



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

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

MATTER OF S-Y-M-

DATE: APR. 13, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an innovative medical business strategist, seeks classification as an individual of extraordinary ability in business. *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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which she must meet at least three.

On 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

- (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 of evidence 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); *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 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 recently graduated from the [REDACTED] and interned as a quality improvement project leader and researcher at [REDACTED]

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the ten criteria 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 regulatory criteria.

On appeal, the Petitioner maintains that she meets the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the original contributions criterion under § 204.5(h)(3)(v), and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). We have reviewed all of the evidence in the record, and conclude that it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner presented a foreign language document claiming that it reflected the [REDACTED]. Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the material is accurate and thus supports her claims.

The Petitioner also submitted evidence of her receipt of three awards from the following organizations: 1) the [REDACTED] “for having exhibited the greatest interest, knowledge, and proficiency in the field of general dentistry during the senior year”; 2) the [REDACTED] for “[REDACTED]”; and 3) the [REDACTED] “to recognize the leadership displayed during the 2013-2014 school year.” Although she provided screenshots regarding general and background information about [REDACTED] and [REDACTED] the issue for this regulatory criterion is the recognition of the prizes or awards rather than the history or reputation of the awarding entities. Here, the documentation does not establish or indicate that the Petitioner’s awards are nationally or internationally recognized for excellence. Further, in her brief, the Petitioner quotes the selection process for the [REDACTED] award; however, she does not provide the referenced source or documentation to support her assertions. Even so, the award criteria do not show that it is nationally or internationally recognized for excellence beyond [REDACTED]. Moreover, the Petitioner has not demonstrated how her awards, which are dental student awards, are indicative of excellence in innovation medical business strategy, a field in which she claims extraordinary ability. Accordingly, the Petitioner has not established that she meets this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievements as an essential condition for membership. The Petitioner submitted screenshots from [REDACTED] regarding background, governance, and organizational structure. The evidence, however, does not list the membership requirements or state whether membership is judged by recognized national or international experts. Although she documented her membership with [REDACTED] the Petitioner did not establish that [REDACTED] requires outstanding achievements, as judged by recognized national or international experts. In addition, she

¹ We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

² Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.*

has not explained how membership in a general dentistry association whose mission is to provide “quality dental care and oral health education to the public” is in the field of innovation medical business strategy. For these reasons, the Petitioner does not meet this criterion.

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).

The Petitioner indicates eligibility for this criterion based on her authorship of four articles for [REDACTED] a [REDACTED] publication. In order for published material to meet this criterion, it must be “about” the Petitioner. A review of the articles reflects that they are regarding [REDACTED] and [REDACTED] related events at [REDACTED]. Evidence of the Petitioner’s authorship in reporting news at [REDACTED] is not sufficient to satisfy the plain language of this regulation, which requires that the published material be “about” her. As such, the Petitioner has not established that she meets this criterion.³

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 Petitioner contends that her role as an innovative medical quality improvement research associate and business strategist at [REDACTED] meets this criterion. In addition, she refers to a letter from [REDACTED] a professor at [REDACTED] who stated that the Petitioner “is a skillful master of medical science and innovative business strategies, which is a unique combination of skills rarely possessed by a professional.”

The plain language of this criterion requires the Petitioner to submit evidence of her original contributions of major significance in the field. The Petitioner’s role at [REDACTED] is more appropriate under the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii) and will be discussed further below. Moreover, neither the Petitioner nor [REDACTED] identified an original contribution of major significance that she has made to her field. *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 corroborate her impact in the field as a whole). Although [REDACTED] describes the Petitioner’s “unique combination of skills,” having a diverse skill set is not an original contribution of major significance unless the Petitioner can demonstrate that she has used those skills to influence the field in a significant manner. Without supporting evidence, the Petitioner has not met her burden of showing that she meets this criterion.

³ On appeal, the Petitioner does not argue that her articles meet the authorship criterion under 8 C.F.R. § 204.5(h)(3)(vi). Regardless, the record does not demonstrate that her writings constitute scholarly articles in the field. As such, she does not meet this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

As indicated above, the Petitioner maintains that she performed in a critical role at [REDACTED]. In general, a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. She submitted a letter from [REDACTED] a professor at [REDACTED] who stated that the Petitioner's research and quality control techniques were pivotal to the department's adherence to the [REDACTED]. The record also contains the Petitioner's resume reflecting that she served in this position under an internship. Although [REDACTED] generally credits the Petitioner's work with bolstering [REDACTED] reputation and securing additional funds, the record, which lacks specific information explaining how her role strengthened [REDACTED] standing or what funding it received, is insufficient to establish that she performed in a critical role. Further, the Petitioner did not show, for example, that [REDACTED] was not meeting its accreditation status or securing grants, and that only after her internship it became successful in doing so.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires the organizations or establishments to have a distinguished reputation. Although [REDACTED] indicated that [REDACTED] "is recognized as one of the preeminent research universities in the world," he did not explain or provide information to corroborate his claims. Moreover, the Petitioner has not shown, for example, that [REDACTED] or its surgery department is viewed as an eminent or respected medical institution by others in the field. For these reasons, the Petitioner has not met this criterion.

B. Summary

As explained above, the record does not satisfy any of the regulatory criteria. As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of 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 field of endeavor," and (2) that the individual "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)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

III. CONCLUSION

For the foregoing reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of S-Y-M-*, ID# 307250 (AAO Apr. 13, 2017)