



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

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

MATTER OF I- LLC

DATE: NOV. 30, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a digital signage designer and manufacturer, seeks to classify the Beneficiary as an “alien of extraordinary ability” in business. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This classification 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, Texas Service Center, denied the petition, concluding that the Petitioner had not provided documentation that the Beneficiary satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

The matter is now before us on appeal. In its appeal, the Petitioner contends that the Beneficiary meets more than three criteria based on his association memberships, original contributions, leading or critical role, and high salary.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner may demonstrate a beneficiary’s extraordinary ability through sustained national or international acclaim and achievements that have been recognized in his field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states:

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 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 the beneficiary's achievements in the field through a one-time achievement (that is a major, internationally recognized award). If the petitioner does not submit this documentation for the beneficiary, then it 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 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 for the beneficiary 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 Beneficiary is the president and chief executive officer of the petitioning company, which develops customized, innovative, commercial-grade digital signage solutions for clients worldwide. The Petitioner contends that the Beneficiary qualifies as an individual of extraordinary ability "in the field of systems engineering with a focus on digital advertising."

The Petitioner did not indicate, and the record does not establish, that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3). The Petitioner must therefore demonstrate the Beneficiary's eligibility under at least three criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). With regard to the Beneficiary's eligibility under the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii) and the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix), the Director's decision provided contradictory statements. For both criteria, the decision first stated that "[t]he petitioner submitted sufficient evidence to meet the plain language of this criterion," but then

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in the next sentence concluded: “As such, the submitted evidence does not meet this criterion.” The Director determined that the Beneficiary had not satisfied any of the other criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner maintains that the Beneficiary qualifies for the leading or critical role and high salary criteria, as well as the membership in associations requiring outstanding achievements criterion under 8 C.F.R. § 204.5(h)(3)(ii) and the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v). For the reasons discussed below, the record does not support a finding that the Beneficiary meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria¹

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).

The Petitioner submitted awards that the Beneficiary received from his client, [REDACTED] for [REDACTED] and [REDACTED] but did not offer evidence demonstrating that these awards were recognized on a national or international level. In addition, the Petitioner provided an award from the [REDACTED] that was “presented to [REDACTED]. As the plain language of this criterion requires “the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field,” awards received by his client are not sufficient. The record does not contain evidence that the Beneficiary received an award at the [REDACTED] or that his client’s award from that event was nationally or internationally recognized. The Director found that the Beneficiary was not the recipient of any nationally or internationally recognized prizes or awards, and the Petitioner does not contest that determination on appeal. Accordingly, the Petitioner has not established that the Beneficiary meets this regulatory 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 provided a certificate stating that the Beneficiary completed the [REDACTED] and became a [REDACTED]. The Petitioner has not established that earning this certification constitutes membership in an association requiring outstanding achievement, as judged by recognized national or international experts.

In addition, the Petitioner submitted letters from [REDACTED] chairman emeritus of the [REDACTED] chairman of the [REDACTED] education committee; and [REDACTED] executive director of the [REDACTED] identifying the Beneficiary as a member of the [REDACTED] and its education committee. The Director’s decision acknowledged the aforementioned letters, but noted

¹ We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

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that the Petitioner did not submit the [REDACTED] “constitution or bylaws which discuss the criteria for membership.”

On appeal, the Petitioner contends that the Director discounted the letters from the officers of the [REDACTED] as “insufficient” without considering or weighing their content. The initial letter from [REDACTED] stated that [REDACTED] membership is open to digital signage professionals,” but did not offer any specific admission requirements. With regard to [REDACTED] education committee, the letter from [REDACTED] welcomed the Beneficiary to the committee, but did not list its membership requirements. [REDACTED] letter stated that the nomination criteria for membership on the education committee included “recognized leadership and personal knowledge . . . with clear evidence of significant contributions to the field,” “review of curriculum vitae and publications,” “suggestions from the [REDACTED] Executive Committee,” and “attendance at [REDACTED] and other industry events.” The letter from [REDACTED] does not offer sufficient information for us to determine that these requirements rise to the level of “outstanding achievements” in the Beneficiary’s field. Furthermore, while [REDACTED] mentioned that “selection of members is a major professional responsibility of each committee chairperson,” the record does not include documentation of the chairperson’s credentials or other supporting evidence demonstrating that members’ achievements are judged by recognized national or international experts in the field. Therefore, the Petitioner has not established that the Beneficiary meets this regulatory 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).

As evidence under this criterion, the Petitioner offered letters of support, documentation that the Beneficiary is seeking a patent for his [REDACTED] pictures of his digital signage displays, and various awards. The Director determined that the submissions did not show that the Beneficiary’s work equates to original contributions of major significance in the field.

In its appeal, the Petitioner argues that the Director’s decision improperly discounted “detailed and compelling evidence from experts in the field attesting to the widespread acceptance of the technology developed by the [Beneficiary].” The Petitioner provided recommendation letters from the Beneficiary’s clients and business partners.² Although the letters praise the Beneficiary’s work, they do not demonstrate that his digital signage technologies have widely affected the field beyond his business partnerships or have otherwise risen to the level of scientific or business-related contributions of major significance in the field. The plain language of the regulation requires that the Beneficiary’s contributions be “of major significance in the field” rather than only to his business partners and their signage customers.

For example, [REDACTED] a digital signage field application engineer at [REDACTED] in Sweden, mentioned his company’s long-term business partnership with the Beneficiary. [REDACTED] listed their companies’ various joint projects for customers such as [REDACTED]

² We discuss only a sampling of these letters, but have reviewed and considered each one.

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_____ and _____. In addition, _____ described the Beneficiary's development of a _____ a method for customers to update signs using a USB flash drive, a touch screen navigation application for digital signs, and digital signs that support internet connectivity. While _____ discussed the Beneficiary's projects for _____ clients, the record does not include documentary evidence indicating that his work has substantially impacted the digital signage industry or that his projects otherwise constitute original contributions of major significance in the field of systems engineering.

_____ a former global category marketing manager of scotch for _____ (a _____ alcoholic beverages company), stated that his company enlisted the Beneficiary to create a customized "digital media marketing player to display in retail locations" for _____. _____ noted that the Beneficiary "designed and engineered a new and unique circuit board" for reading and saving media, providing stable memory, and allowing simplistic programming and processing of message changes. He added that the Beneficiary's 5.6 inch digital signage box resembled "two boxes of _____ and was reasonably priced, but he did not explain how the Beneficiary's digital media marketing player and circuit board were tantamount to original contributions of major significance in the field.

_____ and _____ registered U.S. patent attorneys with the _____. _____ stated that they represent the Beneficiary in intellectual property matters and with regard to his invention of a _____ for which a U.S. provisional patent application has been filed. The record does not include documentary evidence indicating that a U.S. or an international patent has already been granted for the invention. Regardless, while issuance of a patent recognizes the originality of an idea, it does not demonstrate that development of the invention is a scientific or business-related contribution of major significance in the field. Rather, the significance of the innovation must be determined on a case-by-case basis. Although _____ and _____ contended that the Beneficiary's "invention is a highly marketable system that has great potential to be sold in large volumes here in the U.S. and in foreign markets," there is not sufficient evidence to show that his system has already enjoyed high sales volumes in his industry or has otherwise risen to the level of a contribution of major significance in the field.

Similarly, _____ a senior industrial designer at _____ in Sweden, indicated that the Beneficiary's _____ distributes "DC power through a smart and simple solution" and that the invention "has the potential to revolutionize retail POS [point of sale] environment and customer experience." _____ further noted that designs and prototypes of the invention were completed in _____ 2016 and that a patent has been filed in the United States, but he did not provide examples of how the system has already affected the digital signage industry in a substantial way or otherwise constitutes a contribution of major significance in the field. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). _____ and _____ expectations regarding the possible future impact of the Beneficiary's _____ are not evidence of his eligibility at the time of filing.

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cofounder and chief technology officer of in the United Kingdom, noted that the Beneficiary helped design and develop the company's 23 inch digital escalator panel, which the Petitioner also manufactures. stated that honored the Beneficiary with an for for the digital escalator panel. In addition, listed three awards received by for its digital signage and three awards (2012, 2013, and 2014) that the company presented to the Beneficiary for his work. With regard to the awards that the Beneficiary received from his client, and the award that was "presented to they have already been considered under 8 C.F.R. § 204.5(h)(3)(i), a separate and distinct criterion. Because separate criteria exist for awards and original contributions of major significance in the field, USCIS does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a beneficiary meet at least three separate criteria. Nonetheless, the record does not establish that any of the aforementioned awards were reflective of the Beneficiary's original contributions of major significance in the field.

The Petitioner submitted letters of varying probative value. We have addressed the specific affirmations above. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated statements are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the beneficiary's eligibility. *Id. 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"). Without additional, specific evidence showing that his work has been unusually influential, has substantially impacted the systems engineering field or digital signage industry, or has otherwise risen to the level of original contributions of major significance in the field, the Petitioner has not established that the Beneficiary meets this regulatory criterion.

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).

Although the Petitioner has not claimed that the Beneficiary is eligible for this criterion, it initially provided two online articles authored by the Beneficiary and posted at and . The evidence offered, however, does not show that these two articles, which promote the Beneficiary's company and its products, are "scholarly" and that the aforementioned websites are professional or major trade publications or other major media. Accordingly, the Petitioner has not established that the Beneficiary meets this regulatory criterion.

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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).

In a letter accompanying the petition, the Petitioner indicated that the Beneficiary meets this regulatory criterion based on his “leading role for [REDACTED].” As supporting evidence, the Petitioner submitted a letter from [REDACTED] director for Northern Europe; a letter from [REDACTED] a visual solutions architect at [REDACTED] and [REDACTED]. Although the Director’s decision stated that the Beneficiary meets this regulatory criterion, we find the record does not support that conclusion. [REDACTED] indicated that the Beneficiary has “worked closely with [REDACTED] in Europe developing a unique [REDACTED] product line” and that his “experience and abilities has been very valuable for [REDACTED] to reach the level of success with the Digital Signage market.” Similarly, [REDACTED] noted that the Beneficiary “has established a strong partnership between [the Petitioner] and our European counterparts [REDACTED] Europe.” [REDACTED] further stated that the Beneficiary “helped put [REDACTED] on the map of Digital Signage in Europe,” that he “also works with . . . [REDACTED] in the United States,” and that he “keeps raising the bar for our Digital Signage’s division, by repeatedly developing thought-provoking solutions for us and our customers.” [REDACTED] also listed various joint projects of [REDACTED] and the Petitioner.

In general, a leading role is demonstrated by evidence of where a beneficiary fits within the hierarchy and duties of an organization or establishment, while a critical role is demonstrated by evidence of his contributions to the organization or establishment’s operational viability. The Petitioner did not provide an organizational chart or other similar evidence to establish where the Beneficiary’s role fit within the overall hierarchy of [REDACTED]. While the Beneficiary collaborated with Avnet on projects for its customers, the Petitioner did not provide sufficient documentary evidence to show that his duties and responsibilities were leading or critical for the company as a whole. The submitted documentation does not differentiate the Beneficiary from [REDACTED] executives and senior engineers so as to demonstrate his leading role, and does not establish that his various digital signage projects contributed to the company in a way that was of substantial importance to its success or standing in the industry. Furthermore, regarding [REDACTED] company profile, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff’d* 317 Fed. Appx. 680 (C.A.9) (concluding that USCIS did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media). Without further supporting evidence, we cannot conclude that [REDACTED] has a distinguished reputation. Accordingly, we withdraw the Director’s finding that the Beneficiary meets this regulatory 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 Petitioner provided statistical evidence indicating that the Beneficiary’s salary in Sweden was high relative to other private sector engineers, corporate production and operations managers, and

managers of small enterprises. Thus, the record supports the Director's statement that the Beneficiary meets this regulatory criterion.

B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner has not submitted the required initial evidence of either a one-time achievement or documentation that the Beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Had the Petitioner included the requisite material under at least three evidentiary categories, in accordance with the *Kazarian* opinion, our next step of analysis would be a final merits determination that considers all of the submissions in the context of whether the Beneficiary has achieved: (1) a "level of expertise indicating that [he] is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the [beneficiary] has sustained national or international acclaim" and that his "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. As the Petitioner has not done so, the proper conclusion is that the Beneficiary has not satisfied the antecedent regulatory requirement of presenting initial evidence set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x). *See 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 Beneficiary has achieved the level of expertise required for this classification.

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that the Beneficiary is an individual of extraordinary ability under section 203(b)(1)(A) of the Act. Accordingly, the Petitioner has not established 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 I- LLC*, ID# 142843 (AAO Nov. 30, 2016)