



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

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

MATTER OF I-W-B-S-

DATE: DEC. 19, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an attorney, mediator, journalist, and author, seeks classification as an individual of extraordinary ability. *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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three. The Director indicated that the Petitioner had not stated which of the ten criteria he was applying for and how the evidence should be applied.

On appeal, the Petitioner submits additional evidence and contends that he meets the regulatory criteria as an individual of extraordinary ability.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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 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 of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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 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. 8 C.F.R. § 204.5(h)(2)-(3).

II. ANALYSIS

The Petitioner states that he qualifies as an individual with extraordinary ability as a multilingual attorney, journalist, author, and mediator. At the time of filing, he was serving as a volunteer mediator with the [REDACTED] in [REDACTED]. Because he has not indicated or established that he has received a major, internationally recognized award, the Petitioner must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the Petition, the Director found that the Petitioner did not meet any of the regulatory criteria.

On appeal, the Petitioner contends that the Director did not properly consider the evidence in the record. He discusses his documentation and achievements relating to the criteria identified below. We find the evidence insufficient to demonstrate that the Petitioner meets at least three criteria.

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).

¹ The Form I-140 petition lists the Petitioner’s occupation as “student.” The record does not contain evidence, such as a statement from the Petitioner, as required by 8 C.F.R. § 204.5(h)(5), indicating how he intends to continue his work in the area of expertise in the United States.

The record contains evidence that the Petitioner has served as a mentor critiquing and evaluating the performance of other mediators in the [REDACTED] in [REDACTED]. Therefore, we find that the Petitioner meets this 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).

The Petitioner authored an article entitled, [REDACTED] that was published by the [REDACTED]. Accordingly, the Petitioner 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).

In general, a leading role should be apparent by its position in the overall organizational hierarchy. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities.

The record reflects that the Petitioner has been a volunteer mediator for the [REDACTED]. The Petitioner states that he has completed hundreds of mediations and that his fluency in several languages gives him a unique advantage as a mediator. He offers letters from various colleagues discussing his role as a mediator. For example, [REDACTED] the Court Mediation Services Coordinator for the [REDACTED] states that the Petitioner was accepted as a Volunteer County Mediator in the Court in January 2016 and that he currently mediates county cases two mornings each week. She further indicates that he "is very professional, follows direction, and is well-liked by the public he is serving."

In addition, [REDACTED] the Staff Family Mediator, asserts that the Petitioner "has handled well over 250 individual cases within our circuit alone since beginning his time within our Courthouse Mediation Department." [REDACTED] also notes that the Petitioner is "quite experienced" and that his specialized training, background, and ability to speak four languages set him apart from other mediators. Furthermore, Attorney [REDACTED] contends that the Petitioner "is truly a valued and exemplary mediator in [REDACTED] Florida." [REDACTED] further explains that the Petitioner's "work ethic has allowed him to achieve a high level of respect" and that he "is well-regarded by attorneys, clients, faculty members, and our administration." While we acknowledge that the aforementioned letters indicate the Petitioner is an effective mediator, the evidence in the record does not establish that he has performed in a leading or critical role for the [REDACTED].

² This article was subsequently published in the book [REDACTED]. The record also indicates that the Petitioner was a journalist in Brazil for [REDACTED] network in Brazil, but he has not demonstrated how this relates to the legal field or the other regulatory criteria for classification as an individual of extraordinary ability.

The record also includes a list of the outside mediators for the [REDACTED] Residential Mortgage Mediation program. The Petitioner is listed here as one of the mediators in this program, but the list includes over 170 other individuals. The evidence submitted does not demonstrate that the Petitioner has a leading role in the hierarchy of the organization or that he performs a critical role when compared to the numerous other mediators in the organization. In addition, the Petitioner has taken many professional development courses to further his expertise as a mediator, but this does not establish that he has performed in a leading or critical role. For these reasons, the Petitioner has not demonstrated that he meets this criterion.

III. CONCLUSION

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. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of I-W-B-S-*, ID# 668002 (AAO Dec. 19, 2017)