



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

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

In Re: 11972653

Date: NOV. 27, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a professor and researcher in the field of law, seeks classification as an alien 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 Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for this classification through either the receipt of a major, internationally recognized award or meeting three of the ten evidentiary criteria listed under 8 C.F.R. § 204.5(h)(3).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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 a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through 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 sufficient qualifying documentation that meets at least three of the ten criteria 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).

II. ANALYSIS

The Petitioner was employed as an Associate Professor of law at [redacted] University [redacted] at the time she filed the instant petition. She earned a Ph.D. in jurisprudence in 2009 from [redacted] University, and also serves as the Deputy Procurator General in the [redacted]. She states that she intends to continue working in the field of law in the United States by developing legal and academic exchanges and conduct legal research.

A. Evidentiary Criteria

Because the Petitioner 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). The Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her authorship of scholarly articles and participation as a judge of the work of others in her field. On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to published material about her and her work, and her contributions of major significance to the field of law. After reviewing all of the evidence in the record, we find that it does not establish that the initial evidence requirements have been met.

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)

To meet the requirements of this criterion, the published material must be about a petitioner and his or her work in the field, be published in one of the qualifying types of publications, and include sufficient identifying information (title, date and author) to establish its authenticity. In addition, all material written in a foreign language must be accompanied by a full English translation in accordance with 8 C.F.R. § 103.2(b)(3), which also requires that the translation be accompanied by a translator's certification.

In his decision, the Director found that the submitted evidence was about the Petitioner and her work, but was not published in qualifying types of media. However, on review, we disagree with the Director that the published material is about the Petitioner. Specifically, the Petitioner initially submitted two articles, one of which appears to have been taken from a website but does not include the website address. This article, which the translation indicates was written by a correspondent for the *Qian Jiang Evening News*, is titled “[redacted]” and is about the age of consent in China. The Petitioner is interviewed as an expert on the subject, and she describes a recent case in [redacted] and explains the relevant law. Even though the Petitioner is named and interviewed in the article, this material is not about her, but about the laws concerning the age of consent. In addition, we note although the Petitioner provided evidence of the circulation of the *Qian Jiang Evening News*, this article appears to have been posted on a website which the evidence does not identify. We therefore agree with the Director that the Petitioner has not established that this material was published in a professional or major trade publication, or other major media.

The second article the Petitioner initially submitted was published in *Zhejiang Legal News* on [redacted] [redacted] 2019, and includes three paragraphs about the Petitioner which have been translated into English. While the Petitioner describes this as an article “on 13 highly respected legal experts,” the rest of the article is not translated, and thus the translation is not compliant with 8 C.F.R. § 103.2(b)(3). In addition, since only a small portion of this published material is about the Petitioner, it is not about her. This finding further is supported by the title of the article, “This is a place worth going to experience and do business,” which appears to reference “[redacted]” of the [redacted] which she speaks about. Although the evidence sufficiently demonstrates that *Zhejiang Legal News* is a professional publication, this evidence does not meet the requirements of this criterion.

In responding to the Director’s request for evidence (RFE), the Petitioner submitted a third article which she asserts supports her qualification under this criterion. That evidence consisted of two paragraphs, which are accompanied by her photograph, published in *Zhejiang Legal Update* as part of a page titled “[redacted]”. In those paragraphs, the Petitioner provides her opinion regarding the [redacted]. This material is not about her, but is either a direct quotation of her or written by her, and thus does not meet the requirements of this criterion.

For all of the reasons discussed above, we find that the Petitioner has not established that she meets this criterion.

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Director found that the Petitioner met this criterion, but did not provide an explanation for his finding. On review, we note that the evidence shows that she performed an evaluation of a master’s degree thesis as part of her duties as an associate professor at [redacted] and that she was listed as a member of the editorial committee of [redacted], which appears to be a professional publication. In responding to the Director’s RFE, she submitted additional evidence, including a text message thanking her for participating in a provincial legal essay competition, as well as website pages

showing her scoring and evaluation for the 2019 [redacted] University Student Legal Profession Competition. We agree with the Director that this evidence is sufficient to show that the Petitioner meets the requirements of 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)

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. 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.

The Petitioner initially focused on her roles as Deputy Procurator (Prosecutor) General of the [redacted] and as the Director of the [redacted] Law Research Association of the [redacted] Law Society, and referred to reference letters to support these claims. However, as noted by the Director in his RFE, the letters provided little detailed information about specific contributions she had made.

In response, the Petitioner narrowed her claim under this criterion to the work she performed in drafting amendments to China's [redacted] despite not previously claiming to have expertise in this legal area. She submitted a copy of a document titled [redacted] [redacted] which states that [redacted] of [redacted] was the project leader for the project of [redacted] [redacted] with the Petitioner and four other members of the [redacted] faculty assigned to specific topics. A letter from [redacted] states that the Petitioner "is a nationally renowned expert in the realms of [redacted], [redacted] and [redacted], again despite the previous claims to her expertise focusing in the legal areas of [redacted] and [redacted] law. He indicates that the Petitioner served as chief drafter for the [redacted] [redacted] section, and that the drafts "are currently under review by the People's Congress of Legislature." However, this letter does not provide specifics on the amendments proposed in the Petitioner's draft, or how those amendments would impact the overall field of law.

On appeal, the Petitioner asserts that the Director downplayed the importance of this aspect of the Petitioner's work, and that the new law will impact "not only entire China, but the international business community." She also submits additional evidence of the impact of her work, including a copy of the report she authored containing a research summary and proposed revisions to sections of the [redacted], and a new letter from [redacted]. However, where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). We further note that the evidence does not indicate that the Petitioner's proposed revisions had been accepted into the final version of the revised [redacted] at the time of filing. Because the evidence does not demonstrate that the Petitioner's proposed revisions to the [redacted] have been implemented, we find that it does not establish that she has made a contribution to the field of law.

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 submitted several copies of articles which she authored which were published in journals, together with English translations. These include papers which appeared in *People's Tribune*, *Political Science and Law*, and *Journal of Juvenile Crimes and Delinquency*, which the evidence establishes are professional journals. We therefore agree with the Director and find that the Petitioner 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 that 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.

ORDER: The appeal is dismissed.