

# 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

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.

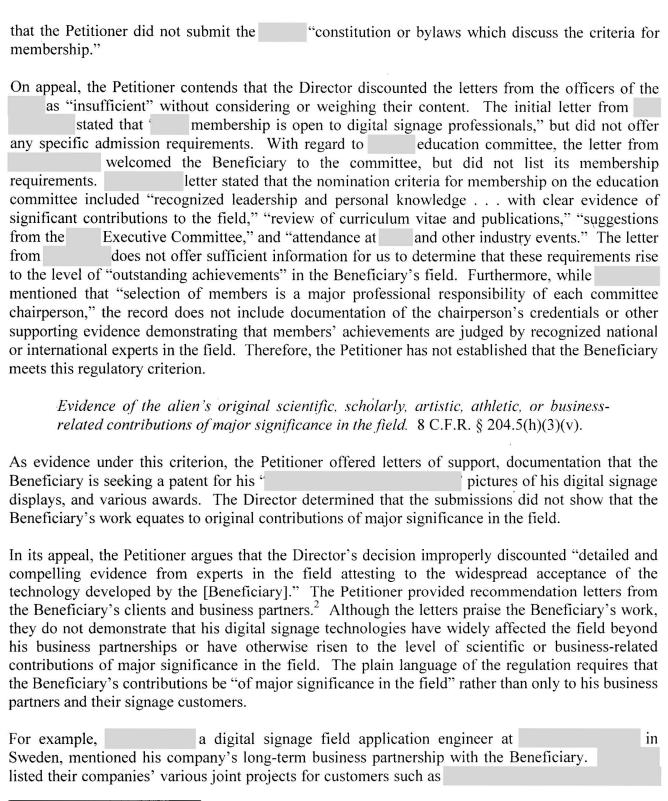
## A. Evidentiary Criteria<sup>1</sup>

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).

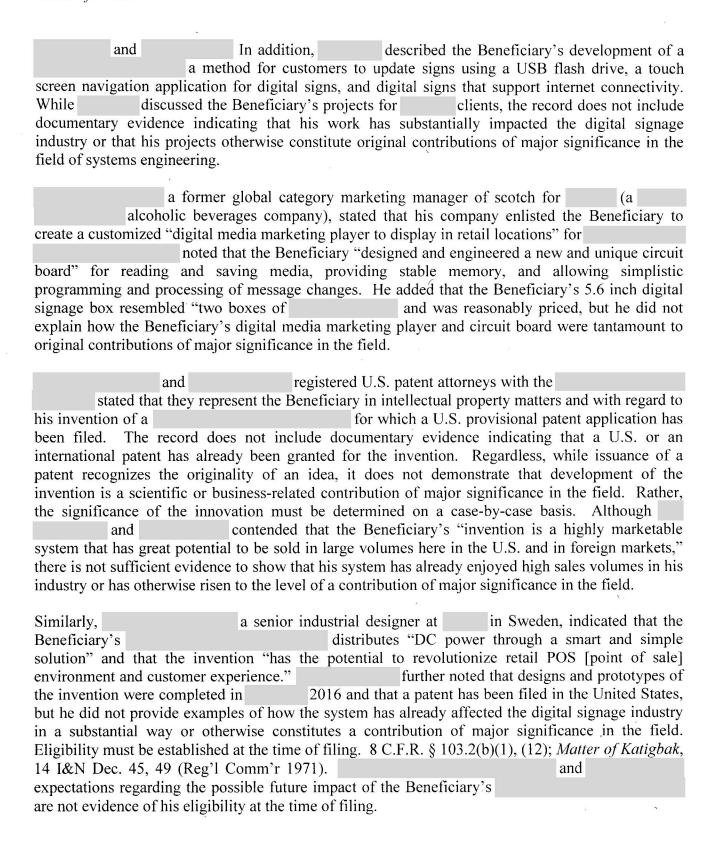
The Petitioner submitted awards that the Beneficiary received from his client,

for '		and '
but did not offer evidence demonstra	e	
or international level. In addition, the Petition	_ •	
that was "presented to	As the plain language of this	
alien's receipt of lesser nationally or internation		
field," awards received by his client are not suf		
Beneficiary received an award at the		
nationally or internationally recognized. 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 t	hat the Beneficiary completed	
and became a '		The Petitioner has not
established that earning this certification co outstanding achievement, as judged by recognize		
In addition, the Petitioner submitted letters fro	om chairman e	meritus of the
c	chairman of the education	committee; and
executive director of the identifyi	ing the Beneficiary as a memb	per of the and its
education committee. The Director's decision acknowledged the aforementioned letters, but noted		
large manages as a series of the series		

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



<sup>&</sup>lt;sup>2</sup> We discuss only a sampling of these letters, but have reviewed and considered each one.



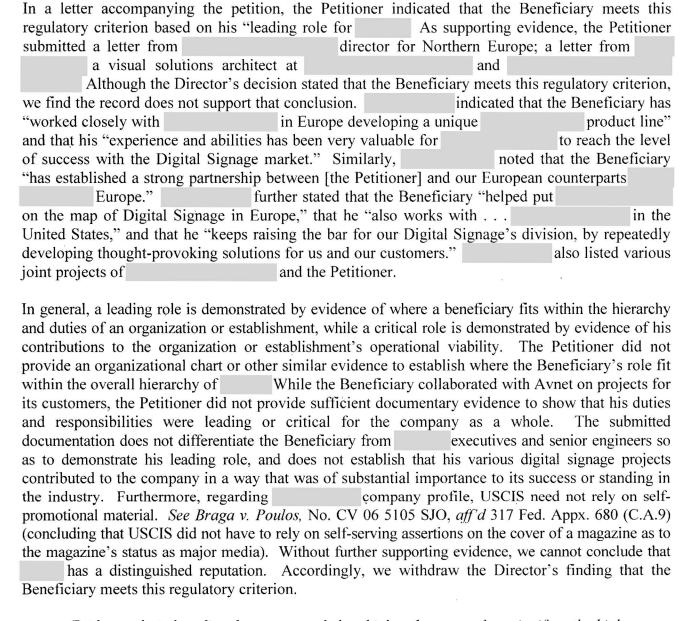
cofounder and chief technology officer of in the United Kingdom, noted that the Beneficiary helped design and develop the company's 23 inch digital escalator panel, which the Petitioner also manufactures. stated that honored the Beneficiary with an for ' for the digital escalator panel. In addition, listed three awards for its digital signage and three ' received by 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.

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).



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)