



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

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

MATTER OF C-H-R-F-, INC.

DATE: OCT. 1, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a nonprofit organization, seeks to classify the Beneficiary as an individual of extraordinary ability in the sciences as an interventional radiologist. *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 on behalf of the Beneficiary makes visas available to foreign nationals 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 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 documentation that meets at least three of the ten regulatory criteria. On appeal, the Petitioner submits a brief and resubmits materials it provided in the proceedings before the Director. For the reasons discussed below, we agree that the Petitioner has not established the Beneficiary's eligibility for the classification sought. Specifically, the Petitioner has not shown that the Beneficiary is one of the small percentage at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the Petitioner's appeal.

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,

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

Satisfying 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

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 determined the Petitioner satisfied the requirements of this criterion. The Petitioner has submitted sufficient evidence, including documentation of the Beneficiary's peer review duties for the [REDACTED] to establish that he meets this criterion.

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.

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

The Director determined the Beneficiary met the requirements of this criterion. The evidence includes several of the Beneficiary's scholarly articles published in journals, such as the *Journal of Magnetic Resonance Imaging*. This authorship establishes that the Beneficiary meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The Director determined that the Petitioner did not satisfy the requirements of this criterion. On appeal, the Petitioner asserts that it must only show that the Beneficiary's salary is high in relation to others in the field, not among the best in the field. The Petitioner explains that it did not provide comparable wages for interventional radiologists specifically because the source upon which it relied for comparable salaries does not provide those salaries. A review of the record of proceeding reflects that the Petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion and the Director's determination on this issue is hereby withdrawn. The Petitioner demonstrated that the Beneficiary's salary is high in relation to others in the wider field of medicine.

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 reflect that the beneficiary 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 therefore conduct a final merits determination that considers all of the evidence 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[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 not made such a showing. Accordingly, the appeal must be dismissed.

With regard to his participation as a judge of the work of others, the Petitioner documented a single instance of peer review for one publication. The nature of the Beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of his national or international acclaim. *See Kazarian*, 596 F.3d at 1122. Peer review is a routine element of the process by which peer-reviewed journals select articles for publication. Participating in the peer review process on a single occasion does not, by its nature, demonstrate that an individual has sustained national or international acclaim at the very top of his field.

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The Petitioner did not satisfy the plain language requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(v), which requires contributions of major significance in the field. The plain language of that phrase requires an impact beyond one's employer and clients, customers or patients. See *Visinscaia*, 4 F. Supp. 3d at 134-35 (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). The support letters, however, generally discussed the Beneficiary's success with his own patients and the potential for a wider use of his techniques rather than discussing how his work has impacted the field. For example, [REDACTED], a staff physician at [REDACTED] affirmed that the hospital "has seen encouraging results in the patients he has treated." Regardless, in the context of the final merits determination, the evidence the Petitioner submitted to meet that criterion is not indicative of or consistent with national or international acclaim.

[REDACTED], Chief of Radiology at [REDACTED] asserted that the Beneficiary's "groundbreaking research and proposals will enormously help treat [arteriovenous malformation and aneurysmal bone cysts] using a more a [sic] feasible and minimally invasive technique." [REDACTED], a senior associate in surgery at [REDACTED] explained that he "anticipate[s] most pediatric centers will be using variations on his technique over the next few years," but does not identify a center that is currently doing so. [REDACTED] Program Director, [REDACTED] at the [REDACTED] affirmed that the Beneficiary's alternative techniques "have the potential to reduce hospital stay and the overall cost in treatment of some cancers." These statements do not suggest that the Beneficiary is nationally or internationally recognized for his contributions in the field.

With respect to the Beneficiary's five articles, the Petitioner relies on the Beneficiary's citation record in the aggregate and the fact that a journal, while not citing to his work, listed one of his articles as "suggested reading." While not all physicians publish scholarly articles, the Petitioner has not shown that the dissemination of these five articles, which consist of four case reports and one retrospective analysis, is indicative of the Beneficiary's acclaim in the field. Only one of the journals that published the Beneficiary's articles is ranked within the top ten journals in the field and the article in that journal was a case report.

Regardless, more probative to whether the Beneficiary's publication record is consistent with national or international acclaim is the field's response to those articles. *Kazarian*, 596 F.3d at 1122. Even in the aggregate, the 10 citations to the Beneficiary's work are not of a level of impact in the field commensurate with sustained national or international acclaim. While one journal listed the Beneficiary's article as "suggested reading," at issue is the ultimate impact of the findings in that article. It remains that this article had only garnered two citations as of the date of the Petitioner's response to the RFE, which does not demonstrate that the Beneficiary has attained the status as one of that small percentage who have risen to the very top of their field of endeavor.

The Petitioner did not submit evidence demonstrating that the Beneficiary's role for the Petitioner met the plain language requirements of the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner relies on the Beneficiary's title at [REDACTED] as the Director of Clinical Operations for his division, [REDACTED]. The distinguished reputation of [REDACTED] and the

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██████████ are not in question. The Director concluded, however, that the Beneficiary's role was not leading due to administrative duties and that the Beneficiary did not function in a critical and essential capacity for ██████² The Petitioner correctly notes on appeal that the plain language of the criterion does not exclude a role with administrative duties. Nevertheless, the actual duties do not reflect a leading or critical role and the Beneficiary's selection for and performance in this role is not indicative of or consistent with national or international acclaim.

The initial evidence included a July 31, 2013 letter from ████████████████████, Radiologist-in-Chief and Chair of the ████████████████████. In this letter, ████████████████████ thanked the Beneficiary for his willingness to serve as the Director of Clinical Operations for ████████████████████ and this role is the Petitioner's focus on appeal. In this position, the Beneficiary would coordinate the division physician schedule with other staff, serve as the point person for operational questions from technical, nursing, and scheduling employees and attend operational meetings.

In response to the Director's RFE, the Petitioner submitted a June 30, 2014 letter from ████████████████████ Division Chief of ████████████████████, confirming that the Beneficiary performed in a leading and critical role for ██████ as the Director of Clinical Operations for ████████████████████. ████████████████████ characterized the role as an essential leadership position, critical to the smooth running of the division. Without an organizational chart or other evidence documenting how the Beneficiary's former position fits within the general ██████ hierarchy, the Petitioner has not established that the Beneficiary performed in a leading role. For example, the record does not reflect how many directors each division has and to whom they report. With respect to a critical role, we look at the Beneficiary's performance in the role. Further, in the context of the final merits determination, the position must be of such significance that the Beneficiary's selection for or performance in the position, in and of itself, is indicative of or consistent with national or international acclaim. Ultimately, the Petitioner has not shown that the Beneficiary's division scheduling responsibilities during the two and half months he had held this position as of the date of filing, or even during the year he was in this position, was critical to the hospital's success. For example, while scheduling is a necessary duty that someone must perform, the references do not suggest that the Petitioner selected the Beneficiary for this position based on his recognition in the field or that he improved scheduling during his time in this position such that ██████ improved its overall services to a significant degree.

The Petitioner documented that the Beneficiary's salary is high compared to physicians and surgeons in general. As the Beneficiary is an interventional radiologist, including the data for all other physicians, which is not an appropriate comparison for the final merits determination. Specifically, the Petitioner submitted materials from the Foreign Labor Certification (FLC) Data Center's Online Wage Library. This library relies on the Bureau of Labor Statistics (BLS) Occupational Employment Statistics (OES) wage estimates. The BLS and OES employment data are benchmarked to average employment levels. The evidence the Petitioner submitted relates to

² As noted by the Petitioner on appeal, the Director's RFE suggested a critical role must be critical "to the existence or to the success" of ██████. That language, however, does not appear in the Director's final decision.

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“Physicians and Surgeons, All Other” in the locale of the [REDACTED]. The FLC library does not provide salaries for those specifically practicing radiology or for interventional radiologists.

On appeal, the Petitioner asserts that FLC does not provide wage information specific to interventional radiologists, but does not suggest that these wages are not available from another source.³ The petitioner must show the high-end earnings nationally of those in his occupation performing similar work at the top level of the field. *Matter of Price*, 20 I&N Dec. 953, 955 (Assoc. Comm’r 1994); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). In his June 2014 letter, [REDACTED] indicated that the Petitioner offers a \$90,000 differential to all interventional radiologists and, that among interventional radiologists at academic institutions with the same experience as the Beneficiary (approximately two years), the Beneficiary is among those in the top tier. Receipt of a differential paid to every individual in his occupation and a high salary among those fairly new to his occupation are not achievements that place him among those near the top of his field. As the Petitioner has not demonstrated that his salary is high when compared with other interventional radiologists nationally, he has not established that his remuneration level is among that small percentage who have risen to the very top of their field of endeavor.

Finally, considering the full measure of the Beneficiary’s ability and achievements, the level of his national or international acclaim, and the extent to which his achievements have been recognized in the field are not indicative of a record of sustained acclaim. While not determinative, we note that [REDACTED] judging experience includes peer review for four journals and service on the Editorial Board of the [REDACTED] his roles for [REDACTED] include Director of [REDACTED] Division Chief, [REDACTED] and Co-Director of the [REDACTED] and he has authored at least 39 articles. Ultimately, the Petitioner has not submitted extensive documentation exhibiting that he has attained a level of expertise placing him among that small percentage who have risen to the very top of the field of endeavor.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must demonstrate that the Petitioner has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

The record in the aggregate, however, does not reflect that the Beneficiary has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be

³ Media reports on physician incomes reveal that those practicing in the same area as the Beneficiary receive markedly higher salaries than the Beneficiary. *See* <http://work.chron.com/much-interventional-radiologists-make-6769.html>, accessed on September 28, 2015, and incorporated into the record of proceeding.

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within the small percentage at the very top of his field. The evidence is not persuasive that the Beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the Petitioner has not established the Beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C-H-R-F-, Inc.*, ID# 12716 (AAO Oct. 1, 2015)