



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

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

MATTER OF Y-G-

DATE: OCT. 27, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a sculptor and architect, seeks classification as an individual “of extraordinary ability” in the arts. *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 satisfying 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 his appeal, the Petitioner contends he meets more than three criteria based on his awards, association memberships, scholarly articles, leadership role for his company, and artistic contributions.

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

I. LAW

The Petitioner may demonstrate his extraordinary ability through sustained national or international acclaim and achievements that have been recognized in her 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 his achievements in the field through a one-time achievement (that is a major, internationally recognized award). If he does not submit this documentation, then he 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 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

A. Evidentiary Criteria

Under the regulation at 8 C.F.R. § 204.5(h)(3), a petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not stated or shown that he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, he must provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 initially submitted a portfolio containing photographs of his various award certificates, but the accompanying English language translations in the portfolio were not certified by the translator. The regulation at 8 C.F.R. § 103.2(b)(3) provides in pertinent part:

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Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

For example, the portfolio included a December 2010 certificate of honor from the editorial committee of the [REDACTED] inviting the Petitioner as a "special master" for an arts exhibition commemorating the [REDACTED] anniversary of [REDACTED] birth. In addition, a December 2010 award certificate in the portfolio stated that the Petitioner won a [REDACTED]. Although the Director's request for evidence (RFE) informed the Petitioner that all non-English language documents required properly certified English language translations, he did not provide such translations for the two aforementioned certificates. Because the Petitioner did not submit properly certified English language translations for the preceding two Chinese language award certificates, we cannot determine whether the documents support his claims. Regardless, the Petitioner did not offer supporting evidence showing that the two awards constitute nationally or internationally recognized awards for excellence in the field.

With regard to the remaining 13 certificates from the portfolio, the Petitioner's response to the RFE included a single "Certificate of Translation" from the translator attesting to her competency in English and to the accuracy of the "Awards and Exhibitions" translations. The "Certificate of Translation" listed seven items including "Awards and Exhibitions," but lacked any further specificity regarding any of the translated documents. The submission of a single translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3).

Nonetheless, the Petitioner did not provide documentary evidence demonstrating that any of the 13 certificates are nationally or internationally recognized prizes or awards for excellence in the field of endeavor. For instance, one of the certificates stated that the Petitioner's work [REDACTED] was "selected to attend [REDACTED] of the [REDACTED] 1990). Another certificate indicated that the Petitioner "supported and sponsored the [REDACTED] through his "donation of [REDACTED]. In addition, an [REDACTED] 2008 "Certificate of Participation" noted that the Petitioner's "work [REDACTED] was displayed in the exhibition [REDACTED] going with [REDACTED] for [REDACTED] held at [REDACTED]. The record does not include documentation showing that the aforementioned certificates are nationally or internationally recognized awards for excellence in sculpting, rather than just acknowledgments of the Petitioner's participation in the exhibitions or his donation of art work.

The Petitioner provided a document listing and describing his 13 award certificates, but he has not submitted accompanying evidence demonstrating that his certificates were recognized on a national or international level. Accordingly, the Petitioner has not established that he meets the plain language of this regulatory criterion.

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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 initially submitted his membership credentials for the [REDACTED] and the [REDACTED] without providing certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). In response to the Director's RFE, the Petitioner provided a document listing the [REDACTED] application requirements:

1. Agree with [REDACTED] constitution and will to join in
2. Skilled craftsman with medium-grade professional title or above
3. Have high school degree or above and have at least five-years work experience
4. People have invention, significant science and technical achievement or monograph
5. Government leaders who supports [sic] our career and works at arts and crafts area

Although the single "Certificate of Translation" provided in response to the RFE included the description "Membership in Association" among its seven listed items, the certification lacked any further specificity regarding any of the translated documents. Again, the submission of a single translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, we cannot conclude that the [REDACTED] five requirements rise to the level of "outstanding achievements." While the requirements include an "invention, significant science and technical achievement or monograph," the Petitioner has not shown that such work equates to "outstanding achievements" in his field. Furthermore, the record does not include evidence demonstrating that the [REDACTED] members' achievements are judged by recognized national or international experts in the field.

On appeal, the Petitioner maintains that his membership in the [REDACTED] and the [REDACTED] meet this regulatory criterion. The Petitioner submits background information about the [REDACTED] and the [REDACTED] from their respective websites, but the online information does not mention membership requirements. Without evidence showing that the [REDACTED] and the [REDACTED] require outstanding achievements of their members, as judged by recognized national or international experts, the Petitioner has not established 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 Petitioner submitted a [REDACTED] 2014 article in [REDACTED] but the English language translation accompanying the article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Without a properly certified English language translation for the

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article, we cannot determine whether the material is about the Petitioner and relating to his work. In addition, the author of the article was not identified, and the record does not include objective evidence showing that [REDACTED] is a professional or major trade publication or other form of major media. Accordingly, the Petitioner has not established that he 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).

The Petitioner offered several letters of support as evidence for this regulatory criterion. On appeal, he provides biographical information for five of his references. The Petitioner indicates that his "contributions to the sculptural/design field are widely lauded by peers and experts in his field of expertise." For instance, a letter from [REDACTED] and [REDACTED] professors of the [REDACTED] China, stated:

[The Petitioner's] work [REDACTED] was collected by the [REDACTED]
[REDACTED] His other work ha[s] been selected and awarded by [REDACTED]
[REDACTED] and other great art exhibitions.

With regard to the Petitioner's participation in various art exhibitions, the regulations contain a separate criterion for display of work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). Evidence relating to or even meeting the display criterion is not presumptive evidence that the Petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for artistic display and original contributions of major significance in the field, USCIS clearly 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 petitioner meet at least three separate criteria. [REDACTED] and [REDACTED] did not explain how the Petitioner's work has substantially impacted the visual arts field, has influenced the work of other artists, or otherwise equates to original contributions of major significance in the field. It is not enough to be a talented sculptor and to have others attest to that talent. An individual must have demonstrably impacted his field in order to meet this regulatory criterion.

[REDACTED] a painter and sculptor in [REDACTED] China, indicated that the Petitioner "is a sculptor artist with [a] solid design foundation, intelligence and creativity" and that "[h]is success influences many young entrepreneurs and other artists." [REDACTED] listed various works sculpted by the Petitioner, but did not provide specific examples of how the Petitioner's work has affected others in the field or otherwise constitutes original contributions of major significance in the field of modern art.

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Another reference, [REDACTED] associate professor of the [REDACTED] China, stated: “[The Petitioner] is an artist with [a] gift. Since 1980s he often attended different kinds of sculpture exhibitions and competitions which improve his creation. These award certificates made him recognized in the sculpture field.” The Petitioner’s award certificates have already been considered under 8 C.F.R. § 204.5(h)(3)(i), a separate and distinct criterion. Regardless, [REDACTED] statements do not show that the Petitioner’s sculptures rise to the level of original artistic contributions of major significance in the field.

[REDACTED] chairman of the board for [REDACTED] and [REDACTED] a senior engineer at [REDACTED] discussed the Petitioner’s work as a designer while employed by their company. [REDACTED] and [REDACTED] listed several building decoration projects overseen by the Petitioner and noted that “[h]e studied, designed and made many construction frame and garden decoration models with different culture feature[s] to achieve sustainable development of our company and control the cost for company.” With regard to the Petitioner’s work for [REDACTED] the plain language of this regulatory criterion requires that his original contributions be “of major significance in the field” rather than just to his employer and its projects. Although the Petitioner’s work was valuable to [REDACTED] the record does not sufficiently demonstrate that his projects have influenced the architectural design industry in a substantial way or have otherwise risen to the level of original artistic contributions of major significance in the field.

In addition, [REDACTED] a senior craft artist and member of various Chinese arts organizations, described several of the Petitioner’s artistic projects. [REDACTED] mentioned that the Petitioner (note: errors in the original text have not been changed) “designed and made logo and marine organism relief of granite for [REDACTED] designed and decorated for [REDACTED] for academician building.” [REDACTED] further indicated that “[a]ll these works . . . received good reputation from leaders of [REDACTED] but did not offer any specific examples of how these projects have widely affected the architectural design field or have otherwise been commensurate with 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). 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 petitioner’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 visual arts field or architectural design industry, or has otherwise risen to the level of original contributions of major significance in the field, the Petitioner has not established that he meets this regulatory 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 provided an article entitled [REDACTED] in [REDACTED] but as the article was not accompanied by a full English language translation as required by the regulation at 8 C.F.R. §103.2(b)(3), we cannot determine whether the article supports the Petitioner's claims. On appeal, the Petitioner submits a webpage that provides information about the [REDACTED] building decoration industry association," but the article does not mention [REDACTED]. The Petitioner did not provide supporting evidence demonstrating that the aforementioned magazine is a professional or major trade publication or form of major media. Accordingly, he has not established that he meets this regulatory criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

Although the Petitioner does not claim eligibility for this criterion on appeal, the record includes photographs and certificates indicating that the Petitioner's sculptures have been displayed at artistic exhibitions such as the [REDACTED] for [REDACTED] held at [REDACTED]. Therefore, we find that the Petitioner 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).

In his appeal, the Petitioner states that as a design director for [REDACTED] he "worked on many architectural projects designing both residential and commercial buildings. They are often large-scale projects creating cohesive designs for entire communities and compounds." The Petitioner lists several of the company's residential and commercial projects, and describes his design work for the projects. The record included a "Projects table" prepared by [REDACTED] that reflected the Petitioner's participation as a "design director" and "construction director" on more than 20 projects for [REDACTED]. In their letter of support, [REDACTED] and [REDACTED] indicated that [REDACTED] had "healthy and fast development under [the Petitioner's] leading which brings abundant remuneration for our company and our coworkers," but they did not explain how the Petitioner's supervisory duties for various design projects translated to a leading role for the company as a whole, or provide further information regarding the financial success attributable to his work.

In general, a leading role is demonstrated by evidence of where a petitioner 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 his role fit within the overall hierarchy of [REDACTED]. While the Petitioner served as a "design director" and "construction director" on various projects, he did not provide sufficient documentary evidence to support the contention that his project duties were leading or critical for the company as a whole. The submitted

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documentation does not differentiate the Petitioner from [REDACTED] other project directors and company executives so as to demonstrate his leading role, and does not establish that his work contributed to the company in a way that was of substantial importance to its success or standing in the design industry.

Additionally, with regard to the reputation of his employer, the Petitioner provided four [REDACTED] reflecting that [REDACTED] was selected to perform design projects for [REDACTED]

and [REDACTED]

Although the bid-winning notices show that that [REDACTED] was the contractor chosen to perform construction and design work, they are not sufficient to show that the company has earned a distinguished reputation in the industry.

In light of the above, the Petitioner has not established that he 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 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 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 he 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 [petitioner] 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 he 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 Petitioner has achieved the level of expertise required for this classification.

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that he is an individual of extraordinary ability under section 203(b)(1)(A) of the Act. Accordingly, he 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 Y-G-*, ID# 85950 (AAO Oct. 27, 2016)