



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF Z-L-

DATE: MAY 15, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a historian, seeks classification as an alien 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 of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had a one-time achievement or met at least three of the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i0-(x).

On appeal, the Petitioner resubmits evidence previously submitted and asserts that he meets three of the evidentiary criteria, and that he has sustained national or international acclaim and is one of that very small percentage of individuals at the top of his field of endeavor.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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 that 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

The Petitioner is a historian, focusing on the field of Chinese history. Because he has not claimed to have received a major, internationally recognized award, he must satisfy at least three of the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner did not meet any of the criteria.

On appeal, the Petitioner asserts that he meets the plain language requirements of three criteria: published material about him in professional or major trade organizations or other major media, original scholarly contributions of major significance to the field of Chinese history, and authorship of scholarly articles in the field. We have reviewed all of the evidence in the record, and do not find that it establishes at least three of the criteria.

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. 8 C.F.R. § 204.5(h)(3)(iii)

In his decision, the Director found several deficiencies in the evidence submitted under this criterion, including improperly certified translations, the lack of “attribution” for some of the evidence that was stated to have come from websites, that some of the evidence was not about the Petitioner, and that the circulation figures provided were self-promotional. On appeal, the Petitioner has

resubmitted some of this evidence and challenged the Director's characterization of it. While he provides separate translation certifications for the foreign language documents, most of the evidence submitted on appeal manifests the same problems noted by the Director regarding the unclear origin of the source material.

However, on appeal, the Petitioner has provided two articles that satisfy the requirements of this criterion: one from September 2015, which discusses the Petitioner's career and background, and one from May 2017, describing a talk given by the Petitioner. Accompanying evidence establishes that they were published on the websites of major media. Based only on these materials, we reverse the Director's decision and find that the Petitioner has established that he meets 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 found that the claims regarding the Petitioner's impact upon the field of Chinese history, made in several support letters submitted with the original submission and in response to the request for evidence, were not supported by documentary evidence in the record. On appeal, the Petitioner focuses solely upon five letters written by his fellow Chinese history scholars which were previously submitted.

_____ of the _____ writes that the Petitioner was recommended to him for participation in a research project, and that in his books, the Petitioner has "developed a unique method of comparative constitutionalism" that he has used to provide "fresh insight to China's historical failure in constitutional transformation." _____ concludes that the Petitioner "is an original thinker" and that his writing "exhibits a level of freshness and accessibility which explains his popularity in the younger readers." _____ of the _____ writes that "[A]lthough _____ ideas (on _____ have not yet been generally approved by the mainstream academic community in the official context, they have been widely spread, discussed and accepted among the intellectual elites." In addition, he notes that the Petitioner's "theory of nation building has far-reaching theoretical value." _____ a Chinese writer living in the United States, states that the Petitioner's publications have challenged the common concept of China as a unified nation, and that his "works are popular among young Chinese readers and Internet citizens." Two additional letters also generally support the originality of the Petitioner's approach to Chinese history and the discussion it has initiated among younger academics in China.

Although the letters describe an academic discourse around the Petitioner's work, they do not identify specific ways in which the Petitioner's original contributions have been of major significance to the field. _____ describes the Petitioner's work as "not generally accepted by the mainstream academic community," and having "far-reaching theoretical value." The prospective value of the his work does not meet the plain language of the criterion, which requires the Petitioner to have already made a significant impact on the field. Similarly, _____ and _____ both

describe the Petitioner's popularity amongst younger readers, but do not explain what effect this has had on the field of Chinese history. The Petitioner has not established that he has met 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)

In his decision, the Director found that the submitted evidence lacked the proper translation certification, and that some of the documents submitted were illegible or lacked attribution. On appeal, the Petitioner has corrected these deficiencies, and the evidence establishes that four of his books published by [REDACTED] meet the requirements of this criterion.

III. CONCLUSION

The evidence does not establish that the Petitioner received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in its entirety, and conclude that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. For these reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of Z-L-*, ID# 1181832 (AAO May 15, 2018)