specifically, the Director found that the Petitioner had not demonstrated that his roles for [REDACTED] were leading or critical. 8 C.F.R. § 204.5(h)(3)(viii). Within that discussion, the Director referenced factors for the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v). On appeal, the Petitioner notes that he never addressed the

contributions criterion and maintains that the Director erred by using the factors from that criterion to evaluate the nature of the Petitioner's role for [REDACTED]

A. Evidentiary Criteria

As the Petitioner has served as a peer-reviewer for manuscripts and grants and has authored several scholarly articles, the record supports the Director's conclusion that the Petitioner meets the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi). At issue, then, is whether he has satisfied a third criterion. The Petitioner maintains on appeal that he also meets the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), and the record supports that conclusion.

The Petitioner served as a member of [REDACTED] and one of the institute's research foundation directors. The record contains letters from another research foundation director, [REDACTED] and from [REDACTED] president and chief executive officer of [REDACTED] discussing the Petitioner's role with the institute.¹

In his letter, [REDACTED] explains that the [REDACTED] "carries [out] the most important mission of [REDACTED] i.e., supporting timely research in accounting and financial management subjects." [REDACTED] official materials, in the [REDACTED] section, list research first on its list of how it supports the accounting profession. According to this item, [REDACTED] was the first organization established to conduct research for the management accounting profession and has funded more than 500 researchers who have produced more than 250 studies. As a director, the Petitioner reviewed research proposals for funding approval. Given this information, it is apparent that research is a major part of [REDACTED] mission, and the Petitioner has played a critical role towards that pursuit. In addition, [REDACTED] confirms that the Petitioner contributed to the development of a plan for the promotion of its initiatives at various forums, and the translation of its products into Chinese.

With respect to the [REDACTED] elaborates that while a member, the Petitioner helped to create new college and university relationships and reinforced existing ones. The goal of these relationships is to promote and enhance [REDACTED] and its [REDACTED] credential. [REDACTED] affirms that as a committee member, the Petitioner reviewed "university management accounting programs that sought certification by [REDACTED]. Overall, [REDACTED] characterizes the Petitioner's contributions to [REDACTED] as "invaluable."²

[REDACTED] founded in [REDACTED] is a worldwide association with more than 75,000 members and more than 300 professional and student chapters. It has certified more than 20,000 [REDACTED] who are currently active. According to [REDACTED] materials, their certification is the leading management accounting

¹ While the Director questioned the sufficiency of letters under this criterion, the regulation at 8 C.F.R. § 204.5(g)(1) indicates that letters from employers are appropriate evidence of experience.

² [REDACTED] issued the Petitioner a certificate in Recognition of Outstanding Service as a committee member, but did not document the selection criteria or significance of this recognition. Nevertheless, the fact that [REDACTED] recognized the Petitioner in some capacity is consistent with [REDACTED] statement that they value his service to them.

credential in the world and the only one prominent in both of the world's two largest economies, the United States and China. Other documentation in the record reflects that the [REDACTED] is earned after the candidate completes a four-part exam and two years of continuous experience, and that a [REDACTED] designation enhances earning power. The record in the aggregate establishes by a preponderance of the evidence that the Petitioner has served a critical role for [REDACTED] which enjoys a distinguished reputation. Accordingly, the Petitioner has met a third criterion.

B. Final Merits Determination

In the final merits determination, we consider the totality of the record to determine if a petitioner has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim, and that his achievements have been recognized in the field through extensive documentation,³ making him one of the small percentage who has risen to the very top of the field of endeavor. If so, a petitioner has met the requisite burden of proof and established eligibility for visa classification as an individual of "extraordinary ability." See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.

The Petitioner has reviewed manuscripts for multiple journals and annual meetings, and was invited to serve as a discussant of another researcher's presented paper at a conference. He also reviewed grant proposals for [REDACTED] as one of a limited number of research foundation directors that the [REDACTED] credits in their promotional materials. These duties in the aggregate are consistent with a finding that the field recognizes his achievements.

As stated above, the Petitioner has authored scholarly articles. Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, however, we will consider the field's response to these articles in our final merits determination.⁴ In assessing the level of the Petitioner's contributions in the field,⁵ the Director noted that citations can serve as an objective gauge in determining an author's influence. The Director did not acknowledge, however, that the record contains evidence that the Petitioner has been widely cited in China. Specifically, the Petitioner presented a certified translation of results from a search on the [REDACTED] journal database. These results show two of the Petitioner's articles have been cited 50 or more times. The Petitioner also provided examples of citations in English-language journals. These citations go beyond merely footnoting the

³ While the statute requires extensive documentation, eligibility is to be determined not by the quantity of the filings alone but by their quality. *Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). We "examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence." *Id.*

⁴ In a request for evidence, the Director stated that authorship of scholarly articles alone is insufficient to meet the criterion at 8 C.F.R. § 204.5(h)(3)(vi); the Petitioner must also demonstrate the impact of those articles. USCIS, however, may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir.2008). As the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(vi) does not include the impact of the Petitioner's articles as a factor, it is relevant only in the final merits determination.

⁵ The Director did not explain why contributions of major significance are relevant to the leading or critical role criterion under which he included this analysis.

(b)(6)

Matter of J-Z-

Petitioner's work; they credit one of the Petitioner's articles as the sole authority for the proposition that an [REDACTED] system reduces information asymmetry. [REDACTED]

[REDACTED] chair of the accounting department at the [REDACTED] explains that the Petitioner's published work has "been widely referenced by many scholars in the field of corporate governance and by numerous company administrators in China." [REDACTED] continues that these articles have inspired many Chinese companies to implement [REDACTED] systems. The number of Chinese citations supports this letter. Accordingly, for all of the above reasons in the aggregate, his publication record is harmonious with recognition in the field.

Finally, [REDACTED] is a worldwide association with chapters and offices in multiple countries. The members of the Committee on Academic Relations and the research foundation directors are from around the world. [REDACTED] names the Petitioner as one of its limited number of members and directors, affording him name recognition. These factors are indicative of sustained national or international acclaim. For all of the above reasons, the evidence in the aggregate demonstrates that the Petitioner is an individual of extraordinary ability.

III. CONCLUSION

The Petitioner submitted the requisite initial evidence and established his extraordinary ability when considered in a final merits decision. Section 203(b)(1)(A)(i) of the Act. By demonstrating that he seeks to continue to work in his area of extraordinary ability, and there being no indication otherwise, we are satisfied that the Petitioner's entry will substantially benefit prospectively the United States. Section 203(b)(1)(A)(iii) of the Act. Therefore, the Petitioner has met his burden of proof. Sections 203(b)(1)(A), 291 of the Act.

ORDER: The appeal is sustained.

Cite as *Matter of J-Z-*, ID# 80634 (AAO Nov. 14, 2016)