



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

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

MATTER OF L-O-O-S-S-S-

DATE: OCT. 1, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a law firm, seeks to classify the Beneficiary 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 Beneficiary had satisfied only two of the ten initial evidentiary criteria, of which she must meet at least three. In addition, the Director found that the Petitioner did not establish that the Beneficiary will continue to work in her area of extraordinary ability.

On appeal, the Petitioner submits a brief, arguing that the Beneficiary fulfills at least three of the ten criteria.¹

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

¹ The Petitioner does not address the Director's issue relating to the Beneficiary's intent to continue to work in her area of extraordinary ability.

- (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 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 submitted a statement from the Beneficiary claiming that she has worked as a geologist at [redacted] in the [redacted] since April 2017.² Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

In denying the petition, the Director determined that the Beneficiary met only two of the initial evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Beneficiary reviewed manuscripts for scientific journals. In addition, she authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Beneficiary fulfilled the judging and scholarly articles criteria.

Further, we find that the Petitioner demonstrated published material about the Beneficiary in professional publications, satisfying the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii).

² The record does not contain any independent, supporting evidence confirming the Beneficiary's employment.

Because the Petitioner has demonstrated that the Beneficiary meets three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.³

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim⁴ and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a beneficiary's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she 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 1119-20.⁵ In this matter, we determine that the Petitioner has not shown the Beneficiary's eligibility.

The Petitioner submitted documentary evidence reflecting the Beneficiary's academic history. Specifically, the Beneficiary received her bachelor's degree from [redacted] University in 2003, her master's degree from [redacted] University in 2006, and her doctorate degree from the University of [redacted] in 2014. Moreover, as indicated earlier, the Beneficiary claimed to be working as a geologist for [redacted] in the [redacted] since 2017, as well as previous employment at the [redacted] Institute [redacted] for Resource Technology" in [redacted] Germany.⁶ As mentioned above, professional publications produced material about the Beneficiary, she judged the work of others within her field, and she authored scholarly articles. The record, however, does not demonstrate that her 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 published material about the Beneficiary, the Petitioner offered four articles in professional publications. Specifically, the Petitioner submitted an article (2011) from the *University of [redacted] Faculty of Geo-Information Science and Earth Observation (ITC) News* about the Beneficiary receiving a travel grant and presenting at a conference. Moreover, the Petitioner provided two articles (2011 and 2014) from the *International Association for Mathematical Geosciences (IAMG) Newsletter* indicating the Beneficiary's travel award and conference and reporting on her recruitment of new IAMG members to ITC. Further, the Petitioner supplied an article (2014) from the *Geological Remote Sensing Group (GRSG) Newsletter* reporting on the Beneficiary's defense of her Ph.D. dissertation.

³ 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* 13 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

⁵ See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 4 (instructing 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).

⁶The Petitioner did not provide any corroborating evidence relating to the Beneficiary's employment with [redacted] Institut [redacted]g for Resource Technology."

However, the Petitioner did not demonstrate that four articles published about the Beneficiary are consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. Further, the Petitioner did not show that the Beneficiary's overall press coverage is 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." 8 C.F.R. § 204.5(h)(2).

Moreover, the Petitioner did not establish that four articles, published in 2011 and 2014, reflect a "career of acclaimed work in the field" as contemplated by Congress. *See* H.R. Rep. No. at 59. Furthermore, the newsletters reflect coverage of the Beneficiary limited to the associations or universities while studying for her higher education degrees rather than widespread reporting on her accomplishments in the field showing sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act.

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).⁷ Here, the Petitioner did not establish that its submission of four articles meets this very high standard.

As it pertains to her service as a judge of others, an evaluation of the significance of her 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 1121-22.⁸ The Petitioner provided evidence showing that the Beneficiary served as a reviewer for the *Arabian Journal of Geosciences*, the *International Journal of Applied Earth Observations and Geoinformation*, the *International Journal of Geographical Information Science*, and the *American Association of Petroleum Geologists Bulletin*, as well as on a panel judging theses at ITC and evaluating abstracts at the European Geoscience Union annual conference.⁹ However, the Petitioner did not establish that her judging instances places her among the small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2). She did not show, for example, how her judging experience compares to others at the very top of the field.

In addition, the Petitioner did not demonstrate that her judging occurrences contribute to a finding that she has a "career of acclaimed work in the field" as contemplated by Congress or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not establish, for instance, that she garnered wide attention from the field based on her work as a manuscript, thesis, or abstract reviewer.

⁷ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 2.

⁸ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

⁹ The Petitioner did not demonstrate the number of manuscripts, theses, or abstracts reviewed by the Beneficiary, nor did it document when they all occurred.

Moreover, serving on a judging committee or 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 her field. Without evidence that sets her apart from others in her field, such as evidence that she 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 shown that the Beneficiary's peer review experience places her among "that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

Likewise, the publication of research does not automatically place one at the top of the field.¹⁰ Here, the Petitioner presented evidence showing that the Beneficiary authored six articles that were published in professional journals between 2006 and 2014, as well as three abstracts from conference proceedings.¹¹ However, the Petitioner has not demonstrated that this publication record is consistent with having a "career of acclaimed work" or qualifies for this "very high standard." *See* H.R. Rep. No. at 59 and 56 Fed. Reg. at 30704. Moreover, the Petitioner did not establish that the Beneficiary's authorship of six published articles is reflective of being among the small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2). In addition, the Petitioner did not show that the Beneficiary has sustained national or international acclaim as her most recent article was last published in 2014. *See* section 203(b)(1)(A) of the Act.

As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of her articles can be an indicator to determine the impact and recognition that her work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Beneficiary may provide solid evidence that her work has been recognized and that other geologists have been influenced by her work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. Here, the record indicates that the Petitioner provided evidence reflecting that the Beneficiary's articles garnered 110 citations and her conference abstracts received 4 citations. While the Beneficiary's citations, both individually and collectively, show that the field has noticed her work, the Petitioner has not established that such citations are sufficient to demonstrate a level of interest in the field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Moreover, the Petitioner has not shown that the citations to the Beneficiary's research represent attention at a level consistent with being among small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not compare the Beneficiary's authored works to others in her field of endeavor that are recognized as already being at the top in her field.

Beyond the three criteria that the Beneficiary 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

¹⁰ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

¹¹ The Petitioner claims that the Beneficiary authored five additional articles; however, it did not demonstrate whether they were ever published.

evidentiary criteria nor contributes to an overall finding that the Beneficiary has sustained national or international acclaim and is among the small percentage of the top of her field.

As it relates to awards, the Petitioner claimed the Beneficiary's eligibility based on her receipt of a "2011 [redacted] Grant Award" from the International Association of Mathematical Geosciences (IAMG), "2012 [redacted] Grant Award" from IAMG, and "2013 [redacted] Scholarship" from the University of [redacted] Scholarship Program. Although scholarships, grants, or fellowships may be recognized in academia, the Petitioner did not demonstrate that such financial aid funding is tantamount to nationally or internationally recognized prizes or awards for excellence in the Beneficiary's field of endeavor, geology. In addition, awards won by the Beneficiary competing against other students do not indicate that she "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). 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 individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). In addition, even considering that the Beneficiary received her last financial aid grant approximately five years ago, the Petitioner did not show that it is representative of the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act.

Further, the Petitioner submitted evidence of the Beneficiary's membership with IAMG between 2011 and 2013. However, the record demonstrates that this association is generally open to "geoscientists, statisticians, and other interested individuals or organizations." Here, the Petitioner did not establish that the Beneficiary's membership with a single association represents an individual who is among the small percentage at the very top of the field. *See* 8 C.F.R. §204.5(h)(2). Moreover, the Petitioner did not show that the Beneficiary's membership with IAMG approximately five years ago resulted in 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 addition, the Petitioner provided recommendation letters that summarized the Beneficiary's work and contributions in the field. The letters, however, do not contain sufficient information and explanation, nor does the record include corroborating evidence, to show that the Beneficiary 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). Further, the Petitioner did not show that the Beneficiary has made impactful or influential contributions to her field reflecting a "career of acclaimed work in the field," garnering the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

Finally, the Petitioner asserted that the Beneficiary played a critical role to IAMG by serving as the chair for the student chapter at the University of [redacted]. However, the Petitioner did not demonstrate that the Beneficiary's role was reflective of, or resulted in, widespread acclaim from her field or that she is considered to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Further, the record does not reflect that the Beneficiary held leading or critical roles for organizations or establishments with distinguished reputations, nor does it show that her role for the IAMG student chapter at the University of [redacted] over four years ago represents sustained national or international acclaim or a "career of acclaimed work in the field." *See* section 203(b)(1)(A) of the Act and H.R. Rep. No. at 59.

The record as a whole, including the evidence discussed above, does not establish the Beneficiary's eligibility for the benefit sought. Moreover, as discussed above, the Petitioner barely documented the Beneficiary's accomplishments or achievements since 2014. Here, the Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Price*, 20 I&N Dec. at 954. 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 the Beneficiary has sustained national or international acclaim and is among the small percentage at the top of her field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability.¹² 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, 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 L-O-O-S-S-S-*, ID# 4250421 (AAO Oct. 1, 2019)

¹² As the Petitioner has not demonstrated the Beneficiary's extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether she intends to continue working in her area of extraordinary ability under section 203(b)(1)(A)(ii).