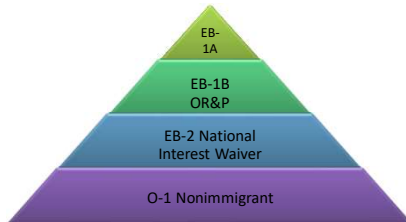


Is My EB-1 Good Enough?

William A. Stock | Feige M. Grundman | Lisa T. Felix

The Hierarchy of Difficulty



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?