



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

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

MATTER OF E-F-N-C-

DATE: AUG. 22, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an audiologist, seeks classification as an alien of extraordinary ability. *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 record did not establish, as required, that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of ten evidentiary criteria.

On appeal, the Petitioner submits additional evidence and asserts that he meets the requirements of four evidentiary criteria in addition to the one that the Director found that he meets.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants 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 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 Director found that the Petitioner meets one of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), having established that he has authored published scholarly articles. On appeal, the Petitioner asserts that he also meets four additional criteria. After reviewing all of the evidence in the record, we concur with the Director that the Petitioner meets the author criterion, but find that the Petitioner does not meet the requisite three evidentiary criteria.

Documentation of the individual'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 bases his claim to this criterion on two awards that he received while earning his Doctor of Audiology degree. As evidence of having won the [REDACTED] in 2014, along with his partner, the Petitioner submitted an article published in [REDACTED] in March 2015, along with pages from websites focused on the audiology profession and industry. However, the record does not demonstrate that this award is nationally or internationally recognized. Notably, the record lacks evidence showing that the announcements in these media would have reached a national or international audience, or that recognition of the Petitioner's receipt of this award would otherwise have reached the national or

international level. Accordingly, the Petitioner has not established his eligibility under this criterion.¹

The Petitioner also submitted evidence of his receipt of a \$1,000 scholarship from the [REDACTED] [REDACTED]. Information from the [REDACTED] website states that the scholarship is awarded annually to “a minority and/or international student who shows exceptional promise in audiology research.” While this award is clearly given in the Petitioner’s field of audiology, this evidence does not establish that the scholarship is granted based upon demonstrated excellence in the field. Rather, it is based upon a student’s potential. In addition, the only mention of the Petitioner’s receipt of this award appears on the [REDACTED] website. Thus, the record does not demonstrate that the scholarship is nationally recognized beyond the granting organization.

For all of the reasons stated above, the evidence does not establish that the Petitioner meets this criterion.

Documentation of the individual’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)

The Petitioner submitted evidence that he was a member of the 2013 class of the [REDACTED] [REDACTED] which is organized by the [REDACTED] [REDACTED] in order to “recruit and retain racial/ethnic minorities that have been historically under-represented in the professions.” The evidence indicates that in order to be eligible, students must be enrolled in certain academic programs “and not be members of [REDACTED].” The Petitioner has not submitted evidence of any additional eligibility requirements that would indicate that outstanding achievements are necessary for membership in the [REDACTED]. Also, although the Petitioner has submitted evidence of membership requirements for [REDACTED] the record lacks evidence of the Petitioner’s membership in that organization. Further, as indicated by the Director in his decision, even if the Petitioner were to establish his membership in [REDACTED] the bylaws of the association do not indicate that outstanding achievements are required for membership. Rather, they include minimum educational qualifications, activity in the field, and agreement to abide by the association’s code of ethics.

On appeal, the Petitioner has submitted the standards for obtaining a Certificate of Clinical Competency in Audiology. However, the Petitioner has not submitted evidence of his receipt of this certificate, or that it is analogous to membership in an association in the field of audiology. Also,

¹ We note that the evidence indicates that this award was based upon the students’ creation of a business plan for a hypothetical audiology practice, thus focusing on the business of audiology rather than its practice as a medical profession. As the Petitioner’s claim to eligibility rests upon his practice of audiology as a medical profession, rather than his business acumen or entrepreneurial skills, this evidence would have limited evidentiary weight in any final merits determination.

the standards described primarily require completion of a qualifying academic program, which as the title of this certificate indicates, demonstrates competence rather than excellence. Therefore, the Petitioner has not established his eligibility under this criterion.

Published material about the individual 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)

Although the Petitioner did not initially claim to qualify under this criterion, on appeal he asserts that the evidence previously submitted from [REDACTED] and discussed under the awards criterion also should be considered as published material about him. The evidence shows that [REDACTED] is a professional publication, but the content of the article is about the competition and its results, only naming the Petitioner and his partner as the grand prize winners. Notably, the second and third prize winners receive the same mention and are also pictured, and the article does not describe the Petitioner's work. Therefore, this material is not about the Petitioner.

In addition, the Petitioner submits new evidence on appeal, consisting of articles from the website www.[REDACTED]. These articles are patient testimonials written for the purpose of promoting the Petitioner's employer's business, posted on a website which allows users to search for doctors. Such self-promotional materials have little evidentiary weight under this criterion, which is intended to measure the Petitioner's acclaim and impact in his field. In addition, the record does not include evidence regarding circulation, traffic, or other metrics that would show that this website could be considered as major media. Accordingly, the evidence does not demonstrate that the Petitioner meets this criterion.

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

Also for the first time on appeal, the Petitioner asserts that the two research posters he submitted, which he claims were presented at three different conferences, should be considered to qualify under this criterion. It must first be noted that although both posters were submitted, the record does not include evidence, such as the program or proceedings of the conferences, to establish that they were displayed at any of the three conferences mentioned. In addition, the plain language of this criterion refers to "artistic" exhibitions or showcases, and the Petitioner has not submitted evidence which demonstrates that these conferences were artistic, rather than scientific or scholarly, in nature. Posters and papers presented at scientific or scholarly conferences, if shown to have been published in the proceedings of those conferences, may be considered under the criterion at 8 C.F.R. § 204.5(h)(3)(vi). Therefore, this evidence does not establish that this criterion has been met.

In addition to the evidentiary criteria, the Petitioner notes the "comparable evidence" provision at 8 C.F.R. § 204.5(h)(4), and asks that we take into consideration his work in conducting research and practicing in the field of audiology as a whole, as well as the claimed shortage of audiologists in the

United States. But he has not identified which, if any, of the criteria do not readily apply to his occupation, which is the necessary first step for us to consider evidence as comparable under that regulation. In addition, none of the ten criteria refer to labor shortages. The issue of whether similarly trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See* 20 C.F.R. § 656.1. It is not a relevant factor when evaluating an individual's sustained national or international acclaim in his or her field.

III. CONCLUSION

The evidence does not establish that the Petitioner received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in its entirety, and conclude that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. For these reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of E-F-N-C-*, ID# 1439332 (AAO Aug. 22, 2018)