U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-J-

DATE: AUG. 31, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a geologist and petroleum researcher, whose particular area of expertise is hydrocarbon accumulating modeling, seeks classification as an individual 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, Nebraska Service Center, denied the petition. The Director determined that the Petitioner had not satisfied the initial documentary requirements set forth at 8 C.F.R. § 204.5(h)(3), which consist of either 1) evidence of a one-time major achievement, or 2) satisfaction of 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, judge of the work of others criterion, original contributions criterion, or leading or critical role 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 –
>
> (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); 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

A. Continue to Work in the Area Expertise

The regulation at 8 C.F.R. § 204.5(h)(5) does not require that the Petitioner supply either an offer of employment in the United States or a labor certification. However, the Petitioner must supply clear evidence that he is coming to the United States to continue work in the area of expertise. Such evidence may include: 1) letter(s) from prospective employer(s), 2) evidence of prearranged commitments such as contracts, or 3) a statement from the Petitioner detailing plans on how he intends to continue his work in the United States.

Finding no evidence of the Petitioner's plan in the initial petition submission, the Director requested, among other things, the Petitioner supply one of the three forms of documentation enumerated above. In response, the Petitioner submitted a personal statement, detailing his education, background, and the condition of oil exploration in the United States. The Petitioner also stated that he wanted "to apply for a position in academia or industry to research unconventional oil and gas,

and focus on enrichment area formation mechanism and evaluation of tight oil and gas in 10 years." The Petitioner also identified four areas in which he would conduct his research. The Director found the evidence insufficient and stated that the Petitioner had not shown that he has "prearranged commitments for working in [his] field."

On appeal, the Petitioner neither addressed this issue in the Director's denial nor provided evidence showing that he has applied for positions or contacted prospective employers. The regulation at 8 C.F.R. § 204.5(h)(5) states that evidence demonstrating that the Petitioner is coming to the United States to continue working in his field of expertise may include "a statement from the Petitioner detailing plans on how he intends to continue his work in the United States." However, the regulation also requires "clear evidence" of this intent. Mere intent "to apply for a position" does not constitute a detailed plan and does not satisfy the requirement of "clear evidence."

B. Evidentiary Criteria[1]

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.

> *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 "Second Prize" from the 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.

As evidence of his award, the Petitioner provided the award certificate, an and a screen print from the web site. Additionally, the initial petition submission contained a single translation certificate from in which this individual attested to competence in both Chinese and English but only indicated that the translation "is accurate to the best of my knowledge." 8 C.F.R. § 103.2(b)(3) requires that "any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." In this case the translator did not certify that the translation(s) is/are "full" and "complete." Further, the

[1] We have reviewed all of the Petitioner's evidence and will address those criteria that he indicates he meets or for which he has submitted relevant and probative documentation.

translator did not indicate to which document or documents in the record the certificate applies. Because the Petitioner did not submit properly certified translations of the documents, we cannot determine whether the evidence supports the Petitioner's claims. In responding to the Director's request for evidence (RFE), the Petitioner also submitted numerous foreign language documents but only three translation certificates, each of these bearing the name of with the same statement that appeared on the initial translation certificate. For the same reason, we cannot determine to which documents the three translation certificates apply and whether the various documents have been translated fully and completely.

Based upon the evidence, it is not clear which entity granted the award. The certificate, which was issued on October 18, 2013, identifies the awarding entity as the The "Announcement of 2013 Awardee of identifies the awarding entity as ' but includes what appears to be a translator's note, stating "also translated as As this appears to be a translator's note, it is not clear that this statement is part of the original document or even reflects the contents of the original document. The screen print from the indicates that the entity changed its name from on May 10, 2010. The Petitioner has not demonstrated that this is the same entity that granted the award. Further, if it is the same entity and the organization changed its name in 2010, it is not clear why it would issue an award certificate three years later, bearing the original name. The Petitioner has not clarified this matter and has, therefore, not demonstrated that the award was issued by the The Petitioner must resolve any material inconsistencies in the record by competent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Nevertheless, the Petitioner has not demonstrated that the award constitutes either a nationally or internationally recognized prize. The certificate bears an institutional name for the awarding body. The announcement of 2013 award recipients indicates that that determinations were made based upon the organization's "award-issuing regulations and after the scrutiny of Award Evaluation Committee." However, this document does not identify the "award-issuing regulations" or the criteria upon which the award were based. The announcement indicates that the committee granted 238 awards in 2013 but does not identify any of the other award recipients for that year or for prior years. The announcement identifies the as the "nationally highest honor in the realms of petroleum and chemistry." However, the Petitioner provided no other documentation to corroborate this statement. The announcement also states that the is authorized by However, although the awards program is authorized by a government agency, the awarding entity in this case is not a governmental agency. The screen print from the provides a brief statement about the background of the entity, indicating that it is a "non-government, not-for-profit organization consisting of companies, institutes, sectional associations and local associations in the petroleum and chemical industry on a voluntary basis." The screen print does not offer any specific information about the entity or its recognition throughout the industry and provides no information about awards it grants.

Although the Petitioner did not address this award on appeal, the record contains evidence demonstrating that the Petitioner initially claimed to have received a [redacted] from the [redacted] The Petitioner submitted a certificate from the awarding entity which states it was "issued to honor the outstanding contributions in technology innovation and application in petroleum and natural gas." However, the Petitioner submitted no information about the [redacted] the awards it issues, the criteria for the award, the population from which candidates are drawn, past award recipients, or the national or international recognition of the awards.

For these reasons, the Petitioner has not satisfied 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.*

On appeal, the Petitioner claims to meet this criterion by virtue of having functioned as a mentor for graduate students who were in the process of completing graduate degrees, a responsibility which falls outside of the bounds of his ordinary duties as an engineer. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the Petitioner seeks an immigrant classification within the present petition.

As evidence of the Petitioner's mentorship, he submitted three certificates which identify him as an "outside advisor" or "outside mentor" for three master's level students at three universities. Additionally, the record included an invitation for the Petitioner to serve as a mentor/advisor for a student at the [redacted] Each of the graduate students had an "Official supervisor/mentor" from within the university while the Petitioner functioned as an external advisor.

None of the institutions that generated certificates attesting to the Petitioner's work as an "outside advisor" or "outside mentor," provided a description of the duties associated with such positions. The Petitioner's attribution of the word "judge" to his role, without a description of his activities, is not sufficient to establish that he performed a function that would satisfy this criterion's requirements. The act of being an "outside mentor" or advisor and assisting graduate students in the completion of their degree programs does not constitute judging the work of others in the field. The regulatory criterion contemplates functioning in an official and formal capacity as a judge. The regulation cannot be read to include every instance of assisting or evaluating students as their advisor or mentor. There is no evidence on record demonstrating that the Petitioner served "as a judge of the work of others."

---

[2] The acronym for this entity appears in only a few instances as [redacted] and more frequently in the record of proceeding as [redacted] For this reason, we will use [redacted] as the standard throughout this decision.

The Petitioner also initially claimed to have served as a judge of the work of others by virtue of having served as a member of the "which was set to study and standardize the national procedures and guidelines for petroleum exploration." However, the Petitioner provided no documentary evidence from the committee to substantiate this claim. The record contains a document entitled "Certification of research projects undertaken," which includes some of the Petitioner's academic and experiential qualifications and states "he was appointed as the member of the However, the author does not identify any of the duties associated with the position or specify how the Petitioner functioned as a judge of the work of others in the field.

The Petitioner also states that he "served as the Deputy Director and Academic Secretary of who directly supervises and evaluates the work of some 20 researchers." As evidence of this role, the Petitioner submitted a brochure that describes the laboratory, the staffing configuration, and the types of research in which the laboratory engages. The document identifies the Petitioner as one of four deputy directors, as well as the academic secretary. According to the staffing overview, the laboratory employs 24 research staff, including technicians and supervisors. The Petitioner is one of the 24. The documentation does not describe the Petitioner's department, those researchers with whom he works, any individuals he might supervise, or any of the duties he performs. Consequently, the evidence does not demonstrate that the Petitioner served as a judge of the work of others with respect to his role at

For these reasons, the Petitioner has not met the plain language of this criterion.

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

On appeal, the Petitioner claims to meet this criterion because he served as 1) a chief researcher/project leader for five major projects funded by the 2) a supervisor of 24 laboratory researchers, and 3) a leader of cooperative research efforts with international teams. To satisfy this criterion, a petitioner's contributions must be both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term "original" and the phrase "major significance" are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Regardless of the field, the phrase "contributions of major significance in the field" requires substantiated impacts beyond one's employer, clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

As evidence of having served as a chief researcher/project leader, the Petitioner submitted a "Certification of research project undertaken." The document bears the heading of the and identifies two projects that were funded by the

two by and one by In each case, there appears an "undertaking party" which is the and a "project leader" or "vice project leader" which is the Petitioner. Each of the projects contains a "research task" and the "research achievements."

Although the certification identified five research projects the Petitioner either led or co-led, and described the teams' findings, it provides no indication of whether such findings are original or of how the petroleum and geology fields received these findings. For example, in the first project, the Petitioner and his team "investigated the mechanism and model of coal-bed methane in high enrichment." According to the certification, they "revealed the mechanism of the relationship between the gas content and the permeability developed a productive mode of buried area and high yield of coal-bed methane enrichment, [and] provided the theory for coal-bed methane exploration." However, the certifying authorities do not indicate whether these findings have been adopted by any entities engaged in coal-bed methane exploration or, if so, how these findings have impacted the field on a broad scale.

The Petitioner submitted a letter from a deputy director of In his letter, attested to the Petitioner's involvement in two of the projects identified on the certification referenced above. According to the two projects are of "great impact to the field," because they "developed the most advanced technologies / techniques which are applicable worldwide in relevant, natural gas and petroleum studies / explorations" and "advanced the understanding of mechanism of hydrocarbon accumulation which underlines formation and distribution of conventional and unconventional oil/gas." Although maintains that the Petitioner's findings are significant and the team's technologies are applicable worldwide in natural gas and petroleum studies, he does not claim that any corporations involved in oil and gas exploration have adopted the team's findings or that these findings have made a broad impact upon the field of oil and gas exploration.

The Petitioner also supplied three other letters from researchers who provide statements about the Petitioner's recognition in his field. For example, – states that the Petitioner's "impact in the field" can be appreciated by the fact that he has won awards, by his position as a deputy director of at by his completion of "quite a few national projects that have great impacts in the field," and by his invention of nine Chinese patents, "which have been well received in the industry." does not explain how awards, a position in a research laboratory, completion of national projects, or the invention of Chinese patents constitute original contributions of major significance within the field of oil and gas exploration. Additionally, the record contains no evidence of the nine patents or their use by any entities in the industry. Further, we have already discussed the Petitioner's projects and the fact that the Petitioner has offered no evidence demonstrating their impact upon his field of endeavor. The other two letters contain the same statements, with one, the letter from

[3] In one case, the "undertaking party" was the

additionally noting that the Petitioner was asked to serve as a mentor for graduate students. However, the author did not explain how such a request constitutes an original contribution of major significance to the Petitioner's field.

Solicited letters that do not specifically identify contributions or include specific examples of how those contributions influenced the field as a whole are insufficient to meet this criterion.[4] *Kazarian*, 580 F.3d at 1036. The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements offered as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive proof of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the foreign national's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Caron Int'l*, 19 I&N Dec. at 795; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding our decision to give minimal weight to solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

The Petitioner points to the level of funding for each research project as of some importance. However, the record only reflects that the granted between one million RMB and 58 million RMB[5] to for purposes of undertaking research into various aspects of oil and gas exploration. The evidence does not show the basis for the awarding of the funds and does not reflect that the sum granted corresponds with an original contribution of major significance to the field.

The Petitioner claims to have supervised 24 researchers in the laboratory and that this is indicative of his impact upon the field. However, the Petitioner provided no documentary evidence from his employer substantiating this claim. The brochure for the identifies the staffing for its laboratory consists of 24 individuals, including researchers and technicians. The 24 researchers are divided among four teams and the Petitioner is only associated with one of these. The evidence in the record does not demonstrate that the Petitioner supervised 24 researchers. Further, the criterion requires evidence demonstrating that the Petitioner is responsible for a contribution that is both "original" and of "major significance" to his field of endeavor. The Petitioner has not demonstrated

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

[5] The ' lists the following sums associated with the five research projects: 1) 11.94 million RMB, 2) 58.1489 million RMB, 3) 11.36 million RMB, 4) 8 million RMB, and 5) 1 million RMB. On August 24, 2016, 1 RMB equaled $.15 USD.

how the supervision of 24 researchers would represent an original contribution of major significance to the field of oil and gas exploration.

The Petitioner states he was in charge of cooperative research projects with "international teams" that yielded "substantial contributions to the field." However, the only evidence in the record addressing this issue is the brochure for the Under a section bearing the heading "Academic Exchanges," the brochure includes three exchange projects: 1) in with the 2) Research on in with and 3) with the The document did not identify the Petitioner as a leader for these "Academic Exchanges," describe the activities of these exchanges, provide any of the findings of these efforts, or otherwise explain the projects.

The Petitioner also initially claimed to have been an inventor with nine patents "which are highly appraised in the industry." The record contains no evidence of such patents. In his RFE, the Director specifically requested copies of the patents and evidence showing that the "innovations are being widely utilized by many scientists." The Petitioner provided no evidence in response to this request and has offered no documentation showing that his claimed patented technologies are being implemented by anyone in his industry.

In addition, the Petitioner maintained that the citation of his written works showed influence throughout his field. On appeal, however, the Petitioner does not address this issue. Nevertheless, the Petitioner's claim is based upon a partially translated document from the entitled This certificate states that the Petitioner's articles "were cited 37 times at The record also contains a five-page, partially-translated document from which appears to identify those articles citing to the Petitioner's written works. Because the material is partially translated, we cannot determine the titles of the articles, the titles of the Petitioner's articles cited, the number of times specific articles are cited, or the names of the authors. Consequently, the Petitioner has not identified a specific article which is supposed to have documented an original finding or shown particularly wide reception of the Petitioner's research. Further, the Petitioner has not demonstrated that 37 total citations is representative of a significant impact upon the field of oil and gas exploration as a whole.

For these reasons, the Petitioner did not meet the plain language of this criterion.

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

The Director found that the Petitioner satisfied this criterion. Upon review of the record, we agree that the Petitioner has provided evidence of his authorship of scholarly articles in the field in professional publications. Specifically, the Petitioner identified at least three scholarly articles that

he published: 1) 2) and 3) These articles were published in journals such as 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.*

On appeal, the Petitioner claims to satisfy this criterion because he has been a deputy director and the academic secretary of the A leading role should be apparent by its position in the overall hierarchy of an organization and the role's corresponding duties. Similarly, a critical role is evidenced by its overall impact on the organization or establishment. Additionally, the organizations or establishments claimed under this criterion must be marked by eminence, distinction, excellence, or a similar reputation.

To demonstrate his leading role with the the Petitioner referenced the brochure discussed above. In its identification of the organization and staff, the document includes the Petitioner as one of four deputy directors of the laboratory as well as its academic secretary. Based solely upon the title ascribed to him, the Petitioner would appear to function in a lead role for the However, the document referenced does not identify any duties associated with the position which the Petitioner holds. The Petitioner discusses his achievements and awards in conjunction with his leading role, and the brochure biographical sketch identifies the Petitioner's field of research (e.g. hydrocarbon accumulating modeling, both conventional and unconventional oil and gas enrichment mechanisms), awards that he won, and his number of publications. However, none of these items is evidence of the leading role he claims to fulfill for the

Further, the Petitioner has not demonstrated that the has a distinguished reputation. The record contains the Key Laboratory brochure which, in its Introduction Section, states that the laboratory "was established in 2006 by and is managed by the The document identifies organizational structure of the laboratory, the number of researchers it employs (24 in total), areas of research, facts about its facilities, a summary of awards received, and academic exchanges in which it has engaged. However, the size of the entity, the corporation that established it, and its research projects and awards do not, alone, establish that it has a distinguished reputation.

The brochure is only partially translated. Though the document identifies awards it attributes to the the copies of the award certificates are not translated. Further, the captions identify the nature of the awards, all but two of which are labelled and The identifies projects over which the Petitioner functioned as the lead or vice lead. In each case, the party that undertook the project is identified as and not The record includes no external documentation or

recognition which would attest to the reputation of the within the oil and gas industry, apart from its association with The letter from refers to as "arguably the most important institute of its kind in China" but makes no reference to the For these reasons, the Petitioner has not established that the Petitioner's employer, has a distinguished reputation.

The Petitioner also claimed to be a member of the Committee for functioning for this entity in a critical role. However, the Petitioner neither identified his role with any degree of specificity nor described the committee. Further, the Petitioner provided no other documentation which describes the committee, its efforts, or its recognition within the industry.

For these reasons, the Petitioner has not met the plain language of this criterion.

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

The Petitioner initially claimed to meet this criterion because his annual salary of 242,000 Chinese Yuan[6] is 10 times the salary of the ordinary Chinese worker. The Petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field.[7] The Petitioner must present evidence of objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The Director requested evidence of the Petitioner's high salary relative to others working in similar positions in the Petitioner's field of endeavor. The Petitioner provided no evidence in response to the Director's request. Further, the Petitioner did not address this issue in his appeal. The only evidence of the Petitioner's salary is an income statement from the which indicates that the Petitioner receives a monthly salary of 22,000.00 Chinese Yuan. As comparative data, the Petitioner submitted a screen print of a

[6] On July 19, 2016, 242,000 Chinese Yuan was equivalent to $36,132.83 USD. http://www.xe.com/currencyconverter/convert/?Amount=242%2C000&From=CNY&To=USD.

[7] While the AAO acknowledges that a district court's decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, "[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term [extraordinary ability at] 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99."

search in which the Petitioner searched for the term "average Chinese income." One result, from [redacted] states, "according to [redacted] online global wage calculator, which uses data from the [redacted] the average annual salary of a worker in China's private sector was 28,752 yuan (about $4,755) in 2012...." The Petitioner provided no other documentary evidence and no comparative data for individuals working in the same capacity in similar industries.

For this reason, the Petitioner has not satisfied this criterion.

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 [has] 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of L-J-*, ID# 17865 (AAO Aug. 31, 2016)