



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

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

MATTER OF G-A-

DATE: NOV. 25, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an archivist, 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 of the Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only one of the initial evidentiary criteria, of which he must meet at least three.

The matter is now before us on appeal. In his appeal, the Petitioner submits additional documentation and a brief maintaining that he meets 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

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(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 served as the [REDACTED] of the national archives division for the [REDACTED]. As the Petitioner has not 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). In denying the Petition, the Director found that that the Petitioner met only the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that he meets the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the judging criterion under criterion under 8 C.F.R. § 204.5(h)(3)(iv), 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 it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

### A. Evidentiary Criteria

*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*

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*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 indicates that the Petitioner submitted Internet articles from [REDACTED] and the [REDACTED]

The evidence, however, does not contain the authors of the articles as required by the regulation. Further, although the Petitioner is mentioned in the articles, they are not about him consistent with the meaning of the plain language of this regulatory criterion. For instance, the [REDACTED] article is about the [REDACTED] ambassador visiting the [REDACTED]. The articles from [REDACTED] talk about changes in public access to national records, meetings with archivists from other countries, and upgrades to electronic documents. The [REDACTED] articles comment on conference proceedings and Persian manuscripts. As the articles do not discuss the Petitioner, feature him, or otherwise focus on him and his work in the field, they do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

The Petitioner requests that if his evidence does not meet the requirements under this criterion it should be accepted as comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4). Accordingly, the petitioner must demonstrate why this regulatory criterion is not readily applicable to his occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(iii). Here, the Petitioner does not explain why the published material criterion does not apply to his occupation as an archivist. Where a petitioner is simply unable to meet or submit documentary evidence of this criterion, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Even if the Petitioner had established that the published material criterion does not apply to his occupation, he did not demonstrate how his contention that the material shows that his “achievements happened under [his] direction and leadership of [REDACTED] is comparable to the published material criterion. Indeed, the evidence is more appropriate for consideration under the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), which will be discussed later in this decision. For these reasons, the Petitioner does not meet the published material criterion, and his evidence cannot be considered comparable to this criterion.

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

The record contains evidence reflecting that the Petitioner served as a scientific referee of articles for the journal, [REDACTED]. Accordingly, the Petitioner established that he meets 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. 8 C.F.R. § 204.5(h)(3)(vi).*

The Petitioner documented his authorship of scholarly articles in [REDACTED] a quarterly journal of [REDACTED]. As such, the Director found that the Petitioner met this criterion, and the record supports that finding.

*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).*

On appeal, the Petitioner contends that he performed in a leading role as deputy of the national archives division for [REDACTED]. In general, a leading role should be apparent by its position in the organizational hierarchy and the role's matching duties. The Petitioner submits an organizational chart placing his position as one of the prominent positions within [REDACTED]. Specifically, the deputy of national archives is one of four deputy positions that reports to [REDACTED] director. Further, the record contains examples of the Petitioner's responsibilities, including meeting with ambassadors and foreign dignitaries, convening conferences, and being a spokesperson on behalf of [REDACTED]. Based on the preponderance of the evidence, the Petitioner submitted sufficient evidence to demonstrate that he performed in a leading role for [REDACTED].

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires the organizations or establishments to have a distinguished reputation. On appeal, the Petitioner indicates that [REDACTED] "is a very prominent organization" and refers to the approval of its bylaws by [REDACTED] and its supervision by a board of trustees headed by [REDACTED] as evidence of its reputation. The record also contains evidence that [REDACTED] served as the Director of the [REDACTED] [REDACTED] as well as a visit by the [REDACTED] ambassador to the organization. We are not persuaded that organizations or departments under the auspices of a national government inherently possess distinguished reputations. Here, the Petitioner's contentions indicate that [REDACTED] is sanctioned to operate and function in [REDACTED]. They do not, however, demonstrate that [REDACTED] enjoys a distinguished reputation. Although the record indicates [REDACTED] participation in an event outside of [REDACTED] and a visit by a foreign dignitary, the Petitioner did not express how these two events reflect [REDACTED] reputation at a distinguished level consistent with this regulatory criterion. The Petitioner has not shown, for example, that [REDACTED] is viewed as an eminent or respected archival institution by others in the field. For these reasons, the Petitioner has not met his burden of demonstrating his eligibility under this criterion.

## B. Summary

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

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings in the context of whether or not the Petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) that the individual “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise and sustained acclaim required for the classification sought.

### III. CONCLUSION

For the above stated 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 G-A-*, ID# 86914 (AAO Nov. 25, 2016)