U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF P-G-G-

DATE: FEB. 19, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a fashion merchandiser and purchaser, seeks classification as an individual "of extraordinary ability." *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals 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 determined that the Petitioner did not satisfy the initial evidentiary requirements set forth under 8 C.F.R. § 204.5(h)(3), which requires a one-time achievement or satisfaction of at least three of the ten regulatory criteria. Specifically, the Director found that the Petitioner had not met any criterion.

On appeal, the Petitioner asserts that she meets the high salary or other significantly high remuneration criterion under 8 C.F.R. § 204.5(h)(3)(ix). She does not, however, state that she meets any other criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). For the reasons discussed below, she has not established her eligibility for the classification sought. Even had she met the salary and remuneration criterion, which as explained below she has not, she would not have demonstrated her eligibility, because under the regulation, as initial evidence, she must have a one-time achievement (that is a major, internationally recognized award) or provide proof that she satisfies at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). She has not filed the required documentation.

I. LAW

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

> (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,

(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 has 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 her achievements in the field through a one-time achievement (that is a major, internationally recognized award). If that petitioner does not submit this documentation, then she must provide sufficient qualifying evidence that 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 Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming U.S. Citizenship and Immigration Services' (USCIS) proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *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").

II. ANALYSIS

A. Procedural History

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 asserted or shown that she is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, she must provide at least three of the ten types of documentation listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

In her initial filing, the Petitioner correctly noted that to establish her eligibility, as initial evidence, she must submit documentation of a one-time achievement, at least three of the ten criteria, or "other

comparable evidence." She stated "she has performed a lead[ing] and critical role for organizations that have [a] distinguished reputation." She also provided materials pertaining to her "academic accomplishments and remuneration record demonstrating exceptional ability," "achievements in the field," "additional achievements and work experience in the industry," and "job offers." [1] Other than the leading and critical role criterion, she did not specify if any of her filings confirm a one-time achievement under 8 C.F.R. § 204.5(h)(3), met any other criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), or constituted comparable evidence under 8 C.F.R. § 204.5(h)(4).

In his request for evidence (RFE), the Director informed the Petitioner that she did not indicate which criteria she met. The Director noted that "USCIS has evaluated the evidence submitted as best it could" and found that "the only criterion that seemed to fit for the evidence submitted was the criterion of high salary or other significantly high remuneration for services." The Director offered the Petitioner an opportunity to file, among other materials, proof that demonstrated she received a one-time achievement or met at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3).

In her RFE response, the Petitioner stated that she had submitted evidence showing she was "an individual who has been recognized in the top of her field," who "will continue to work in her field as a Latin American Merchandiser." She maintained that she had filed materials establishing that her "entry will substantially benefit prospectively the United States," her intent to "continue to work in their [*sic*] claimed area of expertise," and that "she has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." The response did not, however, assert that she met any criteria, other than the salary or remuneration criterion.

In his decision denying the petition, the Director found that the Petitioner did not meet the salary or remuneration criterion, and stated that the Petitioner did not specifically assert which other criteria she met. On appeal, the Petitioner challenges the Director's finding in regard to that one criterion. She does not address whether she has demonstrated a one-time achievement, met any of the other criteria, or filed comparable evidence.

B. Evidentiary Criteria[2]

We agree with the Director that other than the salary or remuneration criterion, the Petitioner has not specifically maintained that she meets any additional criteria. Although in her initial filing, she indicated that she met the leading and critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), she did not continue to assert that she met this criterion in her RFE response or on appeal. We will therefore consider the salary and remuneration criterion below, and conclude that she has abandoned all other criteria. *See Desravines v. United States Att'y Gen.*, No. 08-14861, 343 F. App'x 433, 435

[1] Evidence of 10 years of experience and a degree are relevant in determining whether a foreign national has demonstrated "exceptional ability," under 8 C.F.R. § 204.5(k)(3), which is a lesser classification than "extraordinary ability." *Compare* § 203(b)(2) of the Act.

[2] We have reviewed all of the evidence the Petitioner has filed and will address those criteria she asserts she meets or for which she has submitted relevant and probative documentation.

(11th Cir. 2009) (finding that issues not briefed on appeal by a *pro se* litigant are deemed abandoned); *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (deeming abandoned an issue raised in the statement of issues but not anywhere else in the brief). Moreover, the record, while containing letters with conclusory statements pertaining to her performing as a "top player," "an essential contributor to our company's success," a leader of a "merchandising team," and a "leader for her company and her team,"[3] does not corroborate her place in the hierarchy of her employers as represented by an organizational chart, her specific impact on any company, or the distinguished reputation of any of her employers. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Att'y Gen. of the U.S.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Accordingly, the record does not support a finding that she has met 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.*

On appeal, the Petitioner asserts that she meets this criterion. The Petitioner works as a senior buyer for , a women's fashion retailer. Her Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement indicated that she earned $45,255.06 in 2014, $46,589.98 in 2013, and $48,067.27 in 2012. The record includes letters offering her purchasing manager and other positions with an annual salary ranging between $80,000 and $100,000, plus bonuses and benefits. The Petitioner has not shown that she meets this criterion.

According to information from the United States Bureau of Labor Statistics (BLS), in May 2012, the median annual wage for "purchasing managers, buyers, and purchasing agents" was $60,550, and for "wholesale and retail buyers, except farm products" was $51,470. BLS materials reflect that in May 2014, the median income, or wage at the 50th percentile, for "wholesale and retail buyers, except farm products" had increased to $52,270. All three median figures are higher than the annual earnings the Petitioner received between 2012 and 2014, which does not support a finding that her income is indicative of a high salary or other significantly high remuneration for services.

On appeal, the Petitioner asserts that July 2015 job offer for a purchasing manager position with an annual salary of $80,640 demonstrates that she meets this criterion. In a July 2015 letter, Owner and President of also presented the Petitioner a merchandise purchasing manager position with an annual wage of $100,000. These propositions, however, do not show that she meets this criterion. A petitioner must establish eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner cannot secure a priority date based on the anticipation of

[3] These quotes derive, respectively, from letters authored by the following individuals: Vice President of Owner of Chief Executive Officer and Founder of President of

future events that might exhibit her eligibility. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the concept that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") Accordingly, the Petitioner may not rely on July 2015 employment opportunities to prove that she was eligible for the petition that she submitted in October 2014.

In addition, BLS printouts showed that a position as a purchasing manager is not equivalent to a position as a buyer or purchasing agent. In May 2012, the median yearly wage for buyers or purchasing agents ranged between $51,470 and $58,760, depending on the industry; while the median annual earning for purchasing managers was $100,170, which is more than the wages suggested for Petitioner. As such, even had we considered the July 2015 employment offers for a purchasing manager position, the Petitioner would not have met this criterion.

The Petitioner also submitted an August 2014 letter from Owner and President of regarding a Market Analyst and Merchandising Manager position with a salary of $85,000 per year plus bonuses. In addition, the record includes other employment opportunities, such as a September 2014 offer from Owner of for an unspecified position that pays $80,000 annually plus bonuses and benefits; and a July 2015 offer from , Owner of , doing business as , for a position in the e-commerce expansion team that pays $100,000 annually. The Petitioner has not filed information on what constitutes a high salary or other significantly high remuneration for these positions. The Petitioner, therefore, has not established that these job openings meet the criterion. Moreover, these offers are also prospective, and do not confirm that the Petitioner has already commanded a high salary or other significantly high remuneration. Based on the above stated reasons, the Petitioner has not documented that she satisfies this criterion.

C. Summary

The Petitioner has been working as a buyer for her employer for a number of years. The reference letters, authored by people who worked with the Petitioner, stated in general terms that she has been capable at her position, praised her character and ability, and indicated that she could move to positions that offer a higher compensation. The letters, however, do not demonstrate, and the Petitioner does not maintain, that she meets any of the ten criteria, other than the salary or remuneration criterion. The evidence also shows that she has received a Bachelor of Arts degree in marketing, and was enrolled in an Executive Master of Business Administration (EMBA) program as of April 2014. These academic achievements similarly do not relate to any criteria at 8 C.F.R § 204.5(h)(3).

III. CONCLUSION

The documentation submitted in support of an extraordinary ability petition 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 included the requisite material under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the submissions in the context of whether or not she has achieved: (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 [Petitioner] 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) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done so, the proper conclusion is that she has not satisfied the antecedent regulatory requirement of presenting initial evidence set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate does not support a finding that the Petitioner has achieved 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of P-G-G-*, ID# 15681 (AAO Feb. 19, 2016)