



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

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

MATTER OF S-N-

DATE: AUG. 9, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software architect, seeks classification as an “alien of extraordinary ability” in the sciences. *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, Texas Service Center, denied the petition. The Director concluded that the Petitioner did not submit sufficient initial evidence, when evidence meeting at least three of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) is required.

The Petitioner appeals the matter to us. He submits additional evidence and a brief. He indicates that he has satisfied at least three initial evidence criteria and has shown that he has extraordinary ability as a software architect.

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

I. LAW

The Petitioner may demonstrate his extraordinary ability through sustained national or international acclaim and achievements that have been recognized in his field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states:

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

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(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

(i)

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 sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). If the criteria do not readily apply to the occupation, a petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4).

Satisfaction of at least three criteria or submission of comparable evidence, however, does not, in and of itself, establish eligibility for this classification. *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); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

The Petitioner is a software architect who works as a consultant to companies and governments. He has a master of technology degree in computer science and engineering from the [REDACTED] in India. The Director found the Petitioner did not submit the necessary initial evidence because he did not demonstrate his receipt of a major, internationally recognized award or provide documentation satisfying at least three of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Upon *de novo* review, we agree that the Petitioner has not submitted sufficient initial evidence, either directly or through comparable evidence.

A. Evidentiary Criteria

The Petitioner does not claim he has received a major, internationally recognized award. He states that he has submitted evidence satisfying the four evidentiary criteria discussed below.

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

The Director found that, although the Petitioner provided reference letters, they addressed only the Petitioner's abilities and his performance on particular projects. The Director noted that the letters do not explain how the Petitioner's contributions have affected the field as a whole. The Director also acknowledged evidence indicating that the Petitioner has presented at conferences, but concluded that the documentation did not show that these presentations constitute original contributions of major significance in the field.

On appeal, the Petitioner emphasizes letters of support that speak to his abilities and experience in successfully handling software architecture projects. We agree with the Director that the letters effectively corroborate the Petitioner's employment and experience, but do not articulate an original contribution of major significance to the field. Having a diverse skill set is not a contribution of major significance in and of itself. Rather, this criterion requires evidence that a petitioner has already used those unique skills to impact the field at a significant level in an original way. Regardless, the regulatory language requires substantiated impacts beyond one's collaborators, employer, clients, or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35. Here the Petitioner has not established the requisite impact.

Several of the letters speak about the Petitioner's work in successfully devising solutions for client companies. Major significance in the field necessarily requires influence beyond those with whom one comes in immediate contact. The reference letters list the Petitioner's contributions, responsibilities, and accomplishments in working with the projects. None of the letters contains, however, an explanation of how the Petitioner's work has impacted the larger industry. Neither the letters nor other documents in the record provide examples of the Petitioner's methods or strategies being employed or noticed by others in the field. Without specific evidence addressing the plain language of this criterion, the Petitioner's reputation as a skilled worker is not sufficient.

The Petitioner indicated that he worked on projects for state and municipal governments, and dealt with computer systems that handle large government programs, such as [REDACTED] Dealing with large systems does not inherently translate to making contributions of major significance in the field. The Petitioner claims extraordinary ability in software architecture. As a result, to satisfy this criterion, he must show that he made original contributions in software architecture that have been of major significance in that field. Again, the Petitioner has not articulated how the work he performed for any project has had an impact beyond its immediate application.

In addition to his work as a consultant, the Petitioner also points to his participation and presentation in conferences sponsored by the [REDACTED] Many professional fields regularly hold meetings and symposia to allow participants to present new work, discuss new findings, and to network with other professionals. Participation in such events, however, does not equate to original contributions of major significance in the field. There is no documentary evidence showing that any of the

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Petitioner's specific conference presentations are frequently cited by other researchers, have significantly impacted the field, or otherwise rise to the level of contributions of major significance in the field. While the Petitioner's presentations demonstrate his knowledge in software architecture, he has not established the impact or influence of his presentations. For these reasons, the Petitioner has not met this criterion.

Evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The Director found the Petitioner did not satisfy this criterion because he did not provide documentation showing a published article. The Director acknowledged that the Petitioner provided a copy of his Master's thesis and PowerPoint presentations from conferences; however, he concluded that neither of these satisfied the plain language of the criterion.

On appeal, the Petitioner states that he "provided proof that [he] has indeed published his influential Master's thesis." The record contains a photocopy of a bound version of the Petitioner's thesis entitled [REDACTED]

[REDACTED] Regardless of the final format or appearance of the Petitioner's thesis, the relevant issue for purposes of meeting this criterion is whether the article appeared in a professional or major trade publication or other major media. The Petitioner does not identify a publication or major media that published his thesis. The record similarly does not contain material otherwise suggesting that the Petitioner meets this criterion.

On appeal, the Petitioner states that his thesis was cited in an article that appeared in an [REDACTED] conference proceeding publication. The Petitioner provided a copy of this article. Upon review, we find that the article does not contain a citation to the Petitioner's thesis, as he states. Even if it did, however, the plain language of this criterion necessitates that the Petitioner's scholarly article itself appeared in a professional or major trade publication or other major media. A citation to the Petitioner's thesis, even if demonstrated, would not comply with the plain language of this criterion.

Lastly, the Petitioner notes that he has made presentations at conferences. On appeal, the Petitioner indicates that he has "made a number of well-received presentations at the [REDACTED] and other venues on complex topics." The Petitioner has provided conference pamphlets and copies of PowerPoint presentations. Again, however, the plain language of this criterion requires "authorship of scholarly articles in the field, in professional or major trade publications or other major media." The Petitioner does not address how his presentations satisfy the plain language of this criterion and he therefore has not met his burden of proof.

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Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The Petitioner did not previously claim this criterion. On appeal, he refers to a letter from [REDACTED] an operations support manager at [REDACTED] who attests to the Petitioner's competency and skillset in serving as a Java Technical Architect for the [REDACTED]. The Petitioner does not specify whether his leading or critical role was for [REDACTED] or for the [REDACTED].

A leading role should be apparent by its position in the organizational hierarchy and the role's matching duties. A critical role is apparent by its overall impact on the organization or establishment. The letters provided discuss the Petitioner's exemplary work on projects. They do not address, however, the Petitioner's relative position within the organizations or his overall impact on the establishments. The reference letters referring to the projects list the Petitioner's responsibilities and achievements, but do not indicate that he played a particularly leading or critical role within the projects themselves. The Petitioner operated as an individual working on large projects that were themselves small relative to the overall operations of either the company or the State. The Petitioner does not provide the reasoning for considering his role within either organization to be leading or critical. As a result, he has not submitted sufficient evidence to satisfy the plain language of this criterion.

Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The Director noted that, although the Petitioner submitted evidence of his salary and the average amounts received in related occupations, he did not give documentation regarding compensation for those at the top of the field. On appeal, the Petitioner refers to prevailing wage information showing the Level 4 rate for Computer and Information Research Scientists is \$58.56 per hour or \$121,805 annually. He noted a letter from a human resources specialist at [REDACTED] stating that the Petitioner's annual salary from April 2011 to December 2012 was \$107,712. He also points to a consultant agreement showing that [REDACTED] sent him to work at [REDACTED] in March of 2012 at the rate of \$68 per hour.

The Petitioner's annual salary of \$107,712 in 2012 is lower than the prevailing wage for a Level 4 individual, \$121,805. The Petitioner notes the rate of \$68 per hour cited on the consultant agreement and compares it to the Level 4 prevailing wage hourly rate of \$58.56. However, the amount of \$68 per hour appears to be the billing rate for the services, rather than the amount the Petitioner received. In addition, the consultant agreement is for a period during which he received an annual salary of \$107,712. According to the Level 4 prevailing wage figures, the rate of \$58.56 per hour corresponds to a much higher median annual salary of \$121,805, again suggesting that either \$68 per hour was not the amount the Petitioner received, or that this rate was not consistent over the course of the year. Regardless, we agree with the Director that the prevailing wage levels that the Petitioner submitted do not provide insight into the salaries made at the upper end of the field's pay scale. As a result, even if we accepted the \$68 per hour rate as the Petitioner's salary and compared it to the \$58.56

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quoted, we would not conclude it necessarily represented a high salary without more information about the range of remuneration typical for his occupation.

The Petitioner also provided a Service Certificate indicating that he worked as a Senior Technical Associate for [REDACTED] in India from 2008 to 2009 and made an annual salary of eight lakh rupees. He submitted an article regarding the median salary of software engineers in India, which states that “a good software programmer . . . can fetch up to 12 lakhs per year easily.” A table indicates that this rate is average for someone with ten or more years of experience. However, the statement that those who are good can easily make 12 lakhs per year suggests that the Petitioner’s annual income of 9 lakhs was not a “high salary or other significantly high remuneration for services.” For these reasons, the Petitioner has not satisfied this criterion.

B. Comparable Evidence

On appeal, the Petitioner states that:

It is rare for individuals in the field of software architecture to be able to acquire the same kinds of evidence as might be collected and presented by academic researchers in the context of an Extraordinary Ability Alien petition. However, the regulations permit comparable evidence to be submitted. We believe that the combination of comparable evidence and evidence that directly satisfies the legal requirements for an Alien of Extraordinary Ability sufficiently demonstrates that he has applied extraordinary ability to tackle highly complex technical problems that only a few of his peers have the ability to address.

The Petitioner does not, however, identify which criteria do not readily apply to his occupation, or provide support to show why they do not readily apply. Similarly, he does not state what evidence is comparable to which criteria or provide evidence or reasons to support finding any particular evidence comparable. It is the Petitioner’s burden of proof to establish eligibility. Section 291 of the Act. Without more, the Petitioner has not demonstrated that he submitted comparable evidence for any of the criteria, as contemplated under 8 C.F.R. § 204.5(h)(4).

C. Summary

As indicated above, we find that the Petitioner did not satisfy any of the initial evidence criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) or present comparable evidence under 8 C.F.R. § 204.5(h)(4). Had the Petitioner satisfied at least three evidentiary categories or offered comparable evidence, the next step would be a final merits determination that considers all of the filings 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 field of endeavor,” and (2) that the individual “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)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20 (discussing a two-part review where the evidence is first counted and

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then, if satisfying the required number of criteria, considered in the context of a final merits determination). Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

III. CONCLUSION

The Petitioner has not provided the requisite initial evidence to establish extraordinary ability, as required by regulation. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-N-*, ID# 17460 (AAO Aug. 9, 2016)