



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

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

MATTER OF P-D-A-

DATE: MAY 30, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a researcher in the field of chemical science, 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 Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had received a major, internationally recognized award or satisfied at least three evidentiary criteria.

On appeal, the Petitioner submits additional evidence and asserts that he satisfies five of the evidentiary criteria in addition to the two criteria that the Director determined he satisfied.

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 Petitioner is a researcher in the field of chemical science. Because he has not indicated or established that he has received a major, internationally recognized award, he must meet 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 met two criteria, those concerning the judging of the work of others and the authorship of scholarly articles.

On appeal, the Petitioner maintains that he satisfies the requirements of five additional evidentiary criteria. We have reviewed all of the evidence in the record, and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three 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 Director found that the [REDACTED] award received by the Petitioner did not meet the requirements of this criterion because it was based upon the Petitioner’s receipt of his Ph.D. in materials science from [REDACTED]. On appeal, the Petitioner submits a slightly different translation of this certificate which is not accompanied by the required certificate of translation, as well as a letter from [REDACTED] District Education Officer, [REDACTED] of Nepal. This letter describes the [REDACTED] as “the most top prestigious National Award in the field of education in Nepal,” and states that it

“depends on their excellent contribution in education sector,” but also that it was awarded based upon the Petitioner’s “outstanding performance in the field of Material Science and Technology.” In addition to the discrepancy in the name of the award, the letter’s inconsistency regarding the basis of the award does not allow us to determine that the Petitioner received it based upon excellence in chemical science. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* Further, the lack of specificity in the letter does not establish that the award was given for excellence in the field of chemical science.

The Petitioner also submitted three certificates regarding his service as a reviewer for scientific journals. In addition to the previously submitted [REDACTED] he also submits similar certificates from the [REDACTED] on appeal. A letter from [REDACTED] Editor of the [REDACTED] states that the Petitioner was selected as the best reviewer in 2015 out of a pool of 35 candidates. However, the website of the [REDACTED] includes a link to this journal which indicates that it is no longer published, that the last issue of this journal was published in 2012, and that [REDACTED] is not listed as an editor¹. This discrepancy casts significant doubt upon the reliability of this evidence. *Id.* In addition, the certificates from [REDACTED] indicate that both journals are published by [REDACTED] and appear to be a product of [REDACTED]. As described on [REDACTED] website, the certificates are posted only to a reviewer’s profile page, and are used to record and acknowledge the efforts of peer reviewers.² Given their manner of distribution and intent, these certificates do not meet the requirements of 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 previously referred to the certificates mentioned above as evidence submitted under this criterion, which the Director noted in her request for evidence (RFE) only established his role as a reviewer for those journals. On appeal, the Petitioner submits a copy of membership card from the [REDACTED] which confirms that he has been a regular member since November 28, 2017, more than one year after the filing of this petition. Eligibility must be established at the time of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22

I&N Dec. 169, 175 (Comm'r 1998). In addition, even if the Petitioner's membership in [REDACTED] began prior to filing this petition, the membership requirements cited in the Petitioner's brief do not establish that it requires outstanding achievements of regular members. Accordingly, the evidence does not establish that the Petitioner satisfies 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)

The Petitioner submits a website printout providing information about a scientific conference at which he presented an abstract. The printout includes his name and photograph above the title and text of this abstract, but provides no other information about him or his work. In addition, there is no information in the record which shows that this website is a professional or major trade publication or other major media. Thus, the record does not demonstrate the Petitioner's eligibility under this criterion.

Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Director found that the Petitioner met the requirements of this criterion based upon the certificates described under the awards criterion above. Despite the noted discrepancy regarding the evidence of the Petitioner's reviews for the [REDACTED] the remaining evidence establishes by a preponderance of the evidence that the Petitioner meets the requirements of this criterion.

Evidence of the individual'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)

While the Petitioner claims that he did not previously submit evidence under this criterion, on appeal he refers to a letter from [REDACTED] Chief Operating Officer of [REDACTED] which was submitted in response to the Director's RFE. [REDACTED] refers to a published paper authored by the Petitioner, and states that the increased surface area of carbon nanomaterials described in this paper "might be helpful to load drugs for the targeted drug delivery system." [REDACTED] letter indicates potential applications of the Petitioner's research findings, but it does not support a finding that they have already made an impact on other researchers in the field of chemical science or in the pharmaceutical industry.

The Petitioner also submits a letter from [REDACTED] However, [REDACTED] does not identify any specific contributions made by the Petitioner to the field of chemical science, stating only that the Petitioner's work "is outstanding because it touches upon

critical issues while developing a unique and novel framework” without providing additional detail. In addition, this statement is not supported by documentary evidence in the record. This evidence does not establish that the Petitioner satisfied the requirements of this criterion.

Evidence of the individual’s authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Director found that the Petitioner meets this criterion based upon the evidence of his articles published in scientific journals and presentations at scientific conferences. Upon review of the record we agree with the Director’s decision.

Evidence that the individual 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)

The Petitioner did not initially claim eligibility under this criterion. On appeal, he resubmits two certificates from [REDACTED] in [REDACTED] Korea, which verify his employment as a postdoctoral researcher from May 2011 to July 2014, a contract for his employment in the same position from June 2012 to May 2015, and a letter from [REDACTED] in [REDACTED] Nepal, verifying his employment as a teacher of Chemistry from 1998 to August 2007. These documents do not describe how the Petitioner played a leading or critical role at these institutions, nor does the record include evidence regarding the reputation of these institutions. Therefore, the Petitioner has not established that he meets this criterion.

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 P-D-A-*, ID# 1276008 (AAO May 30, 2018)