



U.S. Citizenship
and Immigration
Services

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

MATTER OF A-M-

DATE: APR. 16, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a dentist in public health, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that she only met one of the ten evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that she meets three 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). Alternatively, he or she must provide 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, memberships, and published material in certain media).

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

A. Continuous Work in the Area of Extraordinary Ability

The Petitioner is a dentist in public health. As an initial matter, the Director held that the Petitioner had not established that she intended to continue working in her field of expertise as a dentist, as stated on the petition, under 8 C.F.R. § 204.5(h)(5), noting that the record indicated that she was currently employed as an adjunct assistant professor at [REDACTED]. The Director noted that in response to a request for evidence (RFE), the Petitioner submitted an amended petition, indicating that her job title is as a dentist in public health. The Director also noted that in a subsequent RFE response, the Petitioner submitted a job offer from [REDACTED] to be a full-time clinical instructor, indicating that she would be employed part-time at her dental practice. The Director concluded that the Petitioner had not established that she intended to support herself principally as a dentist. On appeal, the Petitioner first highlights the distinction between being a dentist and a dentist in public health, noting that the latter allows her to supervise dental students in clinical practice, conduct research on oral health disparities, and implement free clinics for [REDACTED] underserved populations.

We note that the Petitioner's statement accompanying the petition indicates that her field is dentistry in public health and then in her first RFE response, she cites the American Dental Association (ADA) definition of "dental public health" as "that part of dentistry providing leadership and expertise in population-based dentistry, oral health surveillance, policy development, community-based disease prevention and health promotion, and the maintenance of the dental safety net." In a more detailed statement submitted with the petition, the Petitioner states that she plans to take over the management of a particular dental practice, further expanding the private practice "to focus on providing holistic care that incorporates the principles [she has] mastered in public health and epidemiology."

We find that this statement sufficiently meets the requirements of 8 C.F.R. § 204.5(h)(5) which allows the petitioner to submit a statement “detailing plans on how he or she intends to continue his or her work in the United States.” Therefore, we withdraw the Director’s finding in this regard and conclude that the Petitioner has met this requirement.

B. Evidentiary Criteria

As the Petitioner has not received a major, internationally recognized award, the record must demonstrate that she satisfies 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 the criteria for judging under 8 C.F.R. § 204.5(h)(3)(iv) but that she did not meet the requirements for membership under 8 C.F.R. § 204.5(h)(3)(ii), original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v), or leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). On appeal, the Petitioner maintains that she meets these criteria. Upon reviewing all of the evidence in the record, we find that the Petitioner has not established that she satisfies at least three criteria.

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).

The Director held that the record contained evidence of the Petitioner’s membership in one association and society and evidence that she received a certification as a consultant, but that this documentation was insufficient to meet this criterion. On appeal, the Petitioner states that her membership in the [REDACTED] meets the requirements of this criterion, particularly when viewed from the perspective of her field as a dentist in public health. The record contains a letter from [REDACTED] director of the office of the trustees and fellowship affairs of the [REDACTED] confirming the Petitioner’s membership in the academy. [REDACTED] states that “Academy Fellows and Members are distinguished professionals in medical and health professions and other disciplines affecting health, who embody the highest levels of achievement and leadership in urban health, elected by their peers.” The record contains two pages from the [REDACTED] website regarding membership in the academy, which states that “[p]rofessionals who have completed their graduate training or have completed graduate education and certifications as appropriate to their health care related field . . . are eligible for Membership.” This document then states that “[t]hey shall show evidence of performance or outstanding potential in one or several of the health professional’s roles of practitioner, teacher, scientist, researcher, administrator or citizen.” Here, we note that while membership requirements are based on “outstanding potential,” this criterion requires outstanding achievements that have already occurred, rather than based on prospective events. The evidence in the record does not establish that being a “distinguished professional” who is elected by one’s peers meets this criterion, which requires “outstanding achievements” for membership. Furthermore, the record lacks evidence showing that membership in [REDACTED] was “judged by recognized national or international experts” in the field. T

The Petitioner also claims that her membership from the [REDACTED] establishes the requirements of this criterion. Although the Director concluded that the Petitioner’s certification as a consultant in this organization does not constitute membership, we note

that the certificate in the record from the [REDACTED] indicates that she is a member of this society. However, the record does not demonstrate what the requirements are for membership in the organization. The Petitioner submitted a webpage from [REDACTED] which identifies the requirements for certification in clinical hypnosis, indicating that an applicant must “[h]old at least a master’s degree in a health care discipline” and have licensure in the state where they practice; be a member of a professional society consistent with the degree, have a minimum number of hours of [REDACTED] “approved workshop training” and “individualized training;” and have at least “two years of independent practice utilizing clinical hypnosis.” These requirements appear to be for [REDACTED] certification rather than membership, and even if they did correlate with membership, the requirements are focused on an applicant’s education and training and do not demonstrate that membership is based on outstanding achievements as judged by recognized national or international experts in the field. Therefore, the Petitioner has not established that she meets this criterion.

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

We agree with the Director’s conclusion that the Petitioner meets this criterion. The record reflects that she has reviewed a manuscript for the journal *Modern Research in Dentistry*, which is sufficient to meet the requirements of this criterion.

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).

This regulatory criterion contains multiple evidentiary elements that the Petitioner must satisfy. She must demonstrate that her contributions are original and scientific, scholarly, artistic, athletic, or business-related in nature. The contributions must have already been realized, rather than being prospective possibilities. She must also establish that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase “major significance” is not superfluous and thus has meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995), *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003).

The Director indicated that the letters of recommendation the Petitioner submitted are insufficient to meet the requirements of this criterion. In addition, the Director acknowledged that the Petitioner had presented her work at conferences, but he concluded that this does not show original contributions, indicating that there is no way to determine the originality of the paper or its influence on the field. He further stated that the Petitioner had not submitted extensive documentation showing that her work has been “unusually influential, highly acclaimed at the national or international level, or has otherwise risen to the level of original contributions of major significance in the field.” Here, we note that the requirement of showing “sustained national or international acclaim” is a consideration for the final merits analysis, as this criterion does not require that the Petitioner’s work has been “highly acclaimed at the national or international level.” Rather, the Petitioner must show that her original contributions are of major significance in the field by demonstrating the influence they have had on the field.

“Contributions of major significance” connotes that the petitioner’s work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134.

The Petitioner claims to meet this criterion for her contributions to [REDACTED] program, which won the [REDACTED] award. On appeal, she states that this award is “the preeminent forum for recognizing contributions made to oral health and dental education.” She adds that while this award was specifically given to [REDACTED] she made original contributions of major significance to the organization which led it to receive this award, citing a letter from [REDACTED] and the former executive director of the program. [REDACTED] states that the Petitioner served as the clinical director at the [REDACTED] program and that before she joined the unit, it was restricted to providing only oral screening to children, as it could not provide nitrous oxide to relax children. He adds that “[the Petitioner] ingeniously implemented clinical hypnosis into the treatment of the children and that enabled her team to provide comprehensive dental care without the need of nitrous oxide.” He then indicates that through this implementation of hypnosis, “patient visits to the mobile dental health center steadily increased,” noting that she “expanded the program to include foster agencies in the [REDACTED]

[REDACTED] further states that “[the Petitioner’s] role with the [REDACTED] program had additional ripple effects through [REDACTED] noting that cavities “were significantly reduced in the [REDACTED] pediatric population which in turn reduced emergency room visits and thereby unburdened the hospital.” The letter describes effects on [REDACTED] and its immediate vicinity, but does not identify what impact, if any, the Petitioner’s contributions have had on the field. The Petitioner has not shown how her contributions within the [REDACTED] program have impacted the field as a whole to equate to contributions of major significance in the field.

The Petitioner also notes the [REDACTED] student-run free dental clinic in which dental students see patients under the Petitioner’s supervision and provided free dental screenings and oral hygiene instruction to underserved individuals. While this is notable work the Petitioner has provided within the community, she has not established what her original contributions are to this clinic or how her role overseeing the students’ work represents contributions of major significance in the field.

The record contains letters from individuals in the Petitioner’s field, attesting to her initiatives in providing dental care for children in underserved areas. An agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but it is ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). Here, we conclude that these letters do not demonstrate that her original contributions have significantly impacted the field to equate to contributions of major significance in the field. For example, a letter from [REDACTED] professor and chair of the Department of Health Policy and Management at [REDACTED] discusses the Petitioner’s work overseeing the free dental clinic which serves 300 to 400 homeless people in [REDACTED] annually, stating how uncommon it is for a dentist to also have expertise in public health and epidemiology. While this may be uncommon, the record does not establish that the Petitioner’s specialty in these fields amounts to original contributions of major significance in the field. Letters from colleagues that do not specifically identify contributions or detail how those

contributions have influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d at 1036: aff'd in part 596 F.3d 1115. Similarly, the record contains other letters from professionals in the field, attesting to her work in expanding dental care to populations in need in [REDACTED] but she has not established that her original contributions have significantly impacted the field as a whole to constitute contributions of major significance. See *Visinscaia*, 4 F. Supp. 3d at 134. Therefore, the Petitioner has not established that she meets 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).

For a leading role, the evidence must establish that the petitioner is or was a leader.¹ If a critical role, the evidence must establish that the petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the petitioner's performance in the role is or was important in that way. It is not the title of the petitioner's role, but rather his or her performance in the role that determines whether the role is or was critical.²

The Director held that the Petitioner had not shown that she was responsible for any organizations' success or standing to a degree consistent with the meaning of "leading or critical role." On appeal, the Petitioner states that she meets this criterion for her role as the clinical director of the [REDACTED] program, citing the letter from [REDACTED] as discussed above. However, this characterization appears to be incorrect as [REDACTED] letter indicates that the Petitioner was the "clinical director at the [REDACTED] program" as opposed to the clinical director of the entire [REDACTED] program.

While the evidence in the record establishes the distinguished reputation of the [REDACTED] College of Dental Medicine, the Petitioner has not shown that her role in the organization amounts to a critical role. [REDACTED] states that he "worked for the [REDACTED] of Dental Medicine from 1988-2015 in a variety of leadership positions including Executive Director of its award winning [REDACTED] program until 2015." In discussing the Petitioner's role as the clinical director of the program's [REDACTED] states that her implementation of clinical hypnosis into treatment for children allowed her team to transition from only conducting screenings to being able to provide "comprehensive dental care without the need of nitrous oxide," noting that as a result "patient visits to the mobile dental health center steadily increased" and that she "expanded the program to include foster agencies in the [REDACTED] states that the Petitioner also implemented a new method of managing the operations of the [REDACTED] which "translated into more patient visits and revenue," leading to a surplus that they were able to redirect into other community programs at [REDACTED] While this has had a positive influence on the community, the Petitioner has not shown how her role was of significant importance to the outcome of the organization's activities.

¹ 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 10* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

² *Id.*

The record contains a 2014 News Medical article about the [REDACTED] award given to [REDACTED] that quotes [REDACTED] who states, “[t]hrough our public school-based clinics and [REDACTED] enables us to extend oral health care to thousands of individuals every year who otherwise might not have access to care.” The article later states, [REDACTED] has established eight school-based dental clinics, and the program’s [REDACTED] van visits more than 80 locations throughout [REDACTED] and the [REDACTED] offering comprehensive dental care to children ages 3-5.” While we note that the Petitioner has served as the clinical director of the [REDACTED] of the [REDACTED] program, this appears to be just one of the other dental clinics that make up [REDACTED]. The Petitioner has not shown how leading one of these dental clinics is of such significant importance to the outcome of the organization or establishment’s activities that it constitutes a critical role.

The Petitioner also notes the [REDACTED] student-run free dental clinic in which dental students see patients under the Petitioner’s supervision and provided free dental screenings and oral hygiene instruction to underserved individuals. While this is notable work that the Petitioner provides within the community, she has not established that this organization has a distinguished reputation or that her role was of significant importance to the outcome of its activities. Therefore, the Petitioner has not established that she meets the requirements for this criterion.

III. CONCLUSION

The Petitioner is not eligible because she has not submitted the required initial evidence of either a qualifying 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). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-M-*, ID# 2248437 (AAO Apr. 16, 2019)