



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

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

MATTER OF W-M-M-

DATE: JUL. 5, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an engineering manager, seeks classification as an alien 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 Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner has a one time achievement (a major, internationally recognized award) or satisfied at least three of the ten evidentiary criteria.

On appeal, the Petitioner asserts that he satisfies four of the evidentiary criteria and has sustained national or international acclaim.

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 a multi-part analysis. First, a petitioner can demonstrate

sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

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

The Petitioner has not established that he has received a major, internationally recognized award, and so must show that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In her decision, the Director found that the Petitioner met the criteria for leading or critical role and high salary. On appeal, the Petitioner asserts that he also satisfies the requirements of the criteria relating to judging the work of others and contributions of major significance. We will analyze the evidence submitted under each of these criteria below.

Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner submitted emails to and from other professionals in the brewing industry in which he is asked for his professional opinion regarding brewing equipment, suppliers and personnel decisions. The Director found that these emails did not meet the requirements of this criterion, since there was no indication that the Petitioner was acting in a formal judging capacity, and that this regulation was not intended to consider every act of providing advice or guidance as qualifying.

On appeal, the Petitioner notes that the regulation does not explicitly require an invitation to judge or that judging take place in a formal capacity, and focuses on the dictionary definition of “judge,” one of which defines the word as “one who gives an authoritative opinion.” However, the Petitioner’s focus on a single word, and one of several definitions, distorts the meaning of the regulation, which

requires evidence of “*participation* as a judge, either individually or on a panel.” When read as a whole, the regulation requires evidence of judging in a planned activity or event, not merely the provision of advice on an ad hoc basis. While the evidence shows that the Petitioner is an expert in his field, with clients and employers willing to pay him for his advice, it does not establish that he has participated as a judge of the work of others in his field. Therefore, he has not established his eligibility under this criterion.

Evidence of the individual'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 Director determined that the Petitioner did not meet this criterion, noting that his critical role with, and contributions to, individual companies as an employee or consultant was not sufficient to demonstrate his impact on the field overall. On appeal, the Petitioner notes that the Director did not mention or analyze the letters from his employers, clients, and colleagues in the brewing industry. Upon review of the entire record, including these letters, we agree with the Director’s finding regarding this criterion.

While the letter writers are complimentary of the Petitioner’s work, and confirm that he is an expert in this field, they do not establish that he has made an original contribution to the field of engineering project management, even when specifically considering the brewing industry. For example, [REDACTED] states that, as a consultant, the Petitioner “successfully found and eliminated a number of critical production constraints,” which allowed the company to “increase overall output, greatly improve quality, and significantly grow sales volume.” In his current role as Director of Engineering, [REDACTED] writes that the Petitioner manages several projects, and will be promoted to brewery plant manager in five years. [REDACTED] a former employer of the Petitioner, indicates that the Petitioner was responsible for the management of equipment purchasing and installation for two simultaneous brewery projects, and successfully oversaw the completion of these projects on time and within budget. [REDACTED] of the [REDACTED] confirms the Petitioner’s accomplishments noted in [REDACTED] letter, and notes that in addition to his work at [REDACTED] and [REDACTED] the Petitioner has provided consulting to other smaller breweries. This statement is confirmed through evidence in the record, including the previously mentioned emails, which show that the Petitioner has consulted with at least four other companies. While these letters describe the impact of the Petitioner’s work on individual breweries, they do not describe how his contributions have been of major significance to the field.

The totality of this evidence confirms that, by providing expert advice on best practices for brewery equipment installation and operation, the Petitioner has helped several brewing companies to improve their production capacity, quality and profitability. However, the record indicates that as of December 6, 2016, there were more than 5,000 breweries in the United States, the vast majority of which were small craft breweries. The evidence does not demonstrate that by working for or with a small number of breweries, the Petitioner has made an impact on his field, or the industry, as a

whole. Accordingly, we find that the evidence does not establish that the Petitioner meets this criterion.

Evidence that the individual 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 determined that the Petitioner satisfied the requirements of this criterion. Based upon the Petitioner's critical role at Stone Brewing and Karl Strauss, we agree with the Director's decision.

Evidence that the individual 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 submitted evidence that his current salary is \$185,000, and that according to Occupational Employment Statistics (OES) figures published by the Bureau of Labor Statistics, this figure ranked between the 75th and 90th percentiles for engineering managers at the national level as of May 2016. Similarly, the information submitted with the petition from the website salary.com showed a median salary of \$156,020 and a 90th percentile of \$190,832 at the national level. However, these figures do not take local variations in salary into account, or more recent OES data that was available at the time of filing.¹

In addition, while the Petitioner submitted industry-specific data that appeared to be from 2016, the referenced data for "engineers" did not include information about specific job titles, duties, education requirements or location which would allow us to determine whether the salaries listed are for a position comparable to the Petitioner's. Therefore, we disagree with the Director and find that the Petitioner has not established that, based upon the most current and relevant data, his salary can be considered to be high in relation to others in similar positions in his field.

III. CONCLUSION

The Petitioner is not eligible under this highly restrictive classification because he 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). Thus, we need not fully address the totality of the materials in a final merits determination. *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.

¹ See <https://www.bls.gov/oes/current/oes119041.htm>, accessed on May 2, 2018, for the most recent OES data for Engineering Managers, particularly in California, which was available at the time of filing. Since this data, as well as localized data from other sources, indicates that the Petitioner's salary is only slightly above average for his occupation and specific location, the Petitioner would need to address this issue in any further proceedings in this matter.

Matter of W-M-M-

ORDER: The appeal is dismissed.

Cite as *Matter of W-M-M-*, ID# 1280152 (AAO Jul. 5, 2018)