MATTER OF H-W-

DATE: JUNE 13, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a teacher and researcher of traditional Chinese medicine (TCM), 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 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, Texas Service Center, denied the petition. The Director found that the Petitioner had satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3) by meeting at least three of the ten regulatory criteria, but determined that the documentation provided was not indicative of her sustained national or international acclaim or her being among that small percentage who has risen to the very top of the field.

The matter is now before us on appeal. In her appeal, the Petitioner argues that the evidence she submitted for the published material criterion at 8 C.F.R § 204.5(h)(3)(iii), the judging criterion at 8 C.F.R § 204.5(h)(3)(iv), and the authorship of scholarly articles criterion at 8 C.F.R § 204.5(h)(3)(vi) was commensurate with sustained national acclaim at the very top of her field.

Upon *de novo* review, we will dismiss 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.

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 recognition of 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 she 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*; *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); *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").

II. ANALYSIS

A. Evidentiary Criteria

At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was working a teacher and researcher of [redacted] at the [redacted] Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not stated or shown that she is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, she must provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

> *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.*

The Director determined that the Petitioner had satisfied this regulatory criterion. The Petitioner stated that the following Chinese language articles were written about her:

1. [redacted] in [redacted] (November 2014); and
2. [redacted] in [redacted] (June 2014).

The Petitioner did not submit objective evidence of the articles such as copies or photocopies of the articles as they appeared in the aforementioned journals. Rather, she incorporated what she claims is the text from those two articles into [redacted] of her September 2014 letter to USCIS that accompanied the petition. The Petitioner's representations regarding the publication of these articles do not meet her burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In addition, the Petitioner submitted two "Notarized Translation[s]" (dated September 2014 and September 2015) certifying that she is "fluent (conversant) in English and Chinese languages, and that the Chinese Documents and the corresponding English Translation in the package for permanent residence application are true and accurate translation." The regulation at 8 C.F.R. § 103.2(b)(3) provides in pertinent part:

> Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Although the record contains the Petitioner's notarized translations, it is unclear which of the submitted evidence, if any, to which they pertain. The submission of a single translation certification that does not specifically identify the document or documents it accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Because the Petitioner did not submit certified translations that identified any specific articles, we cannot determine whether the evidence supports her claims. Accordingly, the translated text from the two listed articles is of limited probative value.

In response to the Director's request for evidence (RFE), the Petitioner submitted a photocopy of [redacted] in [redacted] (June 2014), but the accompanying English language translation did not identify the author and it was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Without copies of the first two articles as allegedly published in [redacted] or properly certified English language translations for all three of the aforementioned articles, the Petitioner has not established that she meets this regulatory criterion. Therefore, the Director's determination on this issue is withdrawn.

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 Petitioner provided a letter from [redacted] editor of [redacted] stating that she "has served as a peer reviewer" for the journal. Attached to the letter was a list of 11 manuscripts that the Petitioner reviewed for the journal over a three year period. This evidence supports the Director's finding that the Petitioner meets this regulatory criterion.

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 that the Petitioner had satisfied this regulatory criterion. The Petitioner stated that she authored the following Chinese language articles:

1. [redacted]
2. [redacted]
3. [redacted] in
4. [redacted]
5. [redacted] and
6. [redacted] in [redacted]

The Petitioner did not objective evidence of her articles in the aforementioned journals. Instead, she incorporated what she contends are abstracts from the six articles into her September 2014 letter to USCIS that accompanied the petition [redacted]. In addition, although the Petitioner provided uncertified English language translations for the articles numbered 2 and 3 above on [redacted] of her September 2014 letter, she did not submit the original articles in the Chinese language. Because the Petitioner did not submit copies of the original Chinese language articles along with properly certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3), we cannot determine whether the evidence supports the Petitioner's claims. Accordingly, the Director's determination that the Petitioner meets this regulatory criterion is withdrawn.

B. Summary

For the reasons discussed above, we find that the Petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3).

C. Final Merits Determination

Had the Petitioner included the requisite material under at least three evidentiary categories, in accordance with *Kazarian*, our next step of analysis would be a final merits determination that considers all of the submissions in the context of whether she has achieved: (1) a "level of expertise indicating that [she] is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the [Petitioner] has sustained national or international acclaim" and that her "achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done so, the proper conclusion is that she has not satisfied the antecedent regulatory requirement of presenting initial evidence set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x). *See Kazarian*, 596 F.3d at 1122.

Although we need not provide the type of final merits determination referenced in *Kazarian*, our review of the record in the aggregate does not support a finding that the Petitioner has achieved the level of expertise required for the classification sought. For example, even if the Petitioner had submitted copies of the three published articles submitted under 8 C.F.R. § 204.5(h)(3)(iii) along with properly certified English language translations, there is no circulation evidence for the journals showing that their coverage is indicative of national or international acclaim. Furthermore, the three articles mentioning the Petitioner were limited to a five month period from June 2014 – November 2014. According to the Petitioner's curriculum vitae, she has worked in the field of traditional Chinese medicine since 2007. The Petitioner has not shown that three published articles about her over a research career spanning seven years at the time of filing are indicative of her sustained national acclaim at the very top of the field.

As previously discussed, the Petitioner submitted evidence demonstrating that she peer-reviewed 11 manuscripts for a single journal, as of the petition's September 3, 2014, filing date. The letter from stated: "Reviewers, such as the Petitioner, play a key part in determining what the journal accepts for publication. We normally choose leading experts with a national reputation in the field." The record, however, did not include any documentation reflecting prestige or standing in the field. For instance, the Petitioner did not provide objective evidence of the journal's ranking amongst other journals or its impact factor.

The Petitioner also provided a September 2015 letter from the chief editor of the stating that she "has been invited to be an editorial board member" for the journal. The record, however, did not contain any evidence showing that the Petitioner had participated in an editorial capacity for as of September 3, 2014. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider any editorial board services performed after the date the petition was filed as evidence to establish the Petitioner's eligibility at the time of filing.

Regardless, the petitioner has not established that her level of peer review for and is commensurate with sustained national or international acclaim at the very top of her field of endeavor. Scientific and medical journals are peer-reviewed and rely on many

professionals to review submitted articles and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Thus, peer review is routine in the field and not every peer reviewer enjoys national or international acclaim. Without evidence that sets the Petitioner apart from others in her field, such as evidence that she has completed numerous independent requests for review from a substantial number of journals or served in an editorial position for a distinguished journal as of the petition's filing date, we cannot conclude that her level of participation in the peer review process is commensurate with being at the very top of the field.

Furthermore, had the Petitioner provided copies of her scholarly articles in professional journals along with properly certified English language translations, she has not shown that her publication record of six articles sets her apart from almost most others in her field or is otherwise indicative of sustained national or international acclaim. The U.S. Department of Labor's *Occupational Outlook Handbook* (*OOH*), 2016-17 Edition provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* http://www.bls.gov/ooh/education-training-and-library/postsecondary-teachers.htm#tab-3, accessed on May 9, 2016, a copy of which is incorporated into the record of proceedings. The *OOH* states that "postsecondary teachers must find balance between teaching students and doing research and publishing their findings" and that their research record is a consideration for advancement. In addition, doctoral programs require graduate students to prepare "a doctoral dissertation, which is a paper presenting original research in the student's field of study." *See* http://www.bls.gov/ooh/education-training-and-library/postsecondary-teachers.htm#tab-4, accessed on May 9, 2016, copy incorporated into the record of proceedings. This information reveals that authorship of scholarly articles arising from research at institutions such as [redacted] does not necessarily set the individual apart from other faculty in that researcher's field.

Moreover, the Petitioner's citation history is a relevant consideration as to whether the evidence is indicative of recognition beyond her research collaborators. *See Kazarian*, 596 F. 3d at 1122. With respect to the Petitioner's published and presented work, there is no presumption that every published article or conference presentation demonstrates national or international acclaim; rather, the Petitioner must document the actual impact of her article or presentation. An extensive number of favorable independent citations for an article or presentation is an indicator that other researchers are familiar with the work and have been influenced by it. A small number of citations, on the other hand, is generally not probative of the work's impact in the field. In this instance, the Petitioner provided a Chinese language [redacted] webpage that she claims shows 10 cites to her research articles, but the accompanying English language translation was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, the Petitioner has not established that ten cites to her body of research work is indicative of sustained national or international acclaim at the very top of her field.

The Petitioner contends that "the citation of Senior expert [redacted] in the field of [redacted] . . . is as low as 3 times during 4 years" and that [redacted] research articles "usually have low citations due

to characteristics of the discipline." The Petitioner provided a Chinese language webpage that showed three cites to research articles, but the accompanying English language translation was not certified by the translator in accordance with the regulation at 8 C.F.R. § 103.2(b)(3). Nevertheless, the Petitioner's citation example for just one researcher does not offer an appropriate basis for comparison relative to others in the field. In addition, the Petitioner mentions that "the authored a paper entitled that "has only been cited 30 times as showed on ." Even if the Petitioner had provided documentation of the article's citation history from , which she has not, selecting only one article from body of published work does not provide an appropriate basis for comparison with the Petitioner's work. Without further corroborating evidence, the Petitioner has not demonstrated that her citation history is commensurate with sustained national or international acclaim in the field.

Similarly, although the record includes reference letters that discussed the Petitioner's research accomplishments, they did not establish her status as nationally or internationally acclaimed in and among that small percentage who has risen to the very top of the field of endeavor. For example, a professor in the stated that the Petitioner "has been recognized nationally/internationally for her expertise in the field of and that her "research results of integrative medicine have been at the forefront in her field, widely recognized by her peers," but did not provide specific examples of how her work has widely affected treatment practices in the medical field, has been of major significance to practitioners, or was otherwise nationally or internationally acclaimed.

a professor at indicated that the Petitioner's "expertise has enabled her to achieve national recognition and has established her as an outstanding scientist at the top of her specialty." The record does not, however, include evidence to substantiate statement. In addition, president and chief executive officer of mentioned that the Petitioner presented her work at the The Petitioner supplied corroborating evidence showing that her research was presented at the aforementioned conferences, but did not offer specific information about the conferences, their reputation in the field, or the process for selecting presenters. Although refers to them as "prestigious international conferences," the record does not contain objective material to substantiate this characterization. Furthermore, there is no information regarding the selection criteria for presented work. Conference presentations at research symposia are often regarded a necessary activity in medical research fields.

The Petitioner provided additional letters from Curator of an independent practitioner, chief editor of the and These references indicated that the Petitioner was a "very top researcher" with "extraordinary ability" and a national reputation. Statements that repeat

the language of the statute or regulations do not satisfy the Petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *1, 5 (S.D.N.Y. Apr. 18, 1997). The references also mentioned the Petitioner's research, published and presented work, and peer review activity as support for their opinions. They did not, however, establish that the Petitioner's achievements set her among that small percentage who has risen to the very top of the field of endeavor.

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements offered as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive proof of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the foreign national's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Caron Int'l*, 19 I&N Dec. at 795; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding our decision to give minimal weight to solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

In summary, the evidence in the aggregate does not distinguish the Petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The Petitioner has not shown that her achievements at the time of filing were commensurate with sustained national or international acclaim as a teacher and researcher.

III. CONCLUSION

The Petitioner has not provided documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3) and has not demonstrated by a preponderance of the evidence that she is an individual of extraordinary ability in the field of A review of the submissions in the aggregate does not confirm that the Petitioner has achieved sustained national or international acclaim or that she is among the small percentage at the very top of her field. The Petitioner, therefore, has not established eligibility under 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, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of H-W-*, ID# 16799 (AAO June 13, 2016)