



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

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

MATTER OF I-G-K-

DATE: OCT. 3, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a professional engineer, 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 not satisfied any 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

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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 is a professional engineer with the [REDACTED] focusing on storm water and erosion control for the southeast region of the state. 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 did not meet any of the alternate criteria. 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 published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), and the high salary criterion under 8 C.F.R. § 2204.5(h)(3)(ix). We have reviewed all of the evidence in the record of proceedings, and we find the record does not establish that the Petitioner meets the plain language requirements of at least three criteria.

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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).

The Petitioner contends that his "Professional Engineer" title is an award as demonstrated by his licenses issued by Michigan and Wisconsin. The plain language of this regulatory criterion requires the Petitioner to document his nationally or internationally recognized prizes or awards for excellence. Here, the Petitioner has not demonstrated that his professional title amounts to an award or prize. Rather, the Petitioner's documentation reflects that in order to be licensed and regulated as a professional engineer in a state, an individual must meet the minimum requirements, such as graduating from an accredited college or university with a degree in engineering, completing written examinations, and accumulating engineering experience. Although the Petitioner's Michigan and Wisconsin licenses show that he complied with the respective state statutes and is authorized to practice as a professional engineer, he has not established that his title and licenses are nationally or internationally recognized prizes or awards for excellence consistent with 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 claims eligibility for this criterion based on his membership with the [REDACTED]. On appeal, the Petitioner indicates that his professional engineering license is an outstanding achievement, and that he only qualified for membership based on his license. He cites a U.S. District Court decision in which the court noted, in part, that less than 10 percent of engineering graduates and about 17 percent of licensed engineers are [REDACTED] members.<sup>1</sup> Furthermore, the Petitioner states that [REDACTED] was later involved in a case before the U.S. Supreme Court, and that this fact "by itself indicates members are recognized national or international expert[s]."

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. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Although the Petitioner submitted historical information and promotional material, including [REDACTED] code of ethics, he did not establish [REDACTED] membership requirements. Moreover, even if

<sup>1</sup> United States v. [REDACTED] 389 F. Supp. [REDACTED] (D.D.C., [REDACTED]).

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holding a professional engineering license is a stipulation for membership, the Petitioner did not demonstrate that possessing a professional license is tantamount to an outstanding achievement. Furthermore, the plain language of this regulation requires that the petitioner's membership be judged by recognized national or international experts. The association's prior involvement with an unrelated antitrust lawsuit before the U.S. Supreme Court does not satisfy this requirement. Without evidence establishing that membership with [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts, the Petitioner has not demonstrated 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).*

As evidence under this criterion, the Petitioner submitted two articles from the [REDACTED]. The articles are about [REDACTED] students working on models to predict flooding in the [REDACTED]. The Petitioner is not mentioned in first article entitled, [REDACTED]. In the second article, entitled [REDACTED] students continue to study [REDACTED] area flooding," the Petitioner is credited with others in the accompanying photograph caption as part of the [REDACTED] team, but he is not discussed in the article.

In order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be published in professional or major trade publications or other major media. As neither article is about the Petitioner, but rather [REDACTED] students studying flood models, they do not meet the plain language of this regulatory criterion. Furthermore, regarding the publication status of [REDACTED] the Petitioner claims on appeal that the circulation statistics from *Wikipedia* indicate an approximate readership of 11,000 – 15,000. Notwithstanding that the record does not contain the information from *Wikipedia*, the Petitioner did not establish that such circulation is reflective of a major medium. Accordingly, for the reasons discussed, he did not demonstrate that he meets 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).*

On appeal, the Petitioner indicates that his position with [REDACTED] entails overseeing storm water and erosion control practices in the southeastern portion of the state. In addition, as indicated in his job description, the Petitioner provides advice, guidance, and methods on environmental and storm water policies, rules, regulations, and guidelines, as well as performing environment review, analysis, and coordination of transportation improvement projects. The Petitioner provided emails of his invitations and comments from review meetings for various water projects.

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The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the petitioner has served as “a judge” of the work of others. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The documentation mentioned above indicates that the Petitioner served on review committees that made recommendations regarding compliance with relevant rules and regulations. The Petitioner, however, did not demonstrate that he actually served as a judge consistent with the plain language of this regulatory criterion. Not every instance of reviewing work as part of one’s job duties falls under this criterion. Therefore, the Petitioner has not 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).*

The Petitioner states that his work on a team to assist [REDACTED] Michigan, in creating a model to predict flooding meets this criterion. In addition, the Petitioner references the two newspaper articles previously discussed under the published material criterion and submits the [REDACTED] which is co-authored by the Petitioner. Although the documentation shows that the Petitioner was part of the team that worked on the model, he did not establish the impact of the model or project in the field. *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). In fact, the record does not indicate whether the model was ever implemented in [REDACTED]. The Petitioner did not demonstrate, for example, that the model has been widely applied or that his report has been extensively cited by others. Without supporting evidence, the Petitioner has not met his burden of showing that he has made original contributions 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 indicates that his role as an assistant regional storm water and erosion control engineer for [REDACTED] in the southeast region meets this criterion. The record contains [REDACTED] organizational structure showing that it has three executive offices and five divisions, including the [REDACTED] in which the Petitioner is employed. Under [REDACTED] there are four offices, in which the Petitioner works in the southeast region sub-office under the regional office section. Within the southeast region, there are 10 positions, including 1 supervisor, 2 leads, and 2 engineers, one of which is the Petitioner.

A leading role should be apparent by its position in the organizational hierarchy and the role’s matching duties. Based on the Petitioner’s position within the organizational structure, he has not established that he performed in a leading role for [REDACTED] or its component offices. When compared to other positions identified in the hierarchy, the Petitioner’s role as an engineer falls short of a leading role consistent with the plain language of this regulatory criterion.

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Further, a critical role is evident from its overall impact on the organization or establishment. Although the Petitioner submitted evidence of his participation on review committees, he did not demonstrate how his position is critical to [REDACTED] or the southeast region sub-office. The Petitioner, for example, did not show how his role as an assistant engineer in a sub-office influenced or impacted [REDACTED] overall.

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the organizations or establishments to have a distinguished reputation. While the Petitioner submitted a screenshot regarding an overview of [REDACTED] including its background and objectives, the submitted documentation does not demonstrate that the organization enjoys a distinguished reputation. 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 record contains copies of the Petitioner's paystubs from the [REDACTED] reflecting an approximate bi-weekly salary of \$2,200. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the Petitioner to show that he has commanded a high salary "in relation to others in the field." The Petitioner, however, did not compare his salary to other professional engineers. *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.

## 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

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

For the above stated reasons, the Petitioner has not met his burden to establish eligibility for the immigration benefit sought. *See* 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-G-K-*, ID# 11965 (AAO Oct. 3, 2016)