



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

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

MATTER OF M-I-A-

DATE: FEB. 28, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a Hookah Lounge Manager, seeks classification as an individual of extraordinary ability in business. *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 shown that he met any of the ten initial evidentiary criteria, of which he must meet at least three. The matter is now before us on appeal.

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).

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 hookah lounge manager. As the evidence in the record does not establish 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). The Director addressed awards at 8 C.F.R. § 204.5(h)(3)(i), membership at 8 C.F.R. § 204.5(h)(3)(ii), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), concluding that the Petitioner did not meet any of these criteria. Upon review, we conclude that the evidence in the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

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 record contains a Certificate of Achievement presented to the Petitioner for “ [REDACTED] at the [REDACTED] in 2006. The Petitioner submitted an Affidavit of Achievement from [REDACTED] who organized this [REDACTED] indicating that the Petitioner won first place in the competition among [REDACTED] total participants and received 200,000 Pakistani rupees as a result. We agree with the Director’s finding that the record does not establish that this award was for excellence in the field or that it received national or international recognition.

On appeal, the Petitioner has submitted an Award of Excellence from [REDACTED] recognizing him for food safety and preparation. The Petitioner has not presented evidence demonstrating that this constitutes a nationally recognized prize or award. Additionally, while the record contains a photograph of the Petitioner receiving a trophy, the significance of the event is not

explained. The evidence in the record, considered in its totality, does not demonstrate that the Petitioner has satisfied the plain language of this 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 has not submitted any documentation pertaining to this criterion. The Director noted that although an asterisk was placed by this criterion in the documentation presented, the record did not contain any evidence of membership in an association that requires outstanding achievements of its members. After a review of the record, we reach the same conclusion. Therefore, the Petitioner does not meet 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).

A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

The Petitioner submits a letter from [REDACTED] stating that the Petitioner is employed at [REDACTED] in [REDACTED] Texas, and that he is a shift manager and the hookah expert, preparing hookah orders and food for the customers. [REDACTED] states, "After hiring [the Petitioner] based on his expert skills and talent, my business has seen a lot of growth and my customers really like his work ethic and personality." The Petitioner also submits positive online reviews of the [REDACTED] posted to [REDACTED]. While this letter demonstrates that the Petitioner has had a positive influence at [REDACTED] in providing excellent customer service to its customers, the record does not establish what impact the Petitioner has had on the cafe. Additionally, while the record contains positive reviews of the establishment, the record does not establish that the organization has a distinguished reputation. The Petitioner has not demonstrated to what extent [REDACTED] has experience business growth since he was hired. Therefore, the Petitioner does not meet this criterion.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying 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). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has the level of expertise required for the classification sought.

Matter of M-I-A-

ORDER: The appeal is dismissed.

Cite as *Matter of M-I-A-*, ID# 1078894 (AAO Feb. 28, 2018)