



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

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

MATTER OF V-S-U-

DATE: SEPT. 22, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a computer scientist, 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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied two of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner provides documentation and a brief, stating that he satisfies at least three criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified 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). If that petitioner does not submit this evidence, then 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) (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). 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 a computer project manager for the [REDACTED]

[REDACTED] Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met these two criteria: scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi) and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner maintains that he meets three additional criteria: membership under 8 C.F.R. § 204.5(h)(3)(ii), original contributions under § 204.5(h)(3)(v), and high salary under 8 C.F.R. § 204.5(h)(3)(ix).¹ We have reviewed all of the evidence in the record, and conclude it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

¹ While the Petitioner previously claimed eligibility for the criteria relating to awards under 8 C.F.R. § 204.5(h)(3)(i) and published material under 8 C.F.R. § 204.5(h)(3)(iii), he does not continue to do so on appeal, nor does the record support a finding that he meets them. Accordingly, we will not further address these criteria in our decision.

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 states that he is certified as a [REDACTED] by the [REDACTED]. In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievements as an essential condition for membership.

Regarding [REDACTED] the Petitioner indicates that he earned his certification based on a 15 year career in information technology, and that the credential has been cited as a top certification by credible and important organizations. The "[REDACTED] Handbook" provided by the Petitioner reflects that in order to be eligible for the [REDACTED] credential, an applicant must have an educational background, project management experience, and project management education. Moreover, once an application is submitted and processed, an applicant has one year to pass an examination and, upon approval, the applicant has to maintain professional development units. These requirements are not indicative of outstanding achievements and are not judged by recognized national or international experts; instead, the applicant has to pass a multiple choice examination. Further, [REDACTED] relates to a credential rather than membership in an association.² Accordingly, the Petitioner's [REDACTED] certification does not qualify for this criterion.

As it relates to [REDACTED] the Petitioner claims that it is a professional association of highly skilled project managers and requires a level of success in the field. The issue for this criterion, however, is not the reputation or standing of the association but whether outstanding achievements, as judged by recognized national or international experts, are required for membership. The record contains [REDACTED] bylaws that state "[m]embership in [REDACTED] shall be open to any person interested in the declared purposes of the Institute. . . ." Further, the bylaws reflect four classes of membership: regular, retiree, student, and associate. Although the Petitioner did not establish his membership class, "[a]ny person who is interested in, or engaged in, the practice, teaching or other application of project management, including research concerning project management, may qualify as a Regular Member of the Institute." The bylaws indicate that persons seeking membership will be accepted upon "the submission, receipt, acceptance, and processing of the required application materials, dues, fees, and assessments," thereby demonstrating that outstanding achievements are not an essential element for admittance into [REDACTED]. Moreover, the bylaws do not show that membership is judged by recognized national or international experts as required by the regulation. For these reasons, the Petitioner does not meet this criterion.

² As further evidence that [REDACTED] relates to a credential, the [REDACTED] Handbook" provides "information about the policies and procedures for obtaining and maintaining the [REDACTED] credential." In addition, the handbook indicates that "the [REDACTED] credential demonstrates to employers, clients and colleagues that a project manager possesses project management knowledge, experience, and skills to bring projects to successful completion."

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).

Although he did not previously claim this criterion, the Petitioner contends on appeal that he meets it based on the authorship of his work. Specifically, the Petitioner indicates that his paper entitled, "Testing of Component-Based Software Systems" was selected for publication and presentation at the [REDACTED] in 2001. Further, the Petitioner states that the conference "validated the significance of [his] work to the global Software Testing profession by selecting his paper to be presented at their annual conferences."

In order to satisfy this criterion, the Petitioner must establish that he has made original contributions of major significance in the field. Participation in a conference demonstrates that his findings were shared with others and may be acknowledged as original based on their selection for presentation. However, the selection of the Petitioner's paper to be presented at the [REDACTED] in-and-of-itself does not show the major significance of his contribution. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in our adverse finding relating to this criterion. 596 F.3d at 1122. The record does not show that his presentation or paper has been frequently cited by other researchers or has otherwise significantly impacted the field. While the Petitioner claims that his paper "was cited numerous times by scholars," he only provides three papers that cite to his article. Those papers do not reflect that his article was singled out as particularly important. Rather, the Petitioner's article was used as background and for information purposes in the authors' papers. Here, the Petitioner has not shown that his paper or presentation rises to a level of an original contribution of major significance in the field.

Furthermore, the Petitioner submits two recommendation letters from individuals who worked with the Petitioner at [REDACTED]. Although they indicate that the Petitioner's research and findings were distributed within [REDACTED] they did not demonstrate that his work has influenced or impacted the field outside of the company. For instance, [REDACTED] software architect for [REDACTED] stated that the Petitioner's "successful results were widely distributed to technical staff and decision makers within [REDACTED] through internal reports . . . and a company-wide Research Newsletter." In addition, [REDACTED] senior manager for an undisclosed company, discussed three of the Petitioner's projects but did not indicate whether any of the findings were implemented in the field. Similarly, the Petitioner offers a letter from [REDACTED] professor at the [REDACTED] in India, who identified a project the Petitioner worked on in conjunction with [REDACTED] for his master's degree but did not establish the effect it had on 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 as a whole).

The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of how his contributions rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the U.S. Citizenship and Immigration Services' (USCIS') conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). For these reasons, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

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).

As discussed above, the Petitioner authored an article that was published from the proceedings of a conference. Accordingly, the Director found that the Petitioner satisfied this criterion, and we agree with that determination.

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 indicated that the Petitioner's position as a project manager with [REDACTED] for the [REDACTED] [REDACTED] satisfied this criterion. The record supports the Director's determination, and the Petitioner meets 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 Petitioner states on appeal that he has discovered new evidence that meets this criterion. Specifically, the Petitioner claims that his "real market value" at [REDACTED] is \$220,000 per year, and [REDACTED] has a longstanding reputation of exploiting the US immigration guestworker [*sic*] program by hiring Indian IT nationals who they pay significantly less than the market wage" In addition, the Petitioner provides a "work order central" reflecting that [REDACTED] charges \$110 per hour (approximately \$220,000 per year) for the Petitioner's services to other clients, such as the [REDACTED]. Further, the Petitioner submits documentation from [REDACTED] indicating that he earns \$93,492 per year and evidence from the U.S. Bureau of Labor Statistics showing that the annual median wages for computer and information research scientists is \$110,620, including \$170,610 in the 90th percentile.

In order to satisfy this criterion, the Petitioner must demonstrate that he commands a high salary or other significantly high remuneration for services in relation to others in his field. Although he provides documentation showing what [REDACTED] charges its client for his services, the Petitioner earns

\$93,492 per year. Here, the Petitioner does not command or earn the amount that [REDACTED] charges its client for his services; and therefore, it cannot be interpreted as the Petitioner's annual salary.

In addition, as indicated above, the Petitioner provides evidence from the U.S. Bureau of Labor Statistics regarding salaries of computer and information research scientists. The Petitioner's position, however, with [REDACTED] for the [REDACTED] is a computer program manager. Here, the Petitioner did not compare his salary to other computer program managers. Similarly, the Petitioner submits a job offer letter from [REDACTED] for the position as a senior software engineer reflecting a yearly salary of \$219,986. He did not demonstrate that this salary is high in relation to other senior software engineers. Accordingly, the Petitioner did not establish 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 she qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of V-S-U-*, ID# 561213 (AAO Sept. 22, 2017)