U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-A-

DATE: JAN. 25, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an international relations scholar and consultant, seeks classification as an individual 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 Texas Service Center approved the Form I-140, Immigrant Petition for Alien Worker. However, the Director of the Texas Service Center subsequently issued a notice of intent to revoke and later revoked the approval of the immigrant petition, finding that U.S. Citizenship and Immigration Services (USCIS) had approved the petition in error. Specifically, the Director determined that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner offers additional documentation, as well as previously submitted documentation, and a brief, contending that he meets at least three of the ten criteria and qualifies as an individual of extraordinary ability.

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

I. LAW

The Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition . . . ." Section 205 of the Act, 8 U.S.C. § 1155. By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition. 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). The Board of Immigration Appeals has discussed revocations on notice as follows:

> [A] notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if

> unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.[1]

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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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

[1] *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

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

Because the Petitioner has not indicated or 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). In revoking the approval of the petition, the Director found that the Petitioner did not meet any of the initial evidentiary criteria. On appeal, the Petitioner maintains that he fulfills the four criteria discussed below and requests that we consider additional documentation as comparable evidence for the artistic display criterion at 8 C.F.R. § 204.5(h)(3)(vii).[2] We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

A. Evidentiary 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).

As evidence under this criterion, the Petitioner presents documentation indicating his selection for jobs as a Nonresident Senior Fellow at the [redacted] a Scholar-in-Residence at [redacted] and a Visiting Fellow at the [redacted] As supporting evidence, he submits job postings for a "Senior Fellow, Foreign Policy" position at the [redacted] and a "Distinguished Scholar-in-Residence" position at [redacted] The Petitioner states that "these institutions are distinguished research and academic institutions which have highly discerning processes for selecting these roles and the people making the selections are recognized experts in their own right."

While the Petitioner emphasizes the distinguished reputation of the above organizations, the record does not demonstrate that his selection for employment in the aforementioned jobs constitutes his "membership in associations in the field." Submission of documentary evidence reflecting a petitioner's employment or involvement with a particular organization without evidence showing that the petitioner is a member of an association that requires outstanding achievements of its members, as judged by recognized national or international experts, is insufficient to meet the requirements of this criterion. The Petitioner's unsupported assertions that his employment in the

[2] The Director determined that the Petitioner's evidence did not meet the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii) because the submitted material (including, for instance, documentation of his appearances on CNN and Al Jazeera) was not about him. The Petitioner does not contest that determination on appeal. Instead, the Petitioner asserts on appeal that the submitted media coverage should be evaluated as comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4).

noted roles should be evaluated as "memberships" are not persuasive and are inconsistent with the regulations. Accordingly, the Petitioner has not satisfied this criterion.

We further note that the record does not sufficiently document that the above organizations' job requirements for his particular positions rise to the level of outstanding achievements. With respect to the Petitioner's employment at a March 2018 letter from Director of the identifies the Petitioner as a "Scholar-in-Residence" rather than a "*Distinguished* Scholar-in-Residence" (emphasis added). Accordingly, the Petitioner has not shown that the "Distinguished Scholar-in-Residence" job announcement is an accurate representation of the selection requirements for his position. Similarly, the Resident "Senior Fellow, Foreign Policy" fulltime permanent job announcement from the is not specific to the Petitioner's part-time Nonresident Senior Fellow position.

The record also includes a March 2018 letter from a Senior Fellow at the asserting that his organization's "Visiting Fellow program is highly discerning" and that "Visiting Fellows are selected based on their outstanding achievements in their specific area of expertise." Similarly, a March 2018 letter from Executive Vice President at the contends that his organization's "Nonresident Senior Fellows are carefully selected by leadership as well as our in-house experts in the field, based on their outstanding achievements as policy analysts or scholars in the field." The aforementioned letters from and do not list their organizations' specific requirements or further elaborate on the job selection criteria. Repeating the language of the regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Finally, the Petitioner has not provided sufficient evidence to demonstrate that job applicants' achievements are judged by recognized national or international experts.

> *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).

As evidence under this criterion, the Petitioner provided various letters of support and documentation relating to his published work and several conferences and speaking engagements in which he participated. The Director considered this documentation, but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field. For the reasons discussed below, we agree with that determination.

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made contributions that were original but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted the field, or have otherwise risen to a level of major significance in the field.

On appeal, the Petitioner asserts that the Director erred in determining that the letters of support from experts in the field were insufficient to meet this criterion. The Petitioner provides additional

support letters and contends that he has "provided expert policy analysis and advice to U.S. policymakers with regard to U.S.-Israel-Middle East relations, impacted the policy outcomes, and contributed to the theoretical and strategic framework for critical bilateral and multilateral agreements such as the July 2015 Iran Nuclear Deal." In addition, he presents documentation relating to bilateral and multilateral peace agreements and other programs in which he maintains he was involved.[3]

With respect to the Petitioner's letters of support, the Director explained that "USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony," but noted that "USCIS is ultimately responsible for making the final determination regarding an alien's eligibility." *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). As a result, we evaluate the content of letters to determine whether they support his eligibility. *See id.* at 795-96; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Here, the record includes letters from notable experts in international relations attesting to the Petitioner's involvement as a government official or consultant in various international agreements and his status as an influential authority in matters of policy. However, as discussed below, the letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to demonstrate the nature of specific "original contributions" that the Petitioner has made to the field that have been considered to be of major significance.

With respect to the Petitioner's work as a U.S.-Middle East relations strategist and scholar, the record includes a letter of support from Distinguished Fellow and Counselor at the for Near East Policy, stating that the Petitioner has influenced "policy makers, companies and individuals with interests in the Middle East." indicates that "[t]he ongoing crises in the Middle East pose many challenges for the United States" and that the Petitioner "has successfully shaped policies in order to achieve stability in the region." , however, does not identify specific U.S. or Israeli policies the Petitioner is credited with shaping or provide specific examples of how his particular work furthered stability in the Middle East or otherwise rises to the level of a contribution of major significance in the field.

In his February 2017 letter of support, Executive Director for Research at the at[4] states:

> During the time that I served and [the Petitioner] was the at the [2009-2012], we

[3] This documentation includes "Declaration of Principles" (1993), "Israel-Jordan Peace Treaty" (1994), "Wye River Memorandum" (1998), information about the "Builders for Peace" program (1990s), "Memorandum of Understanding Between Israel and the United States" (2007), "Israeli-Palestinian Interim Agreement" (1995), and information about the Joint Comprehensive Plan of Action – Iran Nuclear Deal (2015). The aforementioned documents do not mention the Petitioner or demonstrate the significance of his specific involvement.

[4] From 2009 until 2013, "served as During much of service, the Petitioner worked as , from 2009 until 2012.

> frequently consulted on diplomatic strategies to achieve a solution to the Iranian nuclear threat. [The Petitioner] was a strong advocate for reaching a deal with Iran because failing to do so would lead to devastating outcomes. . . . [The Petitioner] has consistently communicated to the policy community that a military campaign involving the United States, Israel or the Gulf States would be counterproductive because it would draw the ire of the international community and bestow Iran with legitimacy to pursue a nuclear weapon.

March 2018 letter further contends that the Petitioner's "advice was well received and ultimately taken by U.S. policy makers including myself, laying the groundwork for and ultimately contributing to the United States' nuclear agreement with Iran in July 2015. This multilateral agreement restricted the growth of Iran's nuclear capabilities in exchange for lifting certain sanctions." In addition, states that the agreement "was a major diplomatic accomplishment for the United States and a step toward securing peace and preventing nuclear proliferation in the Middle East, one for which [the Petitioner] played an important role."

While indicates that he and the Petitioner "consulted on diplomatic strategies to achieve a solution to the Iranian nuclear threat," we note that neither was working for his respective government in July 2015 when the agreement was reached. According to the "Joint Comprehensive Plan of Action" submitted by the Petitioner, China, France, Germany, Russia, the United Kingdom, the United States, the European Union, and Iran executed this agreement in July 2015 and Israel was not among the participating countries. Furthermore, the record includes a July 2015 article, entitled "6 Things You Should Know About the Iran Nuclear Deal," indicating that the agreement concluded after a "marathon negotiating session by top diplomats over the past three weeks in Vienna." The documentation in the record relating to the Iran Nuclear Deal does not indicate that the Petitioner was among this agreement's chief negotiators or architects. While attests that the Petitioner advocated for pursuing a peaceful diplomatic solution and avoiding U.S. military action against Iran, the evidence does not establish that the Petitioner's particular consultations with and advice to other U.S. policy makers regarding a solution to the Iranian nuclear threat demonstrate his integral role in bringing about the Iran Nuclear Deal or otherwise rise to the level of an original contribution of major significance in the field.

Moreover, a letter of support from former states:

> [The Petitioner] was an influential analyst and policy strategist on developments in U.S.-Israel and Israel-Middle East relations during my time on the committees. As at the . . . and subsequently as a Senior Fellow at [the Petitioner] provided me with critical insight and analysis that helped me gain a better understanding of U.S.-Israel and Middle East politics when I served on the committees. His analysis and advice were tremendously helpful to me in my efforts to further strengthen America's relations with Israel and my policy decisions vis-à-vis Israel and the Middle East.

[redacted] further contends that the Petitioner "contributed significantly to the foreign policy dialogue surrounding U.S.-Israel and Israel-Middle East relations and ultimately impacted U.S. policy toward Israel and the region as a whole." While [redacted] indicates that the Petitioner provided valuable insight, analysis, and advice on international relations and Middle East politics, he does not identify specific examples of issues on which the Petitioner's policy guidance on U.S., Israeli, and Middle Eastern affairs proved influential, nor does he offer sufficient information regarding how the Petitioner's particular consultations "impacted U.S. policy toward Israel and the region as a whole" or otherwise equate to original contributions of major significance in the field.

A letter of support from [redacted] former [redacted] (2014-2017) and U.S. [redacted] in [redacted] (2007-2010), discusses the Petitioner's participation as "a regular member of the [redacted] states that the Petitioner frequently contributed to this group's "discussions which ultimately laid the diplomatic groundwork for subsequent coordinated U.S.-Israel policy on dealing with regional challenges such as the Iran Nuclear issue and the Arab Spring." While the Petitioner participated in the aforementioned working group's discussions, the record does not include sufficient information regarding his original contributions to these meetings or the significance of such contributions. For instance, neither [redacted]'s letter nor supporting evidence in the record demonstrates whether the Petitioner offered specific strategies, recommendations, and/or policy input as a member of the group that constituted original contributions of major significance in the field.

Additionally, [redacted] asserts that the Petitioner "played a central role in the drafting and later signing of the U.S.-Israel Memorandum of Understanding securing the historic $30 billion in U.S. security assistance for Israel for the period 2008-2018, signed by the parties in Jerusalem in 2007." The record includes an August 2007 article from the Israeli Ministry of Foreign Affairs website entitled "Signing of the Memorandum of Understanding between Israel and the United States." This article states:

> Representing the United States at the ceremony were Undersecretary of State R. Nicholas Burns and U.S. Ambassador to Israel Richard Jones. On the Israeli side, Bank of Israel Governor Stanley Fisher, Director General of the Foreign Ministry Aaron Abramovich, Director General of the Ministry of Defense Pinchas Buchris and Israel's Ambassador to the United States, Salai Meridor, attended.

The aforementioned article includes a five-page "Transcript of ceremony and press conference," but the Petitioner is not mentioned in the article or transcript, nor identified as having "played a central role in the drafting and later signing" of the memorandum as claimed by [redacted] Nor does the record otherwise include sufficient information or evidence to demonstrate that the Petitioner's particular work relating to this memorandum rises to the level of an original contribution of major significance in the field. For instance, the record does not show that the nature and extent of his role in the agreement was such that its passage was largely attributable to him, nor has he identified or documented specific original contributions that he made to the drafting of the agreement which have been of major significance.

The record also includes a letter of support from [redacted] former [redacted] to the United States from 1993 until 1997.[5] He states that the Petitioner served as his Chief of Staff during that period and "was a key point of contact to the [redacted] and [redacted] in planning, organizing, and carrying out a number of important diplomatic events including numerous visits to the United States" by [redacted] and [redacted] and [redacted] further indicates that the Petitioner "helped coordinate the historic signing of several peace agreements including the U.S.-backed Israeli-Palestinian Declaration of Principles," "the Israeli-Jordanian Washington Declaration," "the Israel-Jordan Peace Treaty in the Arava Crossing," and "the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip." In addition, [redacted] states that the Petitioner accompanied him to the Israeli-Syrian talks in [redacted] participated as a member of [redacted] and served as Israel's point of contact for both the U.S. Government-funded [redacted] program and the [redacted]. While the Petitioner served as "a key point of contact" to the U.S. executive branch in his role as Chief of Staff at the [redacted] the record does not include sufficient information and supporting evidence to demonstrate that through his coordination of various diplomatic events, participation as member of [redacted] and work relating to the [redacted] program and [redacted] he made original contributions of major significance in the field.

An additional letter from [redacted] discusses the Petitioner's work as [redacted] from 2009 to 2012 when [redacted] was [redacted] to the United States. [redacted] asserts that the Petitioner "was directly involved with the most important events affecting Israeli foreign policy, diplomatic, and security matters during his tenure as [redacted] and he made a vital contribution to attempts to advance the U.S.-backed peace efforts between Israelis and Palestinian promoted by [redacted] . . . ." [redacted] further states:

> [The Petitioner] was intimately involved in the joint and coordinated U.S.-Israeli consultations and efforts to prevent Iran from reaching military nuclear capability; U.S. continuous diplomatic efforts to bridge the gaps between the Israeli government and the Palestinian Authority; the Israeli-Turkish flotilla incident in May 2010, the collapse of Israel-Turkish relations, and U.S. attempts to resolve these issues; Israel's strategic thinking with regard to the events of the Arab Spring beginning in January 2011 including the Egyptian Revolution and the outbreak of civil war in Syria; the lifting of the siege on Israel's embassy Cairo in September 2011; restoring Egyptian natural gas supply to Israel after terrorist attacks on the pipeline cut supply by 40%; and joint U.S.-Israel efforts to deal with the diplomatic fallout and attempts at the

[5] [redacted] letter notes that he is "currently President of the [redacted] and professor emeritus of [redacted] at [redacted] distinguished global professor at [redacted] and a distinguished fellow at the [redacted]

> [United Nations] and other international organizations to sanction Israel over its actions in Gaza.

lists various peace efforts and foreign policy, diplomatic, and security matters in which the Petitioner was involved, but he does not sufficiently explain the nature of the Petitioner's original contributions to these efforts and the record does not show that his specific work relating to these events rises to the level of major significance in the field. Furthermore, to the extent the aforementioned statements from and focus on the Petitioner's responsibilities as and Chief of Staff at the in and the tasks he performed in those roles, this information is more relevant to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), a separate and distinct criterion discussed below and that he has satisfied. Consistent with the regulatory requirement that a petitioner meet at least three separate criteria, we will generally not consider evidence relating to the leading or critical role criterion to satisfy this one.

In addition to the letters of support, the record reflects that the Petitioner has published and presented his work. For example, the Petitioner published an analysis paper entitled and spoke at a policy conference organized by the Committee. Publications and presentations, however, are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. There is no presumption that every published article or conference presentation is a contribution of major significance in the field; rather, a petitioner must document the actual impact of his article or presentation.[6] In this case, the record does not show that the Petitioner's published and presented work has affected his field in a substantial way or that it otherwise equates to original contributions of major significance in the field.

Without sufficient evidence demonstrating the nature of his original contributions or their major significance in the field, the Petitioner has not established that he meets this criterion.

> *Evidence of the alien'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).

As discussed, the record shows that the Petitioner authored an analysis paper, entitled that was published by the at the The record includes sufficient evidence to demonstrate that this work constitutes a scholarly article in a professional publication.[7] Accordingly, the Petitioner meets this criterion.

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[6] Generally, citations can confirm that the field has taken interest in a scholar's work. The Petitioner submitted examples of several articles that cited to or referenced his analysis paper; however they do not reflect that his work was singled out as particularly important. The Petitioner has not demonstrated that the citations to his work, considered both individually and collectively, are commensurate with contributions "of major significance in the field."

[7] A scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field. *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140*

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).

We find that the Petitioner meets this criterion based on his prior roles as and Chief of Staff at the in

B. Comparable Evidence

On appeal, the Petitioner argues that "his media coverage, speaking engagements, and published articles" should be considered as comparable evidence of the "showcase of his work in lieu of 8 C.F.R. § 204.5(h)(3)(vii)," a criterion that requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases."[8] The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation. A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[9]

Here, the Petitioner has not shown that the listed criteria do not readily apply to his occupation. He has not asserted or demonstrated that he cannot offer evidence that meets at least three of the ten criteria. As discussed, the Petitioner has claimed to meet more than three criteria. Moreover, the Petitioner has not shown that international relations scholars and consultants cannot present evidence relating to the other regulatory criteria such as receiving awards for excellence and commanding a high salary. *See* 8 C.F.R. § 204.5(h)(3)(i) and (ix). As such, the Petitioner has not established that he is eligible to meet the initial evidence requirements through the submission of comparable evidence.[10]

Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 9 (Dec. 22, 2010), https://www.uscis.gov/legal-resources/policy-memoranda.

[8] We note that, with respect to the media coverage relating to the Petitioner (such as his CNN and Al Jazeera appearances as well as quotes appearing in major print media), the Director determined that this evidence did not meet the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii) because the submitted material was not about him and the Petitioner does not challenge that determination on appeal. In addition, both our decision and that of the Director have addressed the Petitioner's speaking engagements under the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v). Furthermore, as discussed above, we found that the Petitioner's published article entitled fulfilled the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi).

[9] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

[10] On appeal, the Petitioner cites an AAO non-precedent decision for the proposition that to prove eligibility under 8 C.F.R. § 204.5(h)(4), one must only demonstrate that at least one criterion is not applicable, and that the submitted evidence is comparable to that criterion. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Instead, we are bound by the published policy memorandum referenced above.

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20.

It follows that the Petitioner has not established his eligibility as an individual of extraordinary ability. The revocation of the previously approved petition is affirmed for the above stated reasons, with each considered as an independent and alternative basis for the decision. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Estime*, 19 I&N Dec. at 452, n.1; and *Matter of Ho*, 19 I&N Dec. at 589. Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of D-A-*, ID# 1518916 (AAO Jan. 25, 2019)