



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

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

MATTER OF K-C-

DATE: AUG. 24, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a satellite television news producer, seeks classification as an individual of extraordinary ability. *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, Nebraska Service Center, denied the petition. The Director concluded that the Petitioner had not met any of the ten regulatory criteria, of which a petitioner must satisfy at least three.

The matter is now before us on appeal. In his appeal, the Petitioner submits a personal statement and maintains that the Director erred by downplaying the significance of his credentials and applying circular reasoning.

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

I. LAW

Section 203(b) of the Act states in pertinent part:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) 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,

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(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 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) (including items such as awards, published material in certain media, and scholarly articles).

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 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

The Petitioner is the senior editor and deputy director of the news center at [REDACTED] in China. To demonstrate his eligibility as an individual of extraordinary ability, the Petitioner relies on (1) employer recognition; (2) awards received by the show he produced; (3) media articles, including an interview with him, pieces about his employer, and those he authored; and (4) reference letters. The Director concluded that the Petitioner had not met any of the regulatory criteria. The Petitioner maintains that the Director downplayed the significance of the evidence, and characterizes some of his conclusions as arbitrary or circular. The Petitioner contends that he meets the criteria relating to receiving awards, appearing as the subject of published material, judging the work of others, authoring scholarly articles, and serving in a leading or critical role. 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (vi), and (viii). For the reasons discussed below, we find that while the Petitioner does meet the scholarly articles and leading or critical role criteria, he has not satisfied any of the remaining criteria.

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A. Evidentiary Criteria¹

As the Petitioner has not affirmed or documented that he received a major internationally recognized award and the record does not contain such an achievement, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

Between 2004 and 2010, [REDACTED] recognized the Petitioner with several certificates. The Honorary Credentials from [REDACTED] are as follows: [REDACTED] and [REDACTED]. The Petitioner did not corroborate the significance of these awards and the Director concluded that they were local, work-related honors. The Petitioner maintains that the Director's reasoning was circular, deducing that the criterion was not met because the awards were not indicative of extraordinary ability. While the Director's evaluation of whether the submitted awards show extraordinary ability would have been more appropriate under a final merits analysis had the Petitioner met three criteria, he ultimately found that these awards did not meet the plain language of this criterion, which requires that the awards be nationally or internationally recognized. We agree with this finding. The record does not contain evidence that these items are recognized beyond [REDACTED]. For example, the Petitioner did not provide announcements of the selection in the general or trade media.

On appeal, the Petitioner also focuses on different awards that programs he produced have received. More specifically, the Petitioner maintains that he "is the recipient of the [REDACTED] and that the "name and title of the award speak volume for itself." Further, he references coverage of the event in the media, including on the website of the Chinese Internet company [REDACTED]. Initially, the Petitioner offered two certificates recognizing shows that he produced. First, in July 2005, the [REDACTED] honored the show [REDACTED] with the honorary title of the [REDACTED]. Second, in March 2007, the [REDACTED] and [REDACTED] presented the same show with the title, [REDACTED].

First, both the [REDACTED] award and the [REDACTED] award recognize a show and the certificates do not name the Petitioner. The plain language of the criterion requires that the Petitioner be the recipient of the award. Here, the Petitioner has not met his burden to document that he is a credited recipient of the honor.

Second, while both awards contain the word "national," independent corroboration of the honor's recognition is more persuasive than the title alone. The Petitioner did not supply any coverage of the [REDACTED]. With respect to the other award, one of the judges from the [REDACTED]

¹ We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

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[redacted] describes the panel members and ceremony, but does not elaborate on the award's recognition beyond the issuing organizations. The record also includes a paragraph posted on [redacted] announcing the start of the appraisal and election campaign for the 2006 [redacted]. This [redacted] webpage reflects that it is hosted by the [redacted]. Also, [redacted] posted an explanation for the selection of a different show, [redacted] for a 2006 [redacted] Award. The [redacted] and [redacted] are the sponsors of the award. Their coverage of their own award is not necessarily indicative of the award's recognition beyond the issuing entities.

In summary, the Petitioner has not demonstrated that the certificates from his employer are recognized beyond that company. In addition, he has not met his burden of confirming that he is the recipient of the two awards garnered by the show he produced. Finally, he has not established that either of these awards is nationally or internationally recognized. For these reasons, the Petitioner has not satisfied this criterion.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien'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. 8 C.F.R. § 204.5(h)(3)(iii).

The Director concluded that most of the published material in the record was not about the Petitioner and that he had not demonstrated that the published interview he submitted appeared in major media. The Petitioner provided an interview he had given that appeared in [redacted]. The interview is a transcript of the Petitioner's appearance at a forum on Chinese Media jointly organized and co-hosted by [redacted] its affiliates, a [redacted] party committee, the [redacted] and the [redacted]. The Petitioner supplied confirmation that [redacted] lists [redacted] as number [redacted] on its list of innovative companies and provided information on the company's smartwatch. This information does not reflect the entity's status as a media company. The record does not include distribution or circulation data for [redacted].

On appeal, the Petitioner also focuses on an article in the [redacted] affirming that it has a "nationwide circulation and is an affiliate of [redacted] one of the three largest media agencies in China." It is the Petitioner's position that this article featured one of his successful television projects, the news banquet, which has been "widely implemented in China and set up multiple new records." The Petitioner submitted a piece by [redacted] entitled [redacted] that appeared in the [redacted]. The article reports that "multiple websites" including [redacted] have launched a news banquet style program from 10:20 pm to 11:00 pm. The article then describes [redacted] production. The item quotes the Petitioner in one

² According the translation, his first name is not clear.

³ The translation identifies the publication as [redacted] but the remainder of the article and other items in the record suggest the publication is [redacted].

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paragraph. We agree with the Director that this material is not “about” the Petitioner. Moreover, he did not corroborate his statement that the [REDACTED] enjoys a national distribution as required. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Accordingly, the Petitioner has not met this criterion.

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

In an August 2015 supplement to the initial filing and in response to the Director’s request for evidence (RFE), the Petitioner maintained that he had participated “as a panel member in valuation of the work of others.” He offered two examples: serving as a panel member at the [REDACTED] event and as a training consultant and distinguished expert for the [REDACTED]. The Petitioner provided materials about the [REDACTED] event that lists [REDACTED] under “Radio & Television System,” one of 13 industries being appraised; and a letter from [REDACTED] a director at [REDACTED] who confirms that the Petitioner gave lectures and served as a mentor.

The Director concluded that the record did not demonstrate that the Petitioner served as a judge of the work of others in the same or an allied field. On appeal, the Petitioner refers to the letter from [REDACTED] establishing that he served as a panel member for a state agency. The Petitioner also maintains that the Director used circular reasoning, requiring evidence that the judging duties were indicative of national or international acclaim.

Again, the Director’s conclusion that training and advising students and novices does not show sustained national or international acclaim is more appropriate for a final merits determination had the Petitioner satisfied three criteria. Nevertheless, we agree with the Director’s earlier findings. Specifically, the Petitioner has not demonstrated his participation as a judge of the work of others in the same field or an allied field.

First, while the materials for the [REDACTED] list the program the Petitioner produced as one of several radio and television systems, this item does not identify him as an adjudicator for the event. Page 4 of the translation of this exhibit indicates that the [REDACTED] “shall make final decision[s] and award the titles.”

Second, [REDACTED] does not list duties commensurate with serving as a judge of the work of others. In the Petitioner’s position as a training consultant and distinguished expert, he gave “lectures to learners during business trainings and shar[ed] practice experiences and skills in terms of news interview production, program planning and the like.” He also served as a mentor. While the regulation references a “panel,” it does so in the context of judging the work of others. It is insufficient to serve on a panel that does not include such activity. We agree with the Director that the Petitioner has not shown

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giving lectures, sharing experiences, and serving as a mentor involve participating as a judge of the work of others. For the above reasons, the Petitioner has not satisfied this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

In the August 2015 supplement and the Petitioner's response to the RFE, he maintained that he had made contributions of major significance in the field. Specifically, he affirmed that his news programs have received top national awards and "profoundly impacted the entire industry." The Petitioner relied on three letters in support of this criterion. The Director concluded that the letters did not identify specific contributions and the record did not demonstrate an influence in the field. The Petitioner does not raise this criterion on appeal or offer further relevant evidence.

Regardless, we find the record supports the Director's conclusion. The referenced letters are general and do not identify specific contributions or their influence in the field. [REDACTED] a professor of literature at [REDACTED] notes that as a reporter, the Petitioner authored over 100 articles in prestigious media, including the [REDACTED] does not elucidate how these articles, inherent to the position of a print journalist, have influenced the field of journalism. [REDACTED] further discusses the Petitioner's television shows, characterizing them as involving "new approaches." While [REDACTED] avers that the Petitioner "has attracted substantial followers," he does not identify other broadcasts that have been influenced by those the Petitioner developed. [REDACTED] vice president of [REDACTED] states that [REDACTED] is innovative as the first nationwide passion news production, which captured the top audience rating among provincial satellite television programs at that time. While the Petitioner has produced a successful provincial satellite television presentation, the record lacks evidence from the media or other television stations confirming his influence at a level consistent with a contribution of major significance. [REDACTED] of [REDACTED] affirms that [REDACTED] "stood out" for its program, [REDACTED] resulting in recognition as one of the [REDACTED]. He does not, however, explain how the format influenced television news. An article in the record by [REDACTED] and [REDACTED] entitled [REDACTED] that appeared in [REDACTED] expressly states that [REDACTED] is the only satellite station with an emotion theme, revealing it has yet to influence the industry. With respect to the news banquet concept, as noted above, the article by [REDACTED] in the [REDACTED] reports that multiple websites have adopted a news banquet. While the item focuses on [REDACTED] it does not suggest that their program originated the concept.

General, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010).⁴ As the reference letters in this matter do not elaborate on how the Petitioner has influenced the field, he has not satisfied this criterion.

⁴ In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the foreign national's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

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Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner provided an essay that appeared in the publication [REDACTED] his reflection on the origin and practice of emotions news from [REDACTED] and his news reports in the [REDACTED] and the [REDACTED]. The Director found that the materials are news reports and opinion pieces rather than scholarly articles. On appeal, the Petitioner avers that the finding is “arbitrary” as the Petitioner’s authored items appeared in the “most prestigious **trade publication** [REDACTED] where he discussed the professional standards of journalism.” The Petitioner further states that [REDACTED] is a professional journal. The Petitioner maintains that the news reports in the [REDACTED] are qualifying, concluding that it is “beyond comprehension why they do not meet this criterion.”

The record does not include an article that appeared in [REDACTED]. Rather, the record contains only a cover from that magazine with no translation. The record does not contain information about [REDACTED]. As such, the Petitioner has not demonstrated that they are professional or major trade publications or other major media.

Also, the Petitioner’s news stories in [REDACTED] and the [REDACTED] and articles in [REDACTED] and [REDACTED] do not qualify as scholarly. Scholarly articles report on original research, experimentation, or philosophical discourse, and in general have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts express in the article.⁵ Often, scholarly articles are written for learned persons in that field.⁶ Accordingly, the Director’s determination that news reports are not scholarly articles is not arbitrary. In addition, [REDACTED] which appeared in [REDACTED] is a reflection on historical outlooks on material life. It does not relate to the Petitioner’s area of expertise, journalism. Further, [REDACTED] the article in [REDACTED] examines emotions news. Rather than analyzing the concept from a scholarly perspective, however, it recounts the history and experiences of [REDACTED].

The remaining article to consider is [REDACTED] which appeared in [REDACTED]. This item presents a more in depth examination of emotions and passions news than [REDACTED]. The publication is a journal of the [REDACTED]. The table of contents defines the piece as a “case study.” The record is persuasive that this article is qualifying and, as such, the Petitioner has satisfied this criterion.

⁵ USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 9* (Dec. 22, 2010), <https://www.uscis.gov/laws/policy-memoranda>.

⁶ *Id.*

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Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner relies on his role for [REDACTED] to meet this criterion. The Director concluded that the Petitioner did not offer letters from [REDACTED] attesting to his role there or evidence of [REDACTED] distinguished reputation. On appeal, the Petitioner notes that he supplied a letter from Vice President [REDACTED] of [REDACTED] awards [REDACTED] issued to the Petitioner, and published material about [REDACTED] confirming its reputation. The record supports the appellate affirmations. [REDACTED] confirms that the Petitioner serves as [REDACTED] senior editor and deputy director of news. He is also the general producer of [REDACTED] which is corroborated by two of the Petitioner's articles and the piece in the [REDACTED]. That last item also references the rise of [REDACTED]. As noted by [REDACTED] has issued several honorary credentials to the Petitioner. His program has itself received accolades and has been mentioned in the media. Based on this evidence, the Petitioner has established that he performed a critical role for [REDACTED] a noted satellite television company, and accordingly satisfies this criterion.

B. Summary

As explained above, the exhibits the Petitioner provided satisfy only two of the regulatory criteria. As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

Had the Petitioner satisfied 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. 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. 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of K-C-*, ID# 17830 (AAO Aug. 24, 2016)