Is My EB-1 Good Enough?

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The Hierarchy of Difficulty

- EB-1A
- EB-1B OR&P
- EB-2 National Interest Waiver
- O-1 Nonimmigrant

Case Evaluation

- Original contributions
  - Identifying what the candidate is "known for"
  - Different standards for the significance of those contributions

- RFE tip: leverage the supporting evidence that doesn't quite meet other criteria - in-line citations/footnotes without discussion; minor awards may demonstrate significance of contributions
- RFE tip: define the field carefully and then distinguish the beneficiary from others in the field

Case Evaluation

- Published work by the beneficiary:
  - First-authored articles/impact factors
  - Conference presentations

- RFE tip: distinguish this from others in the field who regularly publish/present
Case Evaluation

- Membership in associations
  - Membership must be selective
  - Leading roles in organizations

  RFE tip: clearly document selection process; do not push the envelope

Case Evaluation

- Work published by others about the beneficiary:
  - Must contain discussion (article, interview, etc.)
  - Other publications/features about the beneficiary's work

  RFE tip: USCIS will dismiss in-line citation/footnote citations under this criterion unless they contain substantive discussion

Case Evaluation

- Awards
  - One-time achievement of a major, international award

  RFE tip: lesser awards are being categorically rejected by USCIS
Case Evaluation

• Review of the work of others in the field
  • Book chapters/review articles/editorials/comments
  • Peer reviewer/manuscript reviewer – journals and conferences
  • Supervising others already in the field

RFE tip: USCIS expects everyone in academia to perform peer review – discuss how this review work is outstanding compared to the norm in the field.

Case Evaluation

• Leading/critical role for an organization with a distinguished reputation
  • Positions of responsibility, management/Leadership in Organizations

RFE tip: Don’t forget to document the reputation of the organization.

Case Evaluation

• Commanding high salary/remuneration
  • Must prove through earnings records
  • Must compare to prevailing wages

RFE tip: use evidence of salary/remuneration even in categories that don’t list this as a criteria – bolster “original contributions”
Case Evaluation

- Comparable evidence
  - Consider “markers of success” for each field
  - Prepare to prove the criteria, and how they are met
  - Can be used creatively

Two-Part Analysis

- Kazarian applied in all categories
  - Step One: Does the petition contain evidence of the requisite number of criteria?
  - Step Two: Final Merits Analysis – does evidence demonstrate that beneficiary is one of a very few at the top of the field?
- Large increase in RFEs with new Kazarian template
- Second RFE trend with vague request regarding Final Merits

Kazarian RFE Trends

- Large increase in RFEs with new Kazarian template
  - Overview of criterion satisfied or lacking
  - Check whether USCIS is applying correct regulatory section
  - Emphasis on Final Merits
- Second RFE trend with vague request regarding Final Merits
- Pushback on the job offer for EB-1/OR
- Pushback on consultation letters for O-1
Best Practices

- Impossible to fully avoid RFEs no matter how strong the case is or how well it’s documented.
- Adjudications more difficult than in past years – set expectations.
- AVOID PREMIUM PROCESSING – “buying” an RFE.
- Pushback on qualifying job offer.
- Pushback on whether private employers have at least 3 full-time researchers.
- Pushback on whether private employers have documented distinction in the field.

Questions?