



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

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

MATTER OF N-M-A-

DATE: JAN. 28, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an accountant and auditor, 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, Texas 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 at 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.

On appeal, the Petitioner asserts that he meets the criteria listed under 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv), (v), (vi), (viii) and (ix). For the reasons discussed below, the Petitioner has not established his eligibility for the classification sought.

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 his 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 he 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. Evidentiary Criteria¹

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 he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, he 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.

¹ We have reviewed all of the evidence the Petitioner has filed and will address those criteria he asserts he meets or for which he has submitted relevant and probative documentation.

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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 asserts that he meets this criterion because of his receipt of the [REDACTED] Award for Community Service. The Petitioner maintains that the Director did not take into account a letter from the [REDACTED] – an “Australian Government Agency that promotes trade, investments and education,” or that the selections appeared in the local [REDACTED]. The Petitioner has not shown that the award is nationally or internationally recognized as honoring excellence in the field of accounting and auditing. A [REDACTED] article in [REDACTED] the newsletter of the Office of Advancement for alumni and supporters of the [REDACTED], indicated that the Petitioner received the award “for his work in developing countries,” because he “put his skills to use in teaching and mentoring the needy.” As he seeks classification in the field of accounting and auditing, he has not established that a community service award recognizes his work in the relevant field.

In addition, the Petitioner has not shown that his [REDACTED] Award for Community Service is nationally or internationally recognized. According to the [REDACTED] letter, [REDACTED] Awards “recogni[z]e and hon[o]r alumni who have attained exemplary achievements in their field of speciali[z]ation at a national, regional or international level.” This letter further noted that the [REDACTED] Awards are “limited to Sri Lanka and Sri Lankan students who have studied in Australia and now are alumni of relevant education providers.” The Petitioner has not established that his award, which has a limited pool of applicants, restricted by nationality and educational background, constitutes a nationally or internationally recognized prize or award. Finally, the record does not include evidence indicating that the awards or the Petitioner’s receipt of the award received any coverage in national or international media outlets or were otherwise recognized beyond the award-issuing entity. The record does not contain a [REDACTED] article. While the Petitioner did offer photographs from the ceremony that appeared in the [REDACTED], they appear in an “Advertising Supplement.” Based on these reasons, the Petitioner has not shown his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. He does not satisfy this criterion.

Documentation of the alien'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.

On appeal, the Petitioner asserts he meets this criterion because he is a Certified Internal Auditor (CIA) in the United States, a Certified Practicing Accountant (CPA) in Australia, and a Certified Fraud Examiner (CFE) in the United States. The record does not demonstrate that these organizations require “outstanding achievements of their members, as judged by recognized national or international experts,” as required under the plain language of the criterion. The Petitioner has not shown that an academic or professional background and specialist qualifications, without more, are sufficient to meet this criterion. *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(C), (E)(specifying that licenses

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and professional memberships are credentials that can support a finding of exceptional ability, a lesser classification under section 203(b)(2) of the Act).

In May 2001, the Petitioner successfully completed the CIA exam and the [REDACTED] designated him as a CIA. According to a 2001 press release, 1,000 of the May 2001 candidates successfully completed the CIA exam, the [REDACTED] has designated a total of more than 33,000 CIAs worldwide, and the CIA exam “reflects the current state of the art in internal auditing and evaluates technical competence in important subject areas related to internal auditing.” The Petitioner has not shown that successfully completing a professional exam constitutes an outstanding achievement, as judged by nationally or internationally recognized experts. In a 2001 letter, [REDACTED] Senior Manager of Certifications at [REDACTED] congratulated the Petitioner on his completion of CIA exam and informed him of the association’s continuing professional education (CPE) requirements.

Similarly, according to a February 2015 letter from [REDACTED] Manager, Assessment and Activation, Member Advisory and Information Services, [REDACTED] that association has more than 150,000 members. She explained that to become a member, an applicant must:

- Complete a degree or a postgraduate award recogni[z]ed by [REDACTED]
- Complete the CPA Program, including [examination and] three years of professional experience in finance, accounting or business;
- Undertake CPD [continuing professional development] activities each year; [and]
- Comply [with] a strict code of conduct set by [REDACTED]

Finally, the Petitioner has not demonstrated that being a CFE in the [REDACTED] meets this criterion. According to [REDACTED] Director of Membership, [REDACTED] CFE members must meet the following requirements:

- Be an Associate Member of the [REDACTED] in good standing;
- Meet minimum academic and professional requirements;
- Be of high moral character; and
- Agree to abide by the Bylaws and Code of Professional Ethics of [REDACTED].

Section 5.02 of the bylaws as quoted by Mr. [REDACTED] also references testing requirements. The record does not contain [REDACTED] associate membership requirements. Regardless, the Petitioner has not established that the abovementioned qualifications for a CIA, CPA, or CFE, consisting of testing, educational credentials, professional background, or personal conduct, meet the plain language of the criterion, which necessitates that the Petitioner demonstrate that the membership requirements include outstanding achievements as judged by nationally or internationally recognized experts. Based on these reasons, the Petitioner has not documented his 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. He does not satisfy this criterion.

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Published material 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.

The Director concluded that the Petitioner did not meet this criterion. On appeal, the Petitioner indicates that he has submitted relevant evidence relating to this criterion. He does not, however, specifically discuss the Director's finding or reasoning, or provide any legal support demonstrating that the Director erred. As such, the Petitioner has abandoned this issue, as he has not properly raised it on appeal. *See Desravines v. United States Att'y Gen.*, No. 08-14861, 343 F. App'x 433, 435 (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, although the record includes articles published in [REDACTED] and a [REDACTED] publication, the Petitioner has not shown that these were professional or major trade publications or other major media. Rather, they are university-based publications. Accordingly, the Petitioner has not presented published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. He does not satisfy 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.

The Director concluded that the submissions did not meet this criterion. On appeal, the Petitioner does not specifically address the Director's reasoning or provide legal support demonstrating that the Director erred. Instead, the Petitioner states in a conclusory manner that his involvement in a possible embezzlement investigation meets this criterion. As he has not offered a basis for appeal, he has abandoned this issue. *See Desravines*, 343 F. App'x at 435; *Tedder*, 590 F.2d at 117.

Moreover, although the evidence indicates that the Petitioner was a member of a commission that investigated "a possible embezzlement of budget funds meant for the acquisition of four lorries for the [REDACTED] [REDACTED]" the record does not demonstrate that he judged the work of others in his or an allied field. The commission conducted an investigation and authored a report. The Petitioner, however, has not specifically documented what he did, or shown that in his role as a commission member, he judged the work of accountants, auditors or others in a related field. Accordingly, the Petitioner has not submitted proof of his participation, either individually or on a panel, as a judge of the work of others in the same or an allied field for which classification is sought. He does not satisfy this criterion.

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

The Director concluded that the submissions did not meet this criterion. On appeal, the Petitioner asserts that he meets this criterion, but does not provide legal support to address the findings in the denial. As such, he has abandoned this issue, as he has not properly raised it on appeal. See *Desravines*, 343 F. App'x at 435; *Tedder*, 590 F.2d at 117. Moreover, although the record indicates that the Petitioner completed studies and has worked as an accountant and an auditor for a number of years, it does not demonstrate that the impact of his work is at a level consistent with a finding of original contributions of major significance in the field. The Petitioner has not shown that his work is original, such that he is the first person or one of the first people to have done the work in the field, or that his contributions are of major significance in the field, such that his work significantly advanced the field as a whole. As the Director noted, the lack of citation record to the Petitioner's thesis does not support a finding that he meets this criterion. Further, although the [REDACTED] published the Internal Audit Manual for that country that it commissioned from the Petitioner, the record lacks confirmation of the impact of this manual in the field. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires an impact beyond one's employer and 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 corroborate her impact in the field as a whole). Accordingly, he has not submitted evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. He does not satisfy this criterion.

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

The Director found that the Petitioner met this criterion. The record supports this finding. In a March 2005 letter, Dr. [REDACTED] Head, [REDACTED] confirmed that the Petitioner was employed as an Advisor/Head of Internal Audit in the [REDACTED], and he was "appointed by the [REDACTED] to organize and develop the Internal Audit capacities of the Ministry of Planning and Finance" of [REDACTED]. The Petitioner authored [REDACTED] that consisted of "generally accepted auditing principles, standards and procedures." In his 2005 employment appraisal, the Petitioner was noted to have "made major contributions to the mission and the [REDACTED] government" and that he was "a great asset to the Organization and the [REDACTED] government." According to a Certificate of Service, between 2003 and 2006, the Petitioner "effectively contributed to the capacity building of the [REDACTED] . . . through advisory services and capacity development activities." In light of the above, the Petitioner has performed in a leading or critical role for an organization or establishment, namely the [REDACTED] which has a distinguished reputation. He satisfies this criterion.

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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.

The Director concluded that the submissions did not meet this criterion. On appeal, the Petitioner indicates that he has filed relevant materials relating to this criterion. He does not, however, address the specific concerns in the denial. As such, he has abandoned this issue, as he has not properly raised it on appeal. *See Desravines*, 343 F. App'x at 435; *Tedder*, 590 F.2d at 117. Moreover, although the Petitioner has authored articles, including his Master's Degree dissertation, he has not shown that any of his articles have been published in a qualified publication or other major media. Accordingly, he has not submitted evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media. He does not satisfy 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 he meets this criterion. The record shows between 2007 and 2009, he earned an annual salary of \$89,982, a yearly service allowance of \$17,859, and a monthly Mission Subsistence Allowance of \$4,920. On appeal, he states that these monetary figures meant that his compensation was \$166,881. The record does not demonstrate that he meets this criterion.

On appeal, the Petitioner notes that "it is not possible for [him] to compare the total remuneration earned by [him] with others who are employed in the same trade." Notwithstanding his assertion, the record has some information on others' earning in the Petitioner's field. The evidence provides the average annual wages for accountants and auditors, and for senior internal auditors. Earning more than the average, however, is insufficient to show that the Petitioner meets this criterion. In addition, according to [REDACTED] Compensation Guide for Anti-Fraud Professionals, the total annual compensation for CFEs is \$125,000 at the 75th percentile. The guide noted that, depending on the industry, income for CFEs ranges between \$106,188 and \$158,750 at the 75th percentile. The [REDACTED] document, however, did not indicate of the elements that went into its calculation for these amounts, or demonstrate that they include items such as "service allowance" or "subsistence allowance." As such, a comparison between the [REDACTED] figures and the Petitioner's annual compensation, which incorporated more than base salary, does not establish that he meets this criterion. Moreover, the Petitioner has not shown that earning more than 75 percent of those in his field constitutes either a high salary or other significantly high remuneration for services in relation to others in the field.

Finally, the submitted evidence shows that between November 2014 and December 2015, he earned approximately \$8,750 per month, which included "basic salary," "hardship," "overseal [*sic*] allowance," "allowance [for] underage children," and "pension contribution." As this information relates to the Petitioner's income after he filed his petition in July 2014, it does not demonstrate that he meets this criterion. The Petitioner must rely on his earning at the time of filing to meet this criterion. *See* 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49; *Wing's Tea House*, 16 I&N Dec. at 160; *Izummi*, 22 I&N Dec. at 175-76. Based on these reasons, the Petitioner has not

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documented that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. He does not satisfy this criterion.

B. Summary

The Petitioner has been working as an accountant and an auditor for a number of years. He has worked for the [REDACTED] and other international organizations. Based on the record, and for the reasons discussed above, however, we agree with the Director that he has not submitted the requisite initial evidence, in this case, documentation that satisfies at least three of the ten regulatory criteria. In addition, having considered all the filings, we conclude that the Petitioner has not shown his eligibility for the exclusive classification.

III. CONCLUSION

The documentation submitted in support of an assertion 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 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 he 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 he 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 N-M-A-*, ID# 15380 (AAO Jan. 28, 2016)