



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

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

MATTER OF Y-W-

DATE: AUG. 23, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an architect,¹ seeks classification as an individual of extraordinary ability in the arts. *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 determined that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitates either 1) documentation of a one-time major achievement, or 2) materials that show that he meets at least three of ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

The matter is now before us on appeal. In the appeal, the Petitioner submits no new evidence but argues that the Director erred in concluding that he did not meet the lesser nationally or internationally recognized prizes or awards criterion, the membership criterion, the published material criterion, the leading or critical role criterion, or the commercial success criterion.

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

I. LAW

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

Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

¹ Initially, the Petitioner identified himself as both an architect and an artist, using both terms to qualify his position in Part 6 of Form I-140. However, in response to the Director's request for evidence (RFE), the Petitioner asked to be considered solely as an architect. The Director rendered his decision on that basis.

- (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.

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 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 a beneficiary's achievements in the field through a one-time achievement (that is a major, internationally recognized award). If a petitioner does not submit this documentation, then it must provide sufficient qualifying evidence indicating that a beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, 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), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

II. ANALYSIS

A. Evidentiary Criteria

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not claimed or shown that he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, the Petitioner must provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

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Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

On appeal, the Petitioner maintains that he meets this criterion based upon having received at least three awards for his architectural designs. The plain regulatory language requires that the Petitioner show not only that he has won prizes or awards, but that these accolades are nationally or internationally recognized, and are awarded for excellence in the field of endeavor.

The Petitioner specifically claims to have received the following:

- An award granted by the [REDACTED] for the Petitioner's work entitled [REDACTED]
- Recognition as one of the [REDACTED]
- Awards for [REDACTED] and Awards for [REDACTED]
- The Gold Award for the [REDACTED]

As evidence of the award for his work entitled [REDACTED] the Petitioner submitted a [REDACTED] and a four-page document entitled [REDACTED]. According to the latter, the exhibition was created for purposes of showcasing various architectural designs in a variety of categories. The [REDACTED] and the [REDACTED] Government organized the exhibition, soliciting works from architects throughout China. According to the [REDACTED] paper, the organizers received 11,200 works and selected 644 for purposes of display. Based upon the evidence in the record, the [REDACTED] is one of the 644 works chosen to be displayed at the exhibition. The [REDACTED] reflects the Petitioner's selection for that purpose, specifically stating "after being evaluated and examined, your work . . . has been collected." The Petitioner provided no documentary evidence, however, demonstrating that selection of his work for display at this exhibition constitutes a nationally or internationally recognized award.

In his appellate brief, the Petitioner specifically states that his recognition as one of the [REDACTED] is not a nationally recognized award" but maintains that it is important. However, this criterion requires evidence of the receipt of awards and that such awards are nationally or internationally recognized for excellence in the field of endeavor. Based upon the Petitioner's admission, this honor does not meet the requirement of being nationally or internationally recognized. Further, the record contains no documentary evidence explaining the nature of the acclaim or demonstrating that this recognition either equates to or resulted in the receipt of an award.

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The Petitioner refers to a variety of “awards for [REDACTED] and awards for [REDACTED] [REDACTED] which he received between 2003 and 2014. The Petitioner provided a list of architectural designs which appeared in the [REDACTED] from 2003 to 2014. The list includes projects upon which the Petitioner served as one of the chief designers such as [REDACTED] in 2003 and “Administrative Office Building of [REDACTED]” in 2005. Based upon the evidence in the record, rather than constituting awards for architectural design, the [REDACTED] appears to represent a collection or catalog of architectural projects. The Petitioner provided no documentary evidence of having received any nationally or internationally recognized awards for any of the designs which are displayed in this publication and no evidence demonstrating that the publication constitutes an award.

The record includes a certificate, “The Gold Award for the [REDACTED] which appears to have been presented to [REDACTED] by the [REDACTED]. The award indicates that it was granted for the [REDACTED]. According to the Petitioner, the [REDACTED] is his company. However, the Petitioner provided no evidence demonstrating the award criteria, the awarding entity, or that the award is nationally or internationally recognized.

For these reasons, the Petitioner has not satisfied this criterion.

Documentation of the individual’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.

The Petitioner maintains that he meets this criterion by virtue of his membership in three societies. To meet this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements.

The Petitioner claims to be a member of the following associations:

- [REDACTED]
- [REDACTED]
- [REDACTED]

The Petitioner submitted a letter of appointment from the [REDACTED] which indicates that he was appointed “an executive member” of the council. The Petitioner included some background

² The Petitioner has alternately translated this document as [REDACTED] and [REDACTED]. We use the latter translation throughout this decision.

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information on the [REDACTED] that identifies it as a voluntary “non-profit social organization” composed of real estate development, construction, engineering, and architectural companies. The organization’s articles of association distinguish between individual and organizational members. According to the articles, ordinary members must have “certain experience,” and “professional titles at intermediate level or higher” or a “published thesis.” The association also permits student members who must be in their third year of college and senior members who “once acted as honorary chairman, advisor or vice-chairman” of the association. The articles do not indicate that demonstrable, outstanding achievements are required for membership, indicate who judges prospective members, or include a category for executive members.

The Petitioner provided his certificate of membership for the [REDACTED] which identifies him as “an individual member,” and [REDACTED] “Articles of Association.” The articles describe the association as a non-profit legal society comprised of “workers from technology....” Membership requirements are set forth in article eight and include 1) support for the articles of association, 2) willingness to join the society, and 3) significant achievements in the professional field. The articles do not further define “significant achievements,” and do not indicate who determines whether prospective applicants have met such requirements.

The record includes the Petitioner’s membership certificate for the [REDACTED] which identifies him as a “member of the council.” The record also includes a three-page document entitled “A Brief Introduction to [REDACTED]” which describes the [REDACTED] as a “social and academic organization” comprised of “experts and scholars engaged in art creation, research and teaching in the field of painting,” and lists the membership requirements for the association. The prospective member must 1) support the articles of association, 2) have exhibited works at two consecutive exhibitions, 3) have made outstanding achievements, and 3) have published professional works and made outstanding achievements in academic activities. The articles do not, however, define or provide examples of what might be considered “outstanding,” or explain who judges prospective applicants.

Without further evidence, the Petitioner has not shown that any of the associations require outstanding achievements of their members, as judged by recognized national or international experts. As a result, the record does not establish that the Petitioner’s membership in the [REDACTED] or [REDACTED] satisfies this criterion.

Published material about the individual in professional or major trade publications or other major media. The materials must relate to the individual’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.

The Petitioner claims to meet this criterion because a number of his architectural designs have been featured in the [REDACTED]. In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as

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the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³ Furthermore, the regulation requires that “such evidence shall include the title, date, and author of the material, and any necessary translation.”

The Petitioner provided portions of the [REDACTED] from 2003 through 2012. The [REDACTED] appears to be a catalog that includes numerous architectural designs from various architects. The Petitioner appears as a collaborator on a number of pieces. However, the Petitioner has not explained the nature of the [REDACTED] and, other than indicating that it was “compiled by the [REDACTED] has not identified its purpose. The Petitioner has provided no information regarding the readership or circulation of this volume. Further, as the [REDACTED] appears to include architectural designs, with descriptions of the works, the evidence does not demonstrate that the publication or any of the material contained therein, is about the Petitioner or his work in the field of architecture. The text associated with the pictures merely describes the images. Apart from his name appearing among the groups of designers, the Petitioner is not discussed, and there is no other information pertaining specifically to him or to his work in the field.

For these reasons, the Petitioner has not submitted evidence which satisfies this criterion.

Evidence of the display of the individual’s work in the field at artistic exhibitions or showcases.

The Director found that the Petitioner satisfied the plain language of this criterion. Upon a review of the record, we agree that the Petitioner has provided evidence of his work displayed at artistic exhibitions. Specifically, the Petitioner submitted a certificate showing that [REDACTED] was shown at the [REDACTED] and that other of the Petitioner’s works were shown at exhibitions such as the [REDACTED] at [REDACTED] and the [REDACTED]. As a result, the Petitioner has satisfied the plain language of this criterion.

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

The Petitioner maintains that he meets this criterion by virtue of having been assigned in lead or critical roles for five organizations or establishments. A leading role should be apparent by its position in the organizational hierarchy and the role’s matching duties. A critical role is evident by its overall impact on the organization or establishment. Further, the evidence must show that the

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

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organizations for which the Petitioner worked have reputations marked by eminence, distinction, or excellence.

The Petitioner claims to have performed the following roles for or with the entities identified:

- International Advisor of [REDACTED]
- Researcher for the [REDACTED]
- President of the [REDACTED]
- Board member of the [REDACTED]
- Founding Partner and President of the [REDACTED]
[REDACTED] also styled the [REDACTED] and the [REDACTED]

Relying on two testimonial letters, the Petitioner claims to have been an international advisor of [REDACTED] described as an architecture critic, exhibition planner, and stone culture planning supervisor, refers to the Petitioner as an “advisor of public art of the [REDACTED] without further qualification or description. An unsigned letter of recommendation from the [REDACTED] provided a general description of the subject matter and physical locations of the Petitioner’s work. The author stated that the Petitioner “presided over the design of more than 35 projects” in areas such as [REDACTED] and others. While the author identified the Petitioner as the “founder of the [REDACTED] he did not identify the nature of the position that the Petitioner occupied or the institution for which he worked while overseeing the various projects. The second letter made no reference to overseas [REDACTED]

The testimony of the Petitioner’s references is not without weight; however, we are ultimately responsible for making the final determination regarding eligibility for the benefit sought. *See Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r 1988). Thus, the content of references’ statements and the bases of their remarks regarding the Petitioner’s roles are important considerations. Specifically, USCIS need not accept primarily conclusory affirmations. *1756, Inc. v. Att’y Gen. of the United States*, 745 F. Supp. 9, 15 (D.D.C. 1990). However, without supporting evidence from the various cultural arts centers, the information provided by the references remains uncorroborated.

As evidence of his position as a researcher for the [REDACTED] the Petitioner supplied an appointment letter. The Petitioner also provided a document which briefly describes the background of the [REDACTED] noting that it is “directly administrated [*sic*] by the [REDACTED]. The document indicated that “nearly 300 professionals” currently work at the [REDACTED] but did not identify the specific number associated with the [REDACTED]. Further, according to this historical description,

⁴ We will use the shortened designation, [REDACTED] throughout this decision.

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“the [REDACTED] is today a comprehensive new institution centered on artistic creation and research and combining the functions of exhibition, exchange, collection, training, promotion, and publication.” The Petitioner offered no information on the role of the “researcher” within this association or established that either the [REDACTED] or the [REDACTED] of this organization has a distinguished reputation.

To establish his role with the [REDACTED] the Petitioner supplied an appointment letter and a three-page description of the [REDACTED]. The appointment letter indicates that the Petitioner is named the President of the [REDACTED] for a term of three years. The three-page document identifies the [REDACTED] “as a joint institution of contemporary architecture” which creates a “big platform for arts and culture” through avenues such as exhibitions. The [REDACTED] indicates that “the [REDACTED] will apply for architecture Grade a (specific project)” and hopes to attain this designation within three years. The Petitioner identified no duties associated with the position and did not indicate what the designation “architecture Grade a” signifies nor did he demonstrate that this [REDACTED] enjoys a distinguished reputation.

The Petitioner offered his appointment letter as evidence of his board membership of the [REDACTED]. However, he provided no information describing the role of a board member or the nature of the organization or its reputation.

To substantiate his role with the [REDACTED] the Petitioner submitted a letter from the company, signed by [REDACTED] and a business license. Additionally, the Petitioner refers to the letter from [REDACTED] to corroborate his involvement with the company. These documents would appear to support the Petitioner’s claim to be a founding member of the [REDACTED]. However, the Petitioner provided no documentary evidence to establish that this entity has a distinguished reputation in the architectural industry.

For these reasons, the Petitioner has not satisfied this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The Petitioner maintains that he meets this criterion by virtue of having signed a number of architectural contracts, in addition to having been responsible for 45 recognized designs. However, this criterion pertains specifically to the performing arts and requires documentation of the Petitioner’s commercial success evidenced, for example, by box office receipts. As an architect, the Petitioner does not work in the performing arts. Therefore, this criterion would not apply in the instant circumstance.⁵

⁵ We have considered the evidence provided under the high salary or other significantly high remuneration criterion at 8 C.F.R. § 204.5 (h)(3)(ix). However, the documentation did not satisfy that regulatory criterion. The Petitioner submitted six architectural contracts, five of which contained the name of the Petitioner’s company as the designing party. While

III. CONCLUSION

The documents submitted in support of extraordinary ability must show that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. Had the Petitioner provided evidence satisfying at least three evidentiary categories, 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 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.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

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the contracts identified the total fee associated with the design work, the Petitioner supplied no evidence of the salary or remuneration which he received from these projects. Further, the Petitioner provided no comparative data to demonstrate that any salary or remuneration that he received is considered high relative to the salaries or remuneration received by other architects operating in the field.