



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

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

MATTER OF S-D-L-A-

DATE: NOV. 23, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, the president of a manufacturing company, seeks classification as an individual of extraordinary ability in engineering management. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director, Texas Service Center, denied the petition, concluding that the Petitioner had satisfied only two of the regulatory criteria, of which he must meet at least three.

The matter is now before us on appeal. In his appeal, the Petitioner submits a brief, stating that he meets at least three criteria.

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,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(b)(6)

*Matter of S-D-L-A-*

(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 that 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 U.S. Citizenship and Immigration Services (USCIS) examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

## II. ANALYSIS

The Petitioner currently serves as president and shareholder for [REDACTED] a metallurgical company in Venezuela that manufactures raw material for the footwear industry. As the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii) and the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix). On appeal, the Petitioner maintains that he meets the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). We have reviewed all of the evidence in the record of proceedings, and the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

*Matter of S-D-L-A-*

A. Evidentiary Criteria

*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).*

On appeal, the Petitioner contends that his selection as one of the top [redacted] most successful managers by [redacted] magazine in 2006 meets this regulatory criterion. In addition, the record contains a letter from [redacted] a representative of [redacted] who indicated that [redacted] grants its annual awards to managers that stand out in different fields and who have great impact on their companies. Further, a letter from [redacted] CEO for [redacted] stated that [redacted] is a publication targeting the local business class and that it annually awards managers for their performances in Venezuela.

Consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the Petitioner must demonstrate that his award is nationally or internationally recognized for excellence in the field of endeavor. Although the letters provide brief information regarding the magazine and the award criteria, they do not establish that the [redacted] award is nationally or internationally recognized for excellence in the field. Accordingly, the Petitioner has not demonstrated that he meets 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. 8 C.F.R. § 204.5(h)(3)(ii).*

The Petitioner expresses on appeal that his membership with [redacted] renders him eligible for this criterion. The Petitioner submitted a letter from [redacted] general director for [redacted] who stated that the Petitioner was unanimously elected by the administrative board based on the evaluation of his managerial and technical skills, his previous work on committees, and his background and work experience. The Petitioner also offered a letter from [redacted] standardization manager for [redacted] who provided background information, council structure, and functions and purposes regarding the association. In addition, [redacted] stated that the Petitioner was unanimously elected because of "his outstanding role in the Engineering Management in his professional career, and experience in general management and the specific engineering disciplines."

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Finally, a petitioner's membership needs to be judged by recognized national or international experts.

(b)(6)

*Matter of S-D-L-A-*

Although [REDACTED] letter explains the reasoning for [REDACTED] unanimous election of the Petitioner, it does not establish that [REDACTED] requires outstanding achievements as a condition for membership in its association. Moreover, the letter does not indicate that membership is judged by recognized national or international experts as required by the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Without evidence demonstrating that membership with [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts, the Petitioner has not shown that he meets this regulatory criterion.

*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. 8 C.F.R. § 204.5(h)(3)(iii).*

The record includes an article from [REDACTED] regarding the Petitioner's receipt of its previously discussed award. The article is about the Petitioner and talks about his role regarding his company's productivity. In addition, the Petitioner submitted sufficient documentation demonstrating that [REDACTED] is a professional publication. Therefore, the Petitioner established that he meets 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).*

On appeal, the Petitioner contends that he led the development and passage of an anti-smuggling law in Venezuela to protect against entry of counterfeit products, that he merged three competing trading groups creating a unified voice for the Venezuelan footwear industry, and that he established an advisory council to establish uniform measures and quality control standards for the Venezuelan manufacturing business. The record contains a letter from [REDACTED] representative of [REDACTED] who indicated that the Petitioner developed an anti-smuggling bill for the [REDACTED]. Further, the Petitioner presented a letter from [REDACTED] president of the advisory council for [REDACTED] who described the Petitioner's successful efforts in organizing multidisciplinary teams to lobby the Venezuelan government and national congress to create an anti-smuggling law. Accordingly, the Petitioner demonstrated that his involvement with the anti-smuggling legislation constitutes an original contribution of major significance in the field.

*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 states on appeal that he has performed in a leading or critical role for [REDACTED] and [REDACTED]. A leading role should be apparent by its position in the organizational hierarchy and the role's matching duties. Further, a critical role is evident from its overall impact on the organization or establishment. In addition, a petitioner's role must be for establishments that have a distinguished reputation.

(b)(6)

*Matter of S-D-L-A-*

As it relates to [REDACTED] the Petitioner submitted a letter from [REDACTED] former director of electrical engineering and former dean of engineering at [REDACTED] stating that the Petitioner was an associate professor at the university for 5 years. Moreover, [REDACTED] indicated that the Petitioner was in charge of key core courses within the engineering department and was invited to participate in the faculty council. We find this letter insufficient to show that the Petitioner performed in a leading or critical role for the university. [REDACTED] did not provide sufficient information to establish the leading or critical nature of the Petitioner's role as an associate professor at [REDACTED]. In addition, the Petitioner did not, for example, compare his role as an associate professor to the roles of other professors and faculty members. Moreover, the Petitioner did not offer sufficient evidence to demonstrate that [REDACTED] has a distinguished reputation as required by the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Regarding [REDACTED] the record contains sufficient evidence to establish that the Petitioner served as its president, which based on the inherent nature of the position, demonstrates a leading or critical role. The Petitioner submitted documentation indicating [REDACTED] background, mission, and features. In addition, the Petitioner presented documentation relating to [REDACTED] activities, such as tradeshows and political involvement. The Petitioner, however, did not establish that [REDACTED] has a distinguished reputation. The record, for example, does not reveal that the organization has garnered any prestigious accolades or is considered the premiere organization in the footwear industry in order to demonstrate that [REDACTED] enjoys a distinguished reputation consistent with this regulatory criterion. For these reasons, the Petitioner has not met his burden of demonstrating his eligibility under 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. 8 C.F.R. § 204.5(h)(3)(ix).*

The Director determined that the Petitioner met this criterion. Based on a review of the record of proceedings, we must withdraw the Director's finding regarding this criterion. At the initial filing of the petition, the Petitioner submitted a letter from [REDACTED] public accountant, who stated that he reviewed documentation regarding the Petitioner's performance as a chief executive officer and stockholder for [REDACTED] and [REDACTED]. [REDACTED] also indicated that the Petitioner is expected to earn a 2015 salary of Venezuelan Bolivar Fuerte (VEF) 2,374,000<sup>1</sup>, which is 82% above the average earned for a managing engineer. In addition, [REDACTED] included a chart for minimum wages from the [REDACTED] reflecting monthly salaries from its professional members ranging from VEF 25,300 to VEF 96,700, depending on professional experience. Further, the Petitioner offered a screenshot from the Foreign Labor Certification Data Center, Online Wage Library indicating that Level 4 Wage civil engineers in the United States earn \$110,635 per year.

<sup>1</sup> [REDACTED] estimation is equivalent to \$376,754. See [www.xe.com](http://www.xe.com).

(b)(6)

*Matter of S-D-L-A-*

In response to the Director's request for evidence, the Petitioner submitted another letter from [REDACTED] stating that he projected the Petitioner's annual salary at the moment of his audit in October 2015, and explained that he based the Petitioner's field and occupation as an engineering manager on the table of wages for Venezuelan engineers because it was "the most reasonable reference [sic]." The Petitioner also presented copies of a paystub and third quarter income tax statement from [REDACTED] reflecting a monthly wage of VEF 155,000 and year-to-date income of VEF 861,000.<sup>2</sup>

Regarding [REDACTED] letters, he indicated that his evaluation was based on the Petitioner's position as chief executive officer at three companies. We note that the record does not include information or evidence demonstrating that he worked for [REDACTED] and [REDACTED]. Regardless, the plain language requires the Petitioner to show that he has commanded a high salary "in relation to others in the field." Here, the Petitioner works as the president and shareholder of [REDACTED] yet the Petitioner submits evidence comparing his salary to civil engineers. Although the Petitioner is an engineer by training, he does not hold the position of an engineer in the company. The Petitioner has not shown that he commands a high salary in relation to other presidents or chief executive officers of an engineering business. See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a 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). In the present case, the evidence the Petitioner submits does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field. Accordingly, the Petitioner has not demonstrated that he meets this criterion.

#### B. Summary

As explained above, 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

<sup>2</sup> The Petitioner's monthly and year-to-date income is equivalent to \$24,599 and \$136,641 respectively. See [www.xe.com](http://www.xe.com).

*Matter of S-D-L-A-*

record in the aggregate supports a finding that the Petitioner has not established the level of expertise and sustained acclaim required for the classification sought.

For the above reasons, the Petitioner has not met his 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).

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-D-L-A-*, ID# 35846 (AAO Nov. 23, 2016)