U.S. Citizenship and Immigration Services

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

MATTER OF H-J-D-

DATE: MAR. 14, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an orthopedic surgeon, 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 although the Petitioner satisfied three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner claims that he is one of the top professionals amongst his peers.

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 consultant orthopedic surgeon 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 the following three criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv), scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), and high salary under 8 C.F.R. § 204.5(h)(3)(ix). Accordingly, we will evaluate the totality of the evidence in the context of the final merits determination below.

### B. Final Merits Determination

As the Director determined that the Petitioner 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.[1] In this matter, we determine that the Petitioner has not shown his eligibility.

The record reflects that the Petitioner received his bachelor of medicine, bachelor of surgery (MBBS) from in India in 2001. The Petitioner also indicates on his curriculum vitae that he obtained his master of surgery in orthopedics from in 2006. In addition, the Petitioner completed fellowships at various medical institutions in Australia and the United States. Currently, the Petitioner is a consultant orthopedic surgeon at in California. As mentioned above, the Director found that the Petitioner judged others within his field, authored scholarly articles, and earns 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 his service as a judge of others, 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. The record reflects that he has served on the editorial boards for the and the , including being designated as the chief reviewer for the upper extremity section with [2] However, the Petitioner did not establish that his judging experience places him among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). He did not show, for example, how the number of reviews he conducted or the positions he held on the editorial boards compared to others at the top of the field.

Moreover, the Petitioner did not establish that his journal reviews contribute to a finding that he has a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. at 59. While he served the editorial boards of two journals, the Petitioner did not show that such judging experience is indicative of the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The Petitioner did not demonstrate, for instance, that he garnered wide attention from the field based on his work reviewing journal papers or serving on the editorial boards. In addition, the Petitioner did not establish whether his judging occurred with highly ranked, prestigious journals in his field such that his experience places him among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2).

Participation in the peer review process does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field.

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[1] *See also* 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* 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

[2] The Petitioner also indicates that he has served as a product advisor for and as an instructor for the However, the Petitioner did not demonstrate how he participated as a judge of the work others in these positions.

Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of completing a substantial number of review requests relative to others, served in editorial positions for distinguished journals or publications, or chaired technical committees for reputable conferences, the Petitioner has not established that his peer review experience places him among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Likewise, publication of a petitioner's written work does not automatically place one at the top of the field. Here, the Petitioner presented evidence showing that he authored three papers (2009, 2011, and 2015) in the *Journal of Hand Surgery* and a book chapter in 2015. The Petitioner, however, has not established that this publication record is consistent with having a "career of acclaimed work." H.R. Rep. No. at 59. In addition, the commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide 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). He has not shown that his authorship of three published articles and a book chapter is reflective of being among the small percentage at the very top of his field and is tantamount to a career of acclaimed work or that it demonstrates the required sustained national or international acclaim for this highly restrictive classification. *See* 8 C.F.R. § 204.5(h)(2); H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.[3]

As authoring scholarly articles is often inherent to the work of scientists, researchers, and physicians, the citation history or other evidence of the influence of his articles can be an 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 may provide solid evidence that his work has been recognized and that other researchers 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. The record reflects that he has 31 total citations with one paper receiving 27 citations and his other paper receiving 4 citations. While the Petitioner's citations, both individually and collectively, show that field has noticed his work, he did not establish that such rates of citation are sufficient to demonstrate a level of interest in his field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not show that the citations to his work represent attention at a level consistent with being among small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not compare his citations to others in his field of endeavor that are recognized as already being at the top in his field.

In addition, although the Petitioner presented documentation from salary.com showing that he earns more than the median wages of orthopedic surgeons in the United States, the evidence also reflects

[3] The Petitioner also offered evidence of his participation, attendance, and presentation at scientific conferences and meetings. However, the Petitioner did not demonstrate that he received national or international acclaim or that the field recognized him as having a career of acclaimed work from these events. *See* section 203(b)(1)(A) of the Act and H.R. Rep. No. at 59.

that his wages are below the 90th percentile. Further, while his salary is above the 75th percentile, his earnings are not tantamount to an individual who is among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). In addition, the Petitioner did not establish that his wages are sufficient to show a level of compensation commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act.

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 fulfills 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 of the top of his field.

With respect to the Petitioner's memberships, he provided evidence indicating his membership with and the Although the Petitioner presented the bylaws for each association, they do not reflect that membership requires outstanding achievements, as judged by recognized national or international experts. Rather, membership is determined based on medical and osteopathic certification and payment of association dues, which is not reflective of outstanding achievements, nor does it represent an individual who is among the small percentage at the very top of the field. As the Petitioner has not shown, for example, that he is a member of associations that limit membership to individuals 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).

In regards to the Petitioner's contributions, he submitted recommendation letters that summarize his professional accomplishments, such as completing fellowships, presenting at conferences, reviewing journal papers, and publishing articles. However, the letters do not explain how the Petitioner's achievements have been considered by the field to be of major significance. Moreover, they do not contain detailed information showing the unusual influence or high impact his contributions have had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[4] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting original contributions of major significance in the field.[5] Here, the letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

[4] *See* USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9.

[5] *Id.* At 9. *See also Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters the repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

The record as a whole, including the evidence discussed above, 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, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *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 top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

## III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. In visa petition proceedings, the petitioner bears the 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 H-J-D-*, ID# 2377289 (AAO Mar. 14, 2019)