



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

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

MATTER OF S-K-

DATE: APR. 20, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a cardiothoracic surgeon and clinical instructor, seeks classification as an “alien of extraordinary ability” in the sciences. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This classification 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, Nebraska Service Center, denied the petition. The Director determined that the Petitioner had satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), but had not demonstrated sustained national or international acclaim at the very top of his field. In his appeal, the Petitioner submits additional evidence, and argues that the Director erred in concluding the Petitioner was not an individual of extraordinary ability. Upon *de novo review*, we will sustain the appeal.

I. LAW

By statute, the extraordinary ability immigrant visa classification requires that foreign nationals demonstrate sustained national or international acclaim and present extensive documentation of their achievements. Specifically, section 203(b)(1)(A) of the Act explains that a foreign national is described as an individual 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.

(b)(6)

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The implementing regulation defines the term “extraordinary ability” as referring only to those individuals in that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). To meet this definition, 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 his 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 he 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).

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 Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming U.S. Citizenship and Immigration Services’ (USCIS) 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 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 Criteria

At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was working in the Department of Thoracic and Cardiovascular Surgery at the [REDACTED] and serving as a member of the Faculty of Medicine at [REDACTED]. The Director determined that the Petitioner had met three of the regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Specifically, the Director found that the Petitioner provided evidence of his participation as a judge of the work of others, authorship of scholarly articles in professional journals, and performance of a leading or critical role for distinguished organizations. 8 C.F.R. § 204.5(h)(3)(iv), (vi), and (viii). The record supports the Director’s findings.

### B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will conduct a final merits determination that considers the entire record in the context of whether or not the Petitioner has demonstrated: (1) that he enjoys a level of expertise indicating that he is one of a small percentage who has risen to the very top of the field of endeavor, and (2) that he has sustained national or international acclaim and that his achievements have been recognized in the field of expertise. Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Based on the filings and consistent with *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm’r 1994), the Petitioner has made the requisite showing.

(b)(6)

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The Petitioner submitted evidence showing that he served as a peer reviewer of a substantial number of articles for multiple journals such as [REDACTED]

[REDACTED] The Petitioner also provided documentation indicating that he has been an invited session moderator expert at the [REDACTED] Annual Meeting and the [REDACTED] Annual Meeting. Furthermore, the Petitioner has authored more than eighty articles in distinguished journals, conference proceedings, and textbooks, and provided copies of articles that favorably cite to his work. *See Kazarian*, 596 F.3d at 1121 (citations may be relevant to the final merits determination of whether an individual is at the very top of the field).

In addition, the Petitioner has performed in critical roles for distinguished institutions. For example, the Petitioner provided documentation showing that he was responsible for organ procurement for heart and lung transplantation at the [REDACTED] Surgical Director for Heart Failure, Department of Thoracic and Cardiovascular Surgery, [REDACTED] stated that the Petitioner “has been an integral part of our ‘Organ Procurement Team’ and has successfully contributed to the Heart Transplantation program at the [REDACTED] Further, a series of articles in [REDACTED] about the [REDACTED] specifically mentioned the Petitioner’s role in procuring organs for transplant. Moreover, the record reflects that [REDACTED] ranking again in [REDACTED] The Petitioner also submitted evidence indicating that he has served as the principal investigator or co-investigator for multiple heart and lung research studies.

Furthermore, the Petitioner provided reference letters from medical experts attesting to his level of expertise in the field. For instance, [REDACTED] Chair of Cardiac Surgery, [REDACTED] Texas, indicated that the Petitioner is “amongst the most experienced and elite heart surgeons in the United States.” [REDACTED] an attending cardiologist subspecializing in advanced heart failure and cardiac transplantation at [REDACTED] Massachusetts, discussed the Petitioner’s work in the heart and lung transplantation programs at the [REDACTED] and described him as “an extraordinary physician and researcher” who has “risen to the top of his field.” While we need not accept unsupported conclusory assertions,<sup>1</sup> the evidence of record, including evidence not discussed in this decision, supports these conclusions.

In light of the evidence discussed above and other corroborating evidence of record, the Petitioner’s achievements are commensurate with sustained national and international acclaim at the very top of his field. The Petitioner has submitted extensive documentation of his achievements in cardiothoracic

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<sup>1</sup> *See 1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

surgery and has demonstrated a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The evidence in the aggregate confirms that he enjoys a level of expertise consistent with a finding that he is one of a small percentage who has risen to the very top of his field of endeavor, that he has sustained national or international acclaim, and that his achievements have been recognized in his field of expertise. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Accordingly, the Petitioner has established by a preponderance of the evidence that he is eligible for the exclusive classification sought.

### III. CONCLUSION

The Petitioner has submitted qualifying evidence under at least three of the ten evidentiary criteria and has documented that he has a “level of expertise indicating that [he] is one of that small percentage who have risen to the very top of the field of endeavor” and “sustained national or international acclaim.” His achievements have been recognized in his field of expertise. He has also shown that he seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the Petitioner has demonstrated his eligibility for the benefit sought under section 203 of the Act.

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 met that burden.

**ORDER:** The appeal is sustained.

Cite as *Matter of S-K-*, ID# 16272 (AAO Apr. 20, 2016)