



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

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

MATTER OF B-J-

DATE: DEC. 6, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a radiation oncologist, seeks classification as an individual of extraordinary ability in the sciences. *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 Texas Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which she must meet at least three.

The matter is now before us on appeal. In her appeal, the Petitioner submits a brief, stating that she meets at least three criteria.

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,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

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(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 currently employed as a post doctorate associate at the [REDACTED] in a pediatric proton therapy fellowship. As the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

The Director found that the Petitioner met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). The Petitioner's documentary evidence indicates that she edited the [REDACTED] and authored scholarly articles in [REDACTED] and [REDACTED].

A review of the record of proceedings also reflects that the Petitioner fulfills the high salary criterion under the 8 C.F.R. § 204.5(h)(3)(ix). Specifically, the Petitioner established that her salary as a radiology fellow at [REDACTED] was high in relation to other radiology fellows. Accordingly, she has met at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3).

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B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, that she has sustained national or international acclaim, and that her achievements have been recognized in the field through extensive documentation, making her one of the small percentage who has risen to the very top of the field of endeavor. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. 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. In this matter, we determine that the Petitioner has not shown her eligibility.

The record indicates that the Petitioner received a bachelor of medicine and bachelor of surgery degree at [REDACTED] in India in 1992. Early in her medical career, the Petitioner held various positions, such as medical and house officer and research fellow, at hospitals in India and the United Kingdom. Later, she worked as a junior oncology fellow and specialty registrar at hospitals in the United Kingdom. Currently, the Petitioner is a post doctorate associate at [REDACTED] in the pediatric proton therapy fellowship program. As mentioned above, the Petitioner has edited publications, authored scholarly articles, and commanded a high fellowship salary. The Petitioner's achievements, however, are not reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Although the Petitioner met the judging criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv), an evaluation of the significance of her judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. The record indicates that the Petitioner served as a co-editor for the [REDACTED] on six occasions and reviewed a book, [REDACTED]. The Petitioner, however, did not offer evidence showing the reputation or standing of these publications in the field.

In the Petitioner's field, peer review is a routine element of the process by which books or articles are selected for publication or for presentation at conferences. Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of her field. Reviewing or editing the works of others is recognized as a professional obligation of researchers and scientists. Normally a journal's editorial staff or a conference technical committee, for example, will enlist the assistance of numerous professionals in the field who agree to review submitted papers. The publication's editorial staff or the technical committee may accept or reject any reviewer's comments in determining whether to publish, present, or reject submitted papers. Without evidence pre-dating the filing of the petition that sets her apart from others in her field, such as evidence that she has received and completed independent requests for review from a substantial number of publications or conferences, served in an editorial position for a distinguished journal or publication, or chaired a technical committee for a reputable

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conference, the Petitioner has not established that she is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The Petitioner also satisfied the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi) by providing evidence that she published three articles in professional journals. In addition, the record includes abstracts and proceedings from the Petitioner's presentations at professional conferences. The Petitioner has not established that her publication record of three articles, as well as a small number of presentations, sets her apart through a "career of acclaimed work." The statute requires the Petitioner to submit "extensive documentation" of her sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

As authoring scholarly articles is inherent to scientists and researchers, the citation history or other evidence of the influence of her articles is an important indicator to determine the impact and recognition that her work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner would provide solid evidence that her work has been recognized and that other researchers have been influenced by her work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. On the other hand, few or no citations of an article authored by the Petitioner may indicate that her work has gone largely unnoticed by her field. Here, the Petitioner offered evidence that her article in [REDACTED] has been cited 59 times, but she did not show that her other two articles, as well as her conference abstracts, have been cited by others. Although the [REDACTED] article shows some interest in the Petitioner's work, she did not establish that such article citation is sufficient to demonstrate a level of interest in her field commensurate with sustained national or international acclaim at the top of her field.

Regarding the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix), the Petitioner showed that she commanded a high salary compared to other radiology fellows. While they may be prestigious, fellowships, scholarships, and other sources of competitive financial support are pursued by students rather than by recognized, established experts in the field. Although the Petitioner's salary was high compared to other radiology fellows, the Petitioner did not demonstrate that she commanded a high salary in relation to other radiology oncologists reflecting "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." 8 C.F.R. § 204.5(h)(2).

The Petitioner also submitted evidence of her receipt of the [REDACTED] for the awards criterion under 8 C.F.R. § 204.5(h)(3)(i). She has not shown, however, that this fellowship indicates national or international acclaim, or reveals a high level of recognition for her work. Experienced experts generally do not compete for scholarships or fellowships, and academic awards and honors received while preparing for a

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vocation fall substantially short of demonstrating the required acclaim. Thus, her fellowship does not establish that she is one of the very few at the top of her field. *See* 8 C.F.R. § 204.5(h)(2).

Under the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner documented her membership with [REDACTED]. According to [REDACTED] bylaws, membership is granted to medical and dental practitioners by [REDACTED] council in accordance with its regulations. The Petitioner, however, did not submit [REDACTED] regulations to demonstrate that membership requires outstanding achievements as judged by nationally or internationally recognized experts. Thus, the Petitioner has not shown that her [REDACTED] membership reflects that “her achievements have been recognized in the field of expertise.” *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Although the Petitioner did not meet the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), she provided recommendation letters as evidence of her eligibility. The letters discuss the Petitioner’s skills and reiterate her experience without identifying original contributions of major significance in the field.¹ For instance, [REDACTED] professor and director of clinical research at [REDACTED] indicated that the Petitioner “has pursued specialized training in proton therapy beyond the basic requirement of residency training and has developed a rare clinical skill.” [REDACTED] did not explain how the Petitioner has used her skills to make original contributions of major significance in the field. Similarly, [REDACTED] president of the [REDACTED] stated that the Petitioner has a “unique combination of clinical skills and research abilities.” [REDACTED] however, did not show that these skills and abilities constitute a major contribution to the field.

With regard to the Petitioner’s performances in a leading or critical role for organizations with a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(viii), she presented a letter from [REDACTED] [REDACTED] medical director for [REDACTED] described the Petitioner’s qualifications and experience but did not indicate that she performed in a leading or critical role for [REDACTED]. Accordingly, the Petitioner has not established that her role as a post doctorate associate fellow is indicative that she is one of “that small percentage of individuals that have risen to the very top of their field of endeavor.” *See* 8 C.F.R. § 204.5(h)(2). The submitted evidence for this criterion does not substantiate her sustained national or international acclaim.

In summary, the Petitioner’s evidence confirms that she has edited publications, authored articles, and worked as a fellow. Her professional accomplishments, however, are not sufficient to establish that she has garnered sustained national or international acclaim or that she is one of the small percentage at the very top of her field of endeavor. We find that the record as a whole does not reflect extensive documentation showing that the Petitioner’s achievements have been recognized in the field.

¹ We discuss only a sampling of these letters, but have reviewed and considered each one.

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III. CONCLUSION

For the above reasons, the Petitioner has not met her 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).

ORDER: The appeal is dismissed.

Cite as *Matter of B-J-*, ID# 115717 (AAO Dec. 6, 2016)