



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

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

MATTER OF A-V-

DATE: JUNE 22, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a reservoir management team lead, seeks classification as an individual of extraordinary ability in petroleum reservoir engineering. *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 satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he meets at least three of the criteria.

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 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). If that petitioner does not submit this evidence, then 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) (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). 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 reservoir management team lead at [REDACTED] in [REDACTED] California. As the Petitioner has not established that he has received a major, internationally recognized award, he 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 leading or critical role under the regulation at 8 C.F.R. § 204.5(h)(3)(viii), and we agree that the Petitioner’s position with [REDACTED] fulfills this criterion. In addition, the Director determined that the Petitioner satisfied high salary under the regulation at 8 C.F.R. § 204.5(h)(3)(ix), and we concur. The record also demonstrates that the Petitioner served on the [REDACTED] where he selected technical papers for publications, thereby meeting judging under the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Accordingly, the Petitioner has established that he meets at least three regulatory criteria, and we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he 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 his eligibility.

According to the Petitioner's curriculum vitae, he obtained his bachelor's degree in chemical engineering in 2006 from [REDACTED]. In 2008, he received his master's degree in chemical engineering from the [REDACTED]. Most recently in 2014, he earned his master of business administration from the [REDACTED]. In addition, the Petitioner has worked as a reservoir engineer and reservoir management team lead for [REDACTED] and is currently the reservoir management team lead for [REDACTED]. As mentioned above, the Petitioner has reviewed technical papers and commands a high salary. The record, however, does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding the Petitioner's judging service, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. See *Kazarian*, 596 F. 3d at 1121-22. As indicated above, the record reflects that the Petitioner selected technical papers for publication at [REDACTED]. Although he presented a letter from [REDACTED] member of [REDACTED] who confirmed his judging experience, [REDACTED] did not indicate the number of papers the Petitioner selected and how many were published. Moreover, while the Petitioner claimed that he participated in "peer assists" and worked as a "recruiter," he did not demonstrate that they involved judging the work of others.² Nonetheless, the Petitioner did not establish that his judging experience is indicative of the required sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act. Without evidence that sets him apart from others in his field, such as documentation that he has served in editorial positions for prestigious journals or chaired technical committees for acclaimed associations, the record does not show that his judging places him in that small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2).

¹ The Petitioner indicated that [REDACTED] is an independent publicly traded corporation that resulted from a stock spin off from [REDACTED].

² The Petitioner offered a letter from [REDACTED], who described "peer assists," and a letter from [REDACTED] who explained the role of a "recruiter."

Moreover, as indicated above, the Petitioner has performed in a critical role for [REDACTED], contributing to its successes. However, the Petitioner did not demonstrate that his employment with [REDACTED], as well as [REDACTED] is reflective of, or has resulted in, widespread acclaim from his field or that he is considered to be at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). Moreover, the record does not demonstrate that the Petitioner has held any other leading or critical roles for organizations or establishments with distinguished reputations, showing sustained national or international acclaim. See section 203(b)(1)(A) of the Act.

Although the Petitioner earns a high salary among others in his field, he has not shown that his earnings are at a level reflecting national or international acclaim or that they place him among the small percentage at the top of his field. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2). The record as a whole, including the other evidence discussed, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. Further, USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the very top of his field.

Beyond the three criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, we find that the evidence neither satisfies the requirements of any further evidentiary criteria nor contributes to an overall finding that the Petitioner has sustained national or international acclaim and is among the small percentage at the top of his field.

The record reflects that [REDACTED] bestowed its "Excellence Award" on the Petitioner from 2012 – 2014. The Petitioner, however, did not demonstrate that these awards are nationally or internationally recognized for excellence in the field or that they indicate he "is one of that small percentage who [has] risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). There is no indication that the Petitioner faced significant competition from throughout his field, rather than limited to employees at [REDACTED]. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. at 954.

The Petitioner also contends that he has served as a board member of [REDACTED] and was invited to participate in [REDACTED] a partnership between [REDACTED] and [REDACTED], to develop leaders for the success of [REDACTED].³ However, the Petitioner did not establish that his memberships require outstanding

³ The Petitioner provided a letter from [REDACTED], who invited the Petitioner to participate in [REDACTED]; however, the record does not indicate that he participated in the program.

achievements, as judged by recognized national or international experts.⁴ As the Petitioner has not shown, for example, that he is a member of associations that limit membership to individuals in petroleum reservoir engineering with renowned endeavors, his membership evidence does not contribute to a finding that he has sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

As it relates to published material, the Petitioner previously claimed at the initial filing that his drafting standards, templates, and presentations while employed at [REDACTED] and [REDACTED] should be considered as published material about his work. However, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material about a petitioner relating to his work in professional or major trade publications or other major media rather than internal company written work. Here, the Petitioner has not shown, for example, that he received press or media coverage, showing sustained national or international acclaim necessary for this highly restrictive classification or indicative of a level of success consistent with being among “that small percentage who [has] risen to the very top of the field of endeavor.” See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

In addition, the Petitioner argues that his presentations and technical papers authored while employed with [REDACTED] and [REDACTED] as well as a proposed research paper while a student at [REDACTED] qualify as authoring scholarly articles. However, in order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the Petitioner must demonstrate the “scholarly” nature of the articles. A scholarly article should be written for “learned” persons in the field. “Learned” is defined as having or demonstrating profound knowledge or scholarship.⁵ Here, the record does not show that the Petitioner’s presentations and work-related products are scholarly in nature. Furthermore, he did not demonstrate that they were published in professional or major trade publications or other major media. Similarly, while the Petitioner presented an abstract of a proposed research paper, he did not show that it was ever completed or published. Regardless, the Petitioner has not established that this publication record is consistent with being among the small percentage at the top of the field or having a “career of acclaimed work.” H.R. Rep. No. at 59. In addition, he has not demonstrated that his publications reflect the required 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 provides 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).

⁴ The record does not contain the bylaws or other evidence showing the membership requirements for [REDACTED] or [REDACTED].

⁵ See USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 9* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

In addition, as authoring scholarly articles is inherent to many scientific fields, the citation history or other evidence of the influence of his articles is an important indicator to determine the impact and recognition that his 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 his work has been recognized and that others have been influenced by his 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 his work has gone largely unnoticed by his field. Here, the Petitioner did not establish that his work has been cited outside of his employers, nor did he otherwise demonstrate a level of interest in his work commensurate with sustained national or international acclaim at the top of his field. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Further, while citations are not the only way to gauge the importance or recognition of an individual's work, the record does not otherwise demonstrate that the Petitioner's work has been considered significant and garnered wide acclaim in the field. Again, the Petitioner presented evidence showing that he made presentations related to his employment. Similar to his written work, the Petitioner did not establish that his presentations garnered interest or acclaim in his field. While the Petitioner's recommendation letters confirm the Petitioner's contributions to [REDACTED] and [REDACTED], they do not show his original contributions of major significance in the field. For instance, [REDACTED], discussed how the Petitioner's [REDACTED] and hydraulic fracking influenced [REDACTED]'s successes in the [REDACTED] and [REDACTED]. Mr. [REDACTED] letter does not show that the Petitioner's contributions to [REDACTED] and [REDACTED] have been of major significance to the overall field or that he has garnered attention at a level among that small percentage at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).⁶

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established his eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of A-V-*, ID# 1409864 (AAO June 22, 2018)

⁶ Although we discuss a sampling of his recommendation letters, we have reviewed and considered each one.