



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

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

MATTER OF AF-W-C- INC.

DATE: MAR. 8, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a social services organization, seeks to temporarily employ the Beneficiary as a traditional Chinese medicine (TCM) practitioner and acupuncturist. To do so, the Petitioner seeks O-1 nonimmigrant visa classification, available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the alternative evidentiary criteria applicable to individuals of extraordinary ability in the sciences, either a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner maintains that the evidence satisfies the regulatory requirements and thus the Beneficiary is eligible for O-1 classification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define “extraordinary ability in the field of science, education, business, or athletics” as “a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.” 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary’s sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of “a major, internationally recognized award, such as a Nobel Prize,” or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). And if the petitioner demonstrates that

the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(iii)(C). If a petitioner provides the requisite evidence, we then determine whether the record, viewed in its totality, shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor.

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. See 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) (“The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met.”). Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor.

II. ANALYSIS

A. Introduction

The Beneficiary holds a Ph.D. in medicine (Integrative Medicine of TCM and Western Medicine Oncology) from [REDACTED] (2006), and worked as a doctor of TCM oncology at [REDACTED] in [REDACTED] between 2006 and 2009. In the United States, he worked as a visiting Research Scientist in the department of pharmacology at [REDACTED] School of Medicine between 2009 and 2011. Between 2011 and 2017 he was also been employed as a TCM instructor, researcher, and acupuncturist at organizations including the [REDACTED], the [REDACTED], [REDACTED], and [REDACTED]. The Petitioner, which describes itself as developing programs “to reduce inequalities, to create access to clean water, sanitation and healthcare, and career training” for “at risk areas” including “the African diaspora and Haiti,” seeks classification of the Beneficiary as an alien with extraordinary ability in the sciences, specifically, TCM oncology. It seeks to employ him on a part-time basis for period of three years.²

¹ [REDACTED] is also referred to in the record as [REDACTED].

² As noted by the Director, the petition was accompanied by the Beneficiary's signed agreement with a different New York organization than the Petitioner, [REDACTED] for part-time employment as an acupuncturist and TCM doctor during the requested employment period. In addition, within the Petitioner's response to the Director's request for evidence (RFE), it provided letters from other organizations, including the [REDACTED] and the [REDACTED], indicating their intention to employ the Beneficiary upon approval of the instant petition. However, the regulation at 8 C.F.R. 214.2(o)(2)(iv)(B) states that if a beneficiary will work for more than one employer within the same time period, each employer must file a separate petition with the service center that has jurisdiction, unless an agent files the petition pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E). Here, however, the Petitioner filed the instant petition as an employer, not as an agent. Further, the Petitioner has not submitted evidence to establish that it is authorized to act as an agent for any other organizations, for the purposes of filing this petition.

B. Extraordinary Ability in Science

Absent evidence of a major international award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the eight regulatory criteria. The Director determined that the Petitioner satisfied only one of the evidentiary criteria: 8 C.F.R § 214.2(o)(3)(iii)(B)(7) (employment in a critical or essential capacity). On appeal, it maintains that it has also met the criteria at 8 C.F.R § 214.2(o)(3)(iii)(B)(1) (prizes or awards), 8 C.F.R § 214.2(o)(3)(iii)(B)(3) (published material), 8 C.F.R § 214.2(o)(3)(iii)(B)(5) (significant recognition for achievements from experts in the field), and 8 C.F.R § 214.2(o)(3)(iii)(B)(6) (authorship of scholarly articles).³ As discussed below, we conclude that the record does not satisfy any of the claimed criteria at 8 C.F.R § 214.2(o)(3)(iii)(B).

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

On appeal for the first time, the Petitioner asserts that the Beneficiary satisfies this criterion, based upon his receipt in 2009 of a scholarship to study abroad from the [REDACTED]. The record reflects that the Beneficiary received the award while working as a clinical TCM oncologist at [REDACTED] and that the scholarship funded his postdoctoral studies in pharmacology at [REDACTED]. The Petitioner submits a letter from [REDACTED], vice president of the [REDACTED] who indicates the organization is an academic group comprised of oncology clinicians, cancer centers, and hospitals. He explains that every four years the [REDACTED] partners with [REDACTED] to select *member* oncologists to receive the scholarship which provides "over [\$104,000] to the winner attached hospital to sponsor the winners to study or research abroad." He states that in 2009, the Beneficiary was one of four oncologists selected by [REDACTED] from 1,785 oncologists on the basis of their clinical success over a three-month period.

Upon review, the evidence submitted does not establish the scope of the award, indicating that it enjoys national or international recognition. While scholarships may be prestigious, the Petitioner has not shown that receiving the aforementioned funding for one's research and academic training constitutes receipt of a nationally or internationally recognized prize or award for excellence in the field of endeavor. In addition, [REDACTED] indicates that competition for the scholarship was not open to the field as a whole, but was limited only to [REDACTED] members. The record does not document the national or international recognition of this organization-specific award. In light of the above, the Petitioner has not satisfied this criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought,

³ The Petitioner does not contest the decision of the Director that it has not claimed that it satisfies the criteria at 8 C.F.R § 214.2(o)(3)(iii)(B)(2), (4), or (8). Accordingly, we will not address these criteria in the decision.

which shall include the title, date, and author of such published material, and any necessary translation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

The Petitioner maintains that the Beneficiary satisfies this criterion based upon his appearances on a television program pertaining to TCM, broadcast on the network New Tang Dynasty TV (NTDTV). It asserts that programs on that network are “broadcast to numerous viewers around the world.” In response to the RFE, it provided screenshots and video links for two of the Beneficiary’s appearances on NTDTV in 2015. It also submitted a letter from [REDACTED], program director at [REDACTED] who summarized the topics of lectures the Beneficiary gave between 2014 and 2017, such as breast cancer, the interplay of cancer and emotions, the role of acu-point massage in treating diseases, and the relationship between food and cancer. She indicated the lectures were received favorably.

Although the Petitioner asserts the programs the Beneficiary hosted were “about” him, it did not provide transcripts or other evidence sufficient to support its claim, and [REDACTED] letter indicates the productions were about the benefits of TCM. Further, [REDACTED] claim that “NTDTV belongs to a media conglomerate” that provides news coverage “worldwide” does not establish the program’s significant national or international distribution, to establish it qualifies as major media (professional or major trade publication or major media), per the requirements of this criterion. In light of the above, the Petitioner has not submitted evidence that meets this criterion.

Evidence of the alien’s original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

As evidence relating to this criterion, the Petitioner submitted letters of support from colleagues attesting to the Beneficiary’s scientific contributions. These materials include a letter from [REDACTED] a radiologist at [REDACTED] who indicates that he knew the Beneficiary both as a doctoral student and as a colleague at the hospital. He asserts that the Beneficiary was among the hospital’s “[e]xpert-tier doctors.” He recounts the success stories of several patients treated by him with acupuncture and herbal medicine, and relates his “unique theory of psychological treatment for breast cancer . . . that laughter can help breast cancer patients survive longer.” He describes the Beneficiary as an “innovative research pioneer in the field.” A letter from [REDACTED] managing director of [REDACTED] states that the Beneficiary “stood out as a leading TCM clinician and researcher” who developed “innovative TCM theories.” He discusses his methodologies, which focus on “novel ways by which we can preserve and stimulate [the] human body’s immune system,” such as “annihilating or washing off internal fire,” and the “Soil Transformation Theory” of treating cancer using Chinese medicinal herbs, and his unique theory of the psychological treatment of cancer patients. Demonstrating ability as a skilled TCM oncologist, however, is not itself a contribution of major significance; rather, the Petitioner must demonstrate that the Beneficiary has impacted the field of TCM oncology as a whole. *Cf. Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met a similar criterion in the regulations pertaining to immigrants of extraordinary ability because she did not demonstrate her impact in the field as a whole).

The Petitioner also provided two letters from [REDACTED] an internist who worked with the Beneficiary at [REDACTED] School of Medicine, who calls him “a pioneer of TCM oncology theory.” His first letter recounts research that the Beneficiary led on the lab’s herbal hormone receptor project, which sought to improve hormone receptor treatment of various illnesses and avoid its side effects. His second letter discusses the Beneficiary’s research into the history of TCM herbal medicine, which identified three herbs with a possible “anticancer effect.” The record also contains a letter from [REDACTED] a professor of pharmacology at [REDACTED] School of Medicine, who confirms that the Beneficiary played a significant role in the lab’s herbal hormone-receptor research project, and in screening, comparing, and testing herbs for inclusion in the lab’s database. The record further contains a letter from [REDACTED] of [REDACTED] who states that the Beneficiary was a TCM instructor at the college, and calls him “one of the most recognized physicians and researchers in the field.”

In addition, [REDACTED] previously discussed letter emphasized that the fact that the Beneficiary facilitated medical seminars between [REDACTED] and others, such as the [REDACTED] and medical researchers/practitioners in the United States. Many professional fields regularly hold conferences and symposia to present new work, to discuss new findings, and to network with other professionals. Participation in these events, however, does not necessarily reflect an original contribution of major significance in the field.

Further, the Petitioner provided testimonials from patients detailing the benefits they received from the Beneficiary’s acupuncture and herbal medicinal treatment for a variety of ailments. Finally, on appeal, the Petitioner urges that the Beneficiary’s successful clinical work at [REDACTED] for which he received the 2009 [REDACTED] scholarship constitutes a contribution of major significance in the field. Regardless of the field of endeavor, the plain language of the phrase “contributions of major significance in the field” requires evidence of an impact beyond one’s employer and clients or customers. *Cf. Visinscaia*, 4 F. Supp. 3d at 134-35.

USCIS may in its discretion use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought. *Id.* Upon review, the preceding letters of recommendation demonstrate that the Beneficiary’s work has earned the respect and admiration of his patients and those with whom he has worked and collaborated, but these letters do not establish that he has made original scientific contributions of major significance in his field. The authors’ assertions do not explain who is using the Beneficiary’s research findings or otherwise describe how those findings have been implemented throughout the field. The record does not indicate that findings of the Beneficiary’s herbal hormone receptor research have been published and cited, and does not contain additional evidence indicating that other TCM oncologists have widely relied on his work, including his theories of “annihilating or washing off internal fire,” “Soil Transformation,” and his unique theory of the psychological treatment for breast cancer. Without additional detail explaining his accomplishments relating to new or innovative theories and techniques, the record does not adequately demonstrate that this work

has made a significant impact on the field. Here, the record does not include documentary evidence showing the widespread implementation of the Beneficiary's work, that it has been seminal, or that it otherwise equates to an original contribution of major significance in the field. The Petitioner has not established, therefore, that the Beneficiary's work in the field has had a demonstrable impact on the field as a whole commensurate with a contribution of major significance.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals or other major media. 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

On appeal for the first time, the Petitioner asserts that the Beneficiary satisfies this criterion, based upon his having authored a scholarly article and co-edited a book. It provides a copy of the Beneficiary's article titled [REDACTED]. The Petitioner did not provide, however, evidence that the article was published in a professional journal or other major media, as required. It also submits copies of several chapters of a book the Beneficiary co-edited, titled [REDACTED]. This material does not establish that the Beneficiary authored any of the book's contents, or that the book was published. Accordingly, the evidence submitted on appeal does not satisfy this criterion.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

The Director concluded, without discussion, that the Beneficiary satisfies this criterion. The scope of this evidentiary criterion focuses on the relative importance of the Beneficiary's position within the scope of the organizations that have employed him. The Petitioner asserted that he satisfies this criterion based upon his previous positions as a TCM oncologist with [REDACTED] doping control officer with the [REDACTED] visiting research scientist at [REDACTED], TCM instructor at [REDACTED] and product researcher with [REDACTED]. Upon review of the record, we withdraw the Director's determination.

The above-mentioned letter from [REDACTED] managing director of [REDACTED] asserts that the Beneficiary "was the most demanded physician in our hospital." The previously discussed letters from [REDACTED] and [REDACTED] of the [REDACTED] School of Medicine indicate that the Beneficiary led research on the lab's herbal hormone receptor project and was instrumental in screening, comparing, and testing herbs for inclusion in the lab's database. In his above-noted letter, [REDACTED] of [REDACTED] confirms that the Beneficiary was a TCM instructor at the college. The Petitioner further provided a letter from [REDACTED] vice president of [REDACTED], a dietary supplement manufacturer with a TCM product line, who indicates that the Beneficiary was "the key and primary researcher who distinguished what an extract was and how our company could follow a specific procedure to detect them."

While the Beneficiary has performed successfully in several capacities, the evidence does not establish that his role as a clinical TCM oncologist, research scientist, and TCM instructor has been

in a critical or essential capacity for the preceding employers. The staff of a hospital, manufacturer, or university/college may consider the Beneficiary's achievements to be of great benefit to the organization, but the focus of this criterion, based on the plain language of the regulation, is the Beneficiary's role itself. While the Beneficiary has been able to provide his clinical and research expertise to his patients, students, and fellow researchers in a manner that is not expected of the average TCM oncologist, research scientist, and instructor, the record does not establish that his role has been critical or essential for the organizations that have employed him.

For example, we note that the Beneficiary's visiting research scientist position at [REDACTED] School of Medicine was intended to provide specialized research experience and training in his field of endeavor. The Petitioner's evidence does not demonstrate how the Beneficiary's research position at that university differentiated him from the other researchers, let alone its tenured faculty or senior managerial staff. The fact that his research may have greatly expanded the lab's medicinal herb database for future studies does not elevate his position within the institution above that of a visiting research scientist for the purposes of this criterion. The record does not contain an organizational chart or other evidence documenting how the Beneficiary's position fit within the general hierarchy of [REDACTED], or [REDACTED] and differentiated him from their other TCM oncologists, research scientists, and instructors. The Petitioner has not been established that his role was critical or essential within those organizations as a whole.

Finally, the Petitioner provided a letter from [REDACTED] who states that he met the Beneficiary when they served as doping control officers at the [REDACTED] in [REDACTED]. He asserts that the Beneficiary "led the work for the tennis athletes' team," and played a critical and leading role in "ensuring the smooth progress of the Game." He does not provide detail explaining how the Beneficiary had a critical or essential role within the organization as a whole. The record also does not document the manner in which [REDACTED] is authorized to represent or speak on behalf of the [REDACTED], nor does it contain evidence from any individual who appears to be in a position to represent that event. In light of the above, the documentation submitted by the Petitioner does not establish that the Beneficiary was responsible for the success or standing of the preceding organizations to a degree consistent with the meaning of "critical or essential," as required by this criterion.

III. CONCLUSION

The Petitioner has not submitted evidence that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), and the exhibits do not satisfy at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in the sciences. In visa petition proceedings, it is the petitioner's 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.

Matter of AF-W-C- Inc.

ORDER: The appeal is dismissed.

Cite as *Matter of AF-W-C- Inc.*, ID# 2249175 (AAO Mar. 8, 2019)