



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

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

MATTER OF V-K-

DATE: OCT. 31, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an electrical engineer, seeks classification as an individual of extraordinary ability in the field of science. *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 not satisfied any of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits a brief and asserts that she meets at least three of the ten 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). 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

As noted above, the Petitioner is an electrical engineer. She earned a Ph.D. in engineering from [redacted] State Technical University in 2012, and at the time of filing was an associate professor at [redacted] State Technical University. Because she has not indicated or established that she has received a major, internationally recognized award, the Petitioner must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner did not meet any of the regulatory criteria.

On appeal, the Petitioner asserts that she satisfies three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) directly or through comparable data. She contests the Director's finding with respect to the awards criterion and claims for the first time that she satisfies two additional criteria: scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi) and salary at 8 C.F.R. § 204.5(h)(3)(ix).¹ For the reasons discussed below, we find that she has not satisfied the initial evidentiary requirements.

A. Evidentiary Criteria

¹ The Petitioner previously claimed eligibility under the published material, leading or critical role, and original contribution criteria at 8 C.F.R. § 204.5(h)(3)(iii),(v), and (viii), respectively. Here she does not contest the Director's findings with respect to these criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner contends that she meets this criterion as she received both awards and scholarships resulting from “scientific activities.” Specifically, she notes her repeated receipt of “cash awards” from the [redacted] State Technical University and from the [redacted] Company. However, she does not indicate which evidence corroborates this claim, nor does the record contain corroborative documentation from either entity showing that they have awarded her cash awards as a result of her scientific activities. Moreover, the record lacks evidence demonstrating that any such awards received by the Petitioner were granted for excellence in her field, or that they are nationally or internationally recognized.

The Petitioner also asserts that she meets this criterion through her receipt of the Governor of the [redacted] and [redacted] scholarship. The Petitioner provides a copy of the former award, along with a full translation stating that the scholarship was given to “the best student [sic] from among indigenous people...” The Petitioner also indicates that the guidelines for this award state that it is given to “gifted children for their achievements in the field of educational activities, culture and sport...”² This evidence does not establish that the Petitioner received this scholarship for excellence in the field of electrical engineering. In addition, the record lacks evidence demonstrating that it is recognized beyond the [redacted] and thus is nationally or internationally recognized.

Regarding the [redacted] scholarship, the Petitioner states that it is a “special recognition of success in research, education process and social work.... [i]ntended for university and postgraduate students – excellent students and authors of scientific research.” The record includes a copy of the award conferring the scholarship, as well as its distribution among the “higher and medium specialized educational institutions of [redacted]” However, the Petitioner did not establish that her field recognizes these scholarships as national or international prizes or awards for excellence.

For the reasons discussed above, the Petitioner has not demonstrated that she 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).

The Petitioner asserts for the first time on appeal that she meets this criterion as she has “published articles in peer-reviewed journals recommended by the [redacted]” The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires her “authorship of scholarly articles in the field, in professional or major trade publications or other major media.”³ Furthermore, 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.⁴

² The Petitioner did not submit a copy of the guidelines to corroborate her statement.

³ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

⁴ *Id.*

The record includes a list of 14 articles provided by the Petitioner as part of her initial appeal, as well as copies of the articles and their translations. However, the record lacks evidence demonstrating that all but one of these articles were published in professional or major trade publications or other major media, as required. Notably, although the Petitioner's list indicates that they were published in various conference proceedings and other publications, the copies lack identification of any publication in which they appeared, and are not supported by copies of indexes or other evidence to corroborate their publication in the proceedings noted on the Petitioner's list. The evidence establishes that the remaining article, titled [REDACTED] appeared in [REDACTED] State Technical University Scientific Journal. Thus the Petitioner has demonstrated that she authored a scholarly article in a professional publication. Accordingly, the Petitioner has established that she meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner claims for the first time on appeal that she meets this criterion due to the cash awards and scholarships discussed above and submits bank records to support her assertion. She states that these bank statements demonstrate "cash receipts above the normal salary amount" given for "high achievements in the field of science."⁵

In order to satisfy this criterion, a petitioner must demonstrate that she commanded a high salary or other significantly high remuneration for services in relation to others in her field. However, the Petitioner did not establish the total amount of salary or remuneration she has earned. The bank account activity report that she submitted reflects varying amounts described as "enrollment of salaries" which were deposited at irregular intervals during a three-year period, but does not identify the Petitioner as the account holder or the source of these payments. The record also lacks documentation from either [REDACTED] State Technical University or the [REDACTED] [REDACTED] showing her actual salary or total cash awards received.

Moreover, the Petitioner did not present comparable data showing that she commands a high salary or significantly high remuneration "in relation to others in the field," such as electrical engineers. Without evidence of the salaries of other similarly situated electrical engineers, we cannot determine whether the Petitioner's salary is high, or her remuneration significantly high, in comparison. Accordingly, she has not shown that she satisfies this criterion.

B. Comparable Evidence

On appeal, the Petitioner refers to evidence of citations to her published work as comparable evidence showing success in her field. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence if the evidentiary criteria do not readily apply to a petitioner's occupation. In general, a petitioner should explain why she has not submitted evidence that would satisfy at least

⁵ The Petitioner states that these awards resulted from "developments in the field of [REDACTED]" her scientific publications, and patents resulting from research "in the field of [REDACTED] and related software."

three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence she has included is “comparable” to that required under 8 C.F.R. § 204.5(h)(3).⁶ Here, the Petitioner has not shown why she cannot offer evidence that meets at least three of the criteria, and in fact claims to meet three criteria. The fact that the Petitioner did not submit documentation that fulfills at least three is not evidence that an electrical engineer could not do so. For these reasons, the Petitioner did not show that she is eligible to meet the initial evidentiary requirements through the submission of comparable evidence. Furthermore, the Petitioner has not explained or established how the documentation she has provided is comparable to the listed criteria at 8 C.F.R. § 204.5(h)(3).

III. CONCLUSION

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). Here, the evidence does not establish that the Petitioner has received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we find the record insufficient to demonstrate that she 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 and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not established her eligibility for the classification sought. 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 V-K-*, ID# 4377776 (AAO Oct. 31, 2019)

⁶ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 12.