



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

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

MATTER OF P-P-M-

DATE: AUG. 21, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an [REDACTED] application (app) developer, 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 dismissed the petition, concluding that the Petitioner satisfied only one of the ten regulatory criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and asserts that he meets an additional three criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

- (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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement that is a major, internationally recognized award. Alternatively, he or she must provide 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).¹ This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is the cofounder of [REDACTED] an [REDACTED] app development company with a number of successful apps. He was previously a software engineer for [REDACTED] and the [REDACTED]. The Director concluded that the Petitioner satisfied one criterion because he had served as the judge of the work of others in the same or a related field. 8 C.F.R. § 204.5(h)(3)(iv). The record supports this determination. Specifically, he judged software and hardware projects at [REDACTED] as well as [REDACTED] an entrepreneurial competition in Spain that had 700 participants. He also was one of four reviewers of a guide entitled [REDACTED] by [REDACTED].

At issue, then, is whether he has satisfied an additional two criteria. For the reasons discussed below, we determine that he has. Specifically, he has presented published material about him and documented his leading or critical role for an organization with a distinguished reputation. We further find that the evidence in the aggregate is indicative of his eligibility for the classification.

¹ This case discusses 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).

A. Regulatory 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 shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The Director concluded that the relevant materials in the record were not about the Petitioner, were broadcast rather than published, or did not appear in a qualifying publication. The record demonstrates that he has satisfied this criterion. While some of the articles are about [REDACTED] apps that, at most, mention him, one of the articles in [REDACTED] discusses him and his brother at length, explaining how they came to work on apps. This article is sufficiently "about" the Petitioner. In addition, exhibits with the appellate submission confirm that [REDACTED] qualifies as major media because it has a readership of 815,000 and is the second most popular newspaper in Spain for both readership and circulation. Accordingly, we find that the Petitioner has established that he meets this 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).

The Director considered this criterion together with the contributions of major significance criterion² because the Petitioner is self-employed and concluded that he had not demonstrated the influence of his company in the field. Regardless of whether a petitioner is self-employed, the requirements for this criterion and the contributions criterion set forth at 8 C.F.R. § 204.5(h)(3)(v) are different and do not lend themselves to one analysis. Specifically, at issue for this criterion is not whether the Petitioner's company has influenced the field but whether it enjoys a distinguished reputation. Notably, there are ways other than influencing the field for a business to earn a distinguished reputation.

The article in [REDACTED] identifies the Petitioner and his brother as founders of [REDACTED] and the creators of its most utilized app, [REDACTED]. Accordingly, the Petitioner performs a leading or critical role for that company. Information in the record, including independent data from [REDACTED] corroborates that three of the company's apps have between one and five [REDACTED] users. [REDACTED] an app magazine, published an interview with the Petitioner and his brother entitled [REDACTED]. The introduction promises "tips and useful information that you cannot miss." We are satisfied that these materials are consistent with a finding that the app developing business enjoys a distinguished reputation.

² 8 C.F.R. § 204.5(h)(3)(v).

B. Final Merits Determination

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. If so, a petitioner has met the requisite burden of proof and established eligibility for visa classification as an individual of “extraordinary ability.” See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20. As discussed below, the record in the aggregate is consistent with a finding that the Petitioner, whose past experience includes working at [REDACTED] and then [REDACTED] during the development of the [REDACTED] is among the small percentage at the top of his field.

The Petitioner not only served as a judge of the work of others, but the level of this experience is notable. [REDACTED] with which he has no affiliation, sought his services as a judge of software and hardware projects. In addition, [REDACTED] co-founder of [REDACTED] explains that the prestige of the mentors “gave solid credit to the contest” and that he invited the Petitioner to participate as a judge because he is a “highly regarded expert in mobile tech and the entrepreneurial spaces.” Finally, he was one of a small number of credited reviewers for a published guide that included biographies of all the reviewers.

The media coverage of the Petitioner and his work is also favorable. The [REDACTED] article mentioned above describes him and his brother as “pioneers in developing applications” for the [REDACTED]. The interview in [REDACTED] characterizes them as “experts in the development of apps and their promotion.” A second article in [REDACTED] details how they have founded a new startup, [REDACTED] to “give voice to businesses so they can communicate automatically with their customers.” While the other published material is not about the Petitioner, it is relevant in the final merits determination that one of his apps received considerable news coverage in the general media.

Further, the Petitioner has founded successful companies and developed successful apps. The number of installations of his apps ranks them within the top percentage of all [REDACTED]. According to a television interview with the Petitioner, [REDACTED] an app that allows users to avoid the [REDACTED] for [REDACTED] was downloaded more than 15,000 times in just three days. The [REDACTED] article indicates that [REDACTED] was a top [REDACTED] in more than 10 countries and users were sharing [REDACTED] icons daily with this app. [REDACTED] while newer, is one of 10 companies participating in the [REDACTED] in partnership with [REDACTED] and [REDACTED]. According to [REDACTED] press release, the “innovative technologies, services, and business models of the companies in the program position them to be leaders in determining the future of retail and commerce.”

Finally, the letters in the record are consistent with a finding that the field recognizes the Petitioner’s achievements. For example, [REDACTED] General Manager at [REDACTED] a business process outsourcing company, affirms that he enlisted the Petitioner’s services after “a worldwide

screening of the best specialists in the field of mobile technologies, and in particular, in the nascent field of bot technology.” The above accomplishments, in addition to other documentation in the record, are indicative of the Petitioner’s acclaim and status in the top percentage of his field. Thus, they establish his eligibility for the classification he seeks.

III. CONCLUSION

The Petitioner has demonstrated his eligibility as an individual of extraordinary ability through the satisfaction of three criteria and evidence indicative of his sustained national or international acclaim as well as recognition in the field.

ORDER: The appeal is sustained.

Cite as *Matter of P-P-M-*, ID# 448433 (AAO Aug. 21, 2017)