



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

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

MATTER OF A-M-S-

DATE: JULY 21, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a research analyst, 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 Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner satisfied at least three of the ten regulatory criteria. Rather, the Director found that the Petitioner met only two.

On appeal, the Petitioner asserts that the Director did not correctly evaluate the evidence for three additional criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

- (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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement that is a major, internationally recognized award. Alternatively, he or she must provide 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).¹ This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a research analyst with the [REDACTED] Department of Mental Health. As he has not established the receipt of a major, internationally recognized award, he 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 had judged the work of others and authored a qualifying scholarly article, thus satisfying the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi). The record supports that determination. Specifically, the Petitioner reviewed a manuscript for [REDACTED]

[REDACTED] He also authored "[REDACTED]" which appeared in the [REDACTED]. Accordingly, at issue is whether he meets a third criterion.

On appeal, the Petitioner no longer contends that he meets the published material or high remuneration criteria at 8 C.F.R. § 204.5(h)(3)(iii) and (ix). Rather, his appellate statement addresses membership, contributions of major significance in the field, and performing in a leading or critical role. 8 C.F.R. § 204.5(h)(3)(ii), (v), and (viii). He asserts that the Director did not correctly evaluate the evidence for these criteria. For the reasons discussed below, even if we were to find that the Petitioner has satisfied a third criterion based on one of his association memberships, the evidence in the aggregate does not demonstrate his eligibility for the classification.

¹ This case discusses 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).

A. Regulatory Criteria

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires documentation of the Petitioner'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." The Petitioner documented his membership in the following associations:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The Petitioner offered membership information for two of the four associations, [REDACTED] and [REDACTED]. As [REDACTED] is open to "individuals interested in the purpose of the Association," it does not require outstanding achievements. [REDACTED] admits by invitation the top 15 percent of college and university sophomores, juniors, and seniors, based "solely on their academic achievements." [REDACTED] is not an association "in the field for which classification is sought;" it is a general association that admits members from all areas of study. In addition, the Petitioner has not demonstrated that national or international experts in their field judge admission. Regardless, even if we found that the Petitioner meets a third criterion, the evidence in the aggregate does not establish his eligibility.

B. Final Merits Determination

We now consider the totality of the material provided in a final merits determination and assess whether 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. If so, a petitioner has met the requisite burden of proof and established eligibility for visa classification as an individual of "extraordinary ability." 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.

The Petitioner's membership in [REDACTED] while a notable academic accomplishment, is not indicative of wider recognition in the field. For example, he has not documented that [REDACTED] which is not an association in his field, widely reports its membership admissions or that trade publications or the general media cover the selections. The record also lacks evidence showing that experienced members of the field compete for or aspire to this membership. Accordingly, it is not indicative of the Petitioner's status among the small percentage at the top of his field. Similarly, he has not demonstrated that his membership in the other organizations confirms that he has sustained national or international acclaim in his field.

While the Petitioner has reviewed a manuscript for a peer-reviewed journal, he has not documented that participation in the peer-review process at this level is indicative of national or international acclaim. The widespread peer review process necessarily requires knowledgeable members of the

field to review manuscripts. The record, however, lacks evidence that he is credited as one of a small number of reviewers, that he was individually sought out by multiple journals based on his status in the field, or other information that might reveal that this review is consistent with a finding of his acclaim.

The Petitioner's publication record is also not indicative of his standing as one of the small percentage at the top of his field. As noted above, he has authored one scholarly article. Subsequent to the date of filing, he published his dissertation through [REDACTED]. While not relevant to the question of whether the Petitioner meets the authorship criterion at 8 C.F.R. § 204.5(h)(3)(vi), citations of scholarly articles are relevant in the final merits determination. *Kazarian*, 596 F.3d at 1121. The record contains two articles that cite the Petitioner's work, but lacks corroboration that this number of citations is reflective of national or international acclaim. He has not offered evidence other than citations that might verify that his single article shows his achievements are recognized in the field.

The remaining evidence, in addition to not satisfying any criteria, also does not support the Petitioner's eligibility for the classification sought. Reports of his activities on the website of the university he attended are not published materials about him in professional, major trade publications, or other major media.² Regardless, they are not indicative of wider recognition of his achievements in the field beyond his school. A single paystub, without evidence of high-end earnings in the field, does not demonstrate a high salary in relation to others in the field³ or his status among the small percentage at the top of his field. The letter from [REDACTED] his supervisor, is unsigned and does not offer examples of the Petitioner's influence beyond the department where he works. Accordingly, the letter is not sufficient to confirm his impact in the field consistent with a finding of a contribution of major significance⁴ or recognition beyond his employer.

With respect to his role for his employer, it is neither leading or critical for an organization with a distinguished reputation⁵ nor consistent with a finding of national or international acclaim. The record contains his reports for the Department of Mental Health and documentation of the [REDACTED] in [REDACTED]. In general, a leading role is evident from the role, its duties, and how it fits within the overall hierarchy of the organization. A critical role is apparent from a petitioner's impact on the entity.

The record lacks information on the hierarchy of the Petitioner's department. Thus, he has not sufficiently shown that his role is leading. With respect to whether his role is critical, he presents two reports that he has prepared for the [REDACTED], one of which is dated after he filed the petition. He has not offered corroboration as to how many reports [REDACTED]

² 8 C.F.R. § 204.5(h)(3)(iii).

³ 8 C.F.R. § 204.5(h)(3)(ix).

⁴ 8 C.F.R. § 204.5(h)(3)(v).

⁵ 8 C.F.R. § 204.5(h)(3)(viii).

commissions or how it has utilized his reports. Ms. [REDACTED] characterizes his recommendations as “valuable,” but does not detail if and how [REDACTED] has successfully implemented them. Regardless, as mentioned above, she did not sign her letter, which diminishes its evidentiary value. Finally, the Collaborative Summary Report for the [REDACTED] Wraparound Program does not mention the Petitioner and the record does not explain the nature of his role with that program. Accordingly, he has not sufficiently established that his involvement in these projects is indicative of his status among the small percentage at the top of his field or acclaim at the national or international level.

Ultimately, the evidence in the aggregate does not demonstrate the Petitioner’s eligibility. The record verifies his membership in an association that recognizes academic rank; his review of one manuscript; the website of the university he attended reported on his activities; his authorship of a single, minimally-cited article; and his compensated employment. These documents and others in the record are indicative of a successful student who has secured employment and performed valuable work for his employer. These accomplishments, however, do not constitute extensive evidence confirming that his achievements have been recognized in the field and are not consistent with sustained national or international acclaim.

III. CONCLUSION

The Petitioner is not eligible because the record in the aggregate does not support a finding that he has reached the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of A-M-S-*, ID# 409731 (AAO July 21, 2017)