U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-W-

DATE: SEPT. 3, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a Chinese language lecturer, seeks classification as an individual of extraordinary ability in education. *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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only one of initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that she fulfills 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,
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> (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

The Petitioner indicates employment as the director of the Chinese program at the [redacted] [redacted] Because she has not indicated or established that she 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).

In denying the petition, the Director determined that the Petitioner met one of the initial evidentiary criteria, scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the scholarly articles criterion.

On appeal, the Petitioner maintains that she satisfies four additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner meets the requirements of at least three 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 claims to meet this criterion based on the "National Grant from the [redacted] [redacted] and "Distinguished Scholar Grant by the [redacted]

In order to fulfill this criterion, the Petitioner must demonstrate that she received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.[1] Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.[2]

As it relates to the "National Grant," the Petitioner initially provided a letter from stating that she "has been awarded a scholarship under the State Scholarship Fund." In response to the Director's request for evidence (RFE), the Petitioner offered screenshots from edu.cn regarding the "National Scholarship Fund." On appeal, the Petitioner presents a letter from who referenced the "National Grant." Here, the Petitioner has not established which grant, scholarship, or fund, if any, she received, as her evidence mentioned different names, such as "National Grant," and "National Scholarship Fund." Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner did not show that her corresponding evidence pertains to her claimed "National Grant."

Similarly, regarding the "Distinguished Scholar Grant," the Petitioner initially submitted a document reflecting that she received the "Top National Research Grant" from the for the "Young Scholar Research Grant." In response to the RFE, she provided a letter from who talked about the "[t]he In addition, she presented a letter from who commented on the "National Funding Project of On appeal, the Petitioner offers letters from and who discussed the "Distinguished Scholar Grant." Again, the Petitioner offered documentation referencing different names, such as "Distinguished Scholar Grant," "National Funding Project," and "National Social Science Fund of Because of her submission of conflicting information, the Petitioner has not sufficiently identified which grant or award, if any, she received. *Ho*, 19 I&N Dec. at 591-92.

Moreover, as it pertains to the "Distinguished Scholar Grant," the initial document reflected that she received the grant for her project, in 2012. However, indicated that he "was asked to give a comment on [the Petitioner's] National Funding Project of entitled which she was granted with in 2012."[3] Here, the Petitioner provided evidence claiming to have received the grant for different projects. *Ho*, 19 I&N Dec. at 591-92. In addition, the last two lines of letter appears to be in a different font than the rest of his letter, suggesting it may have been altered or not authored by him. Unresolved material

[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* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[2] *Id.*

[3] claimed the same project number, entitled

inconsistencies may lead to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Notwithstanding the above, the Petitioner did not show that the scholarships, grants, or funds are nationally or internationally recognized prizes or awards for excellence in her field of endeavor, Chinese instruction. As it relates to the "National Grant," the evidence discussed above references it as "a scholarship . . . to pursue her research in the United States as a visiting scholar," "[to] study abroad for the selection of students," "the youth backbone teachers abroad training program," and "to pursue their own research within their field of expertise at a top academic institution abroad." Likewise, regarding the "Distinguished Scholar Grant," the evidence mentions it as "the highest academic award of funds in social sciences from the Chinese government" and "the most important research proposed by the very top scholars in each area of the social sciences." Although scholarships, grants, or fellowships may be recognized in academia, the Petitioner did not demonstrate that such financial aid funding is tantamount to a nationally or internationally prize or award for excellence in her field of endeavor, Chinese linguistics. Here, the Petitioner did not establish that her field recognizes these scholarships or grants as national or international prizes or awards for excellence. Moreover, academic study is not a field of endeavor, but training for one; academic awards and honors received while preparing for a vocation or for furthering education do not constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor under the regulation at 8 C.F.R. § 204.5(h)(3)(i). Further, the Petitioner did not show that receiving financial support in order to gain training or conduct research qualifies as a prize or award for excellence in the field.

Finally, the Petitioner argues that she has "received numerous awards in her field of Chinese language instruction and curriculum development," such as "Outstanding Teaching for her teaching at [redacted] [redacted] . . . and the [redacted] more recently," "a bilingual speech contest focused on Chinese/English language instruction by the [redacted] and "numerous funding awards, most recently by [redacted] However, the Petitioner does not argue that any of these awards are nationally or internationally recognized for excellence in her field consistent with this regulatory criterion. Moreover, although the record contains evidence of her receipt of various awards, she did not demonstrate the field's recognition of them as national or international prizes or awards for excellence.

For the reasons discussed above, the Petitioner did not establish that she satisfies this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner contends that she fulfills this criterion based on an article published in *China Daily* and posted on chinadaily.com.cn, and coverage broadcasted on the television station, WDAZ. In order to meet this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material.[4]

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[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

Regarding *China Daily* and chinadaily.com.cn, the Petitioner submitted an article about her published in *China Daily USA* and posted on usa.chinadaily.com.cn. Here, the record does not support the Petitioner's claim that she has had published material about her in *China Daily* and on chinadaily.com.cn rather than in *China Daily USA* and on usa.chinadaily.com.cn. Moreover, while the Petitioner provides circulation and viewing statistics for *China Daily* and chinadaily.com.cn, she does not offer evidence relating to *China Daily USA* and usa.chinadaily.com.cn, showing that the publication or website is considered to be a major medium.[5]

As it relates to WDAZ, the Petitioner provided four television still shots claiming to be [redacted] [redacted], interviewed by ABC, WDAZ 8-TV, [redacted] 2016." However, the Petitioner did not present a transcript of the broadcast segment, establishing published material about her. Moreover, the Petitioner did not include the full date and author of the material. Further, the Petitioner did not demonstrate that WDAZ is a major medium. Although she submits screenshots from *Wikipedia* indicating that WDAZ "reaches only 82,000 American television households" and "an additional 256,000 homes [in Manitoba]," the Petitioner did not show the significance of the figures or explain how such information reflects status as a major medium. We note that *Wikipedia* is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. *See General Disclaimer, Wikipedia* (September 3, 2019), https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008). Moreover, the *Wikipedia* indicates the number of households that WDAZ "reaches" rather than the actual number of households that watch the television station, as well as the specific news broadcast.

Accordingly, the Petitioner did not show that she meets 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).

The Petitioner contends that she submitted evidence of citations, downloads, and recommendation letters showing that her contributions have influenced the field of Chinese language instruction and curriculum development, and others have widely adopted her teaching methodologies on a national level. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field.[6] For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

As it relates to downloads, the Petitioner references [redacted] and claims that "there are already 17 downloads of [her] [redacted] syllabus and [redacted] during the short period of January 22, 2018 to September 4, 2018 which is less than an academic year." However, the downloads took place after the Petitioner

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

filed her petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. §103.2(b)(1). Moreover, the Petitioner did not demonstrate the significance or relevance of the 17 downloads. Further, although downloads may indicate that others have viewed her syllabus, they do not necessary show that her syllabus has been implemented in the field, nor do they reflect wide application throughout the field commensurate with major significance.

Similarly, the Petitioner argues that her book, [redacted] "had a download history of 1700+" at the time of filing. Again, the Petitioner did not show the importance or meaning of the download figures. Here, the Petitioner did not establish that such downloads are tantamount to original contributions of major significance in the field. Moreover, the Petitioner did not show that accumulating 1,700 downloads for a book, as well as downloads of her other written material, indicates a level of major significance consistent with this regulatory criterion.

In addition, as discussed further below, the Petitioner provided downloads and citations for her seven articles listed under [redacted] The downloads, when matched to the citations, do not reflect that her papers have garnered attention that are indicative of major significance. For instance, the Petitioner's paper, [redacted] by [redacted] received 1,247 downloads; however, the paper garnered only 21 citations. Again, while downloads may show that others have viewed the paper, it does not represent the paper's influence or impact in the field in a major way. Publications and presentations 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.

Furthermore, as it relates to her citations, the Petitioner provides data from *Clarivate Analytics* regarding average citations by year of publication for various fields, including social sciences, and contends that "[t]he average author of scholarly articles in general social sciences fields receives 4.95 citations to those articles during the ten-year period of 2003 to 2013" and her "citation rate of 45 since 2000 outnumbers the average 4.95 citation rate by over 800%." In general, the comparison of the Petitioner's cumulative citations to others in the field is often more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates that she is among the small percentage at the very top of the field of endeavor in a final merits determination if the Director determined she met at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115. However, the comparison of citations to a particular scientific article may be relevant for this criterion in order to establish the overall field's general view of a contribution of major significance.[7] Moreover, the Petitioner did not show that papers garnering more than the average in ten years, in this case five citations, reflect contributions of major significance.

As indicated above, the Petitioner provided evidence showing that her highest cited article received 21 citations with her remaining articles garnering 8 or less. Again, this criterion requires the Petitioner to establish that she has made original contributions of major significance in the field. Thus, the

[7] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

burden is on the Petitioner to identify her original contributions and explain why they are of major significance in the field. Here, the Petitioner did not articulate the significance or relevance of the citations to her articles. Although her citations are indicative that her work has received some attention from the field, the Petitioner did not demonstrate that her citation numbers to her individual articles represent majorly significant contributions in the field.[8] Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or written work. However, the Petitioner has not sufficiently shown that her citations for any of her published articles are commensurate with contributions of major significance.

Moreover, the Petitioner argues that her support letters show that she has "develop[ed] well-rounded Chinese language learning curriculum that enables non-native speakers to engage more fully with the language learning process and the cultures that influences it." Specifically, the Petitioner references five recommendation letters.[9] While the letters applaud her contributions and describe her work, they do not further elaborate how the Petitioner's contributions have significantly influenced or impacted the field in a major way. For instance, [redacted] stated that the Petitioner introduced online programs at the [redacted] and expanded on the traditional textbooks and integrated digitals tools with an online platform at [redacted] Likewise, [redacted] indicated that the Petitioner implemented original strategies at [redacted] and implemented a new Chinese curriculum online at [redacted] Although the letters show her contributions at two universities in the United States, they do not demonstrate how her curriculum and teaching strategies have significantly affected the field as a whole.[10]

Further, the letters speculate on the potential influence and on the possibility of being majorly significant at some point in the future. For instance, "[h]er upcoming conference presentation at the Annual Conference of the [redacted] in [redacted] 2017 will focus on perhaps one of her greatest contributions to the field – the digitization of Chinese course development" and "[t]he new multi-media digitalization will help learners to develop the ability to use Chinese to conduct specialized work or research" [redacted] "I sincerely hope that future scholars will build on this so that the writing of a new literary history in Chinese can be realized in the not too distant future," "[t]he inroads [the Petitioner] has started in Chinese comparative literature will be followed," and "has created excellent Chinese language curricula that is beginning to be incorporated by academic institutions" [redacted] and "[h]er curriculum will increase student engagement and improve Chinese language instruction in the United States" and "I am certain that I am not the only educator who has referenced [the Petitioner's] original developments and will incorporate them" [redacted] While the letters show promise in the Petitioner's work, they do not establish how her work already qualifies as a contribution of major significance in the

[8] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 8-9 (providing an example that peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the individual's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor).

[9] Although we discuss the letters mentioned on appeal, we have reviewed and considered additional letters contained in the record.

[10] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

field, rather than prospective, potential impacts. The significant nature of her work has yet to be determined or measured.

Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact her work has 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.[11] 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 this criterion.[12] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that she has made original contributions of major significance in the field.

> *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).

The Petitioner argues that she satisfies this criterion based on her leading role[13] at [ ] She references two letters from [ ], former dean of the [ ] and two letters from [ ] president of the [ ] who indicated the Petitioner's "role as the Director of the Chinese Language program at [ ] from 2015-2016." In addition, the Petitioner points to the previously discussed article *China Daily USA* and an article from the *Grand Fork Herald.*

As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[14] The letters and articles, however, do not establish that the Petitioner held a leading position at [ ][15] Moreover, the Petitioner did not show how her role as a director of the Chinese language program reflected a leading position for [ ] as a whole. For instance, when compared to the roles of [ ] (dean) and [ ] (president), the Petitioner performed in a far more subordinate role in a program director position. In addition, while the articles discuss the enrollment increase in the Chinese program from 5 to 50, the Petitioner did not show how it is leading to [ ] overall rather than limited to a program within the university. Moreover, even if we considered the Petitioner's role as critical, the letters and articles only discuss the Petitioner's impact to the Chinese program rather than to the success or standing of [ ] in general.[16]

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

[12] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that 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).

[13] The Petitioner does not argue in her brief that she performed in a critical role.

[14] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

[15] *Id.* (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

[16] Id. (instructing that the evidence for a critical role must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities; it is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical).

Accordingly, the Petitioner did not establish that she meets this criterion.

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. 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 Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. 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 M-W-*, ID# 4134363 (AAO Sept. 3, 2019)