

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

FILE:

[REDACTED]
SRC [REDACTED]

Office: TEXAS SERVICE CENTER Date:

AUG 24 2010

IN RE:

Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

CHRISTINA T. LE, ESQ.
LIU & ASSOCIATES, PLLC
6161 SAVOY DR., SUITE 830
HOUSTON, TX 77036

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. Specifically, the director concluded that the petitioner meets only two of the ten regulatory criteria, 8 C.F.R. § 204.5(h)(3)(iv) relating to judging the work of others and 8 C.F.R. § 204.5(h)(3)(vi) relating to authorship of scholarly articles, of which an alien must meet at least three.

On appeal, counsel argues that the beneficiary meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, we are satisfied that the petitioner meets the statutory and regulatory requirements for classification as an alien of extraordinary ability.

I. Law

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten criteria.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) 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;
- (iv) 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;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's procedure for evaluating evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's approach rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119 - 1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. Analysis

A. Evidentiary Criteria

This petition, filed on August 21, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist.

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

In his decision, the director determined that the petitioner met this criterion. The AAO concurs with the director's decision.

Accordingly, the petitioner has established that he meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field

The record contains evidence that the petitioner's various scientific articles have been individually well cited and that his work as a whole has been cited at least 243 times.

Further, the petitioner has submitted letters from various research scientists stating that the petitioner's original scientific contributions are of major significance in the field and providing specific examples of those contributions and how they have already significantly contributed in the field. We cite representative examples below.

The record contains a letter from [REDACTED], M.D., Associate Professor, Department of Gynecology & Obstetrics, [REDACTED] University, stating:

For me, these original findings about carboxypeptidase M from [the petitioner] have provided a novel clue for my research and also greatly supplied a new line of research for my group. The evidence that [the petitioner] uncovered in his research demonstrates that such interaction of carboxypeptidase M with other protein partners, which is independent of its cleavage activity, will also be involved in the regulation of carboxypeptidase M for human placentation. This will be one of new directions for my researches to further elucidate how carboxypeptidase M modulates the human placentation.

The record also contains a letter from [REDACTED], PhD, Professor and Chairman, Department of Pharmacology and Toxicology, [REDACTED]. Dr. [REDACTED] addressed several of the petitioner's findings and states:

These discoveries confirmed the importance of quercetin in combating cancer metastasis. [The petitioner] was among the first pharmacologist to study this agent. Following his novel findings, other research groups around the world have joined this research area and have built upon [the petitioner's] research. For example, using the techniques described in [the petitioner's] studies, other researchers have found that quercetin could induce apoptosis of other types of cancer cells such as colorectal cancer cells, and inhibit the invasion of breast carcinoma cells. Similarly, pharmacologists in Japan investigated other flavones including kaempfero and fisetin that were found to induce apoptosis of squanoma cell carcinoma, submandibular gland carcinoma and promyelocytic leukemia. I can confidently say that the research of [the petitioner] has supplied a valuable drug candidate, quercetin, for cancer treatment and promoted the research and development of new anti-cancer drugs from flavones.

* * *

This work focused attention on a new area of cancer pharmacology investigations. Following the research of [the petitioner] several research groups from USA, China, Singapore, and other countries are developing monoclonal antibodies and small molecular weight inhibitors of PRL-3 for treating cancer metastasis.

* * *

This finding confirmed that CPM possessed a more complicated role in controlling blood pressure through its interaction with B1R. This finding supplied a new direction for developing drugs to modulate blood pressure. This comprehensive analysis of kinin-killikrein system has changed the way pharmacologists approach the study of CPM and emphasizes the challenging nature of the kinin-kallikrein system. The importance and significance of this research by [the petitioner] has been quickly recognized worldwide. NewsRX, the largest website of global health news, highlighted the findings. It was immediately discussed in a review article, and other international research groups have used his data to investigate CPM interaction with angiotensin-converting enzyme.

The preceding experts have not merely reiterated the regulatory language of this criterion, they have clearly described how the petitioner's scientific contributions are both original and of major significance in the field. Several of the experts have explained how they currently use the petitioner's findings in their own work. Moreover, in support of the preceding experts' statements, the petitioner submitted documentation showing more than two hundred independent citations to his published findings. These citations are solid evidence that other researchers have been influenced by his work and are familiar with it. This evidence corroborates the independent experts' statements that the

petitioner has made original contributions of major significance in his field. The record reflects that the petitioner's contributions are important not only to the institutions where he has worked, but throughout the greater field as well. Leading scientists from around the world have acknowledged the value of the petitioner's work and its major significance in the pharmacological field.

Accordingly, the petitioner has established that he 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

In his decision, the director determined that the petitioner met this criterion. The AAO concurs with the director's decision.

Accordingly, the petitioner has established that he meets this criterion.

In this case, the petitioner meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

C. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 596 F.3d 1115 at 1119 - 1120.

In 2004, the petitioner received his Ph.D. from the School of Life Sciences at [REDACTED] University in China and has demonstrated a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). His publication record of 19 published articles at the time of filing not only meets the criterion at 8 C.F.R. § 204.5(h)(3)(vi), his articles are consistently well-cited, with well over two hundred independent cites to his body of work as of the petition's filing date. See *Kazarian*, 596 F.3d 1115 at 1121 (citations may be relevant to the final merits determination of whether an alien is at the very top of his field). This citation record is also consistent with a determination that his original contributions of major significance, discussed in detail in the reference letters, are consistent with national or international acclaim. The petitioner submitted reference letters from experts in the field, detailing the petitioner's specific contributions and explaining how those contributions have influenced the field. Moreover, the petitioner has participated in the peer-review process for numerous journals. Thus, the petitioner's achievements are commensurate with sustained national or international acclaim at the very top of his field.

III. Conclusion

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has submitted evidence qualifying under three of the ten categories and established a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of thei[ir] field of endeavor" and "sustained national or international acclaim." His achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefit sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.