



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF S-A-A-E-

DATE: JUNE 15, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an accountant, 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not shown he met any one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he meets 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 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 an accountant. As the Petitioner has not 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). The Director held that the Petitioner did not meet any of these criteria.

On appeal, the Petitioner asserts that he meets the following criteria: membership at 8 C.F.R. § 204.5(h)(3)(ii), published material at 8 C.F.R. § 204.5(h)(3)(iii), judging at 8 C.F.R. § 204.5(h)(3)(iv), scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), high salary at 8 C.F.R. § 204.5(h)(3)(ix). For the reasons discussed below, the record does not support a finding that the Petitioner satisfies at least three criteria.

*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 contends that he meets this criterion based on membership in the following organizations, which we will discuss further below.

The Petitioner references a letter from [REDACTED], a partner at the audit, tax, and consulting firm [REDACTED], who was a Board Member for the [REDACTED] from 2001 to 2003. [REDACTED] states that the [REDACTED] is “the only local professional body of accounting/auditing” in Kuwait and that the Petitioner “has been at the forefront of the evolution of basic accounting and auditing services in the state of Kuwait.” [REDACTED] indicates that in 2001 and 2002 the [REDACTED] requested that the Petitioner submit articles for

publication in its journal in 2001 and 2002 due to his outstanding achievements in the field. While this shows the Petitioner was a contributing member of the [REDACTED] the record does not reflect that the organization required outstanding achievements of its members. In addition, these achievements appear to have occurred after the Petitioner joined the association. The regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires outstanding achievements as a prerequisite for joining the association. The document from the [REDACTED] for Kuwait states that the [REDACTED] “was established in 1973 and consists of auditors and accountants” and that its “main objectives are to develop an appropriate level of expertise.” Thus, it appears that the [REDACTED] is an organization that all auditors and accountants can join, provided that they meet the minimum expertise requirements. The record does not indicate that membership in the [REDACTED] requires outstanding achievements of its members to join the association.

The record contains a letter from [REDACTED], the owner of the accounting firm [REDACTED] stating that he hired the Petitioner to prepare the 2014 end-of-year financial accounts for [REDACTED] one of his company’s premier clients. The record does not demonstrate that the Petitioner is a member of [REDACTED]. Therefore, this evidence does not establish that the Petitioner meets this criterion.

*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 Petitioner states that he meets this criterion but has not identified what material about him has been published in professional or major trade publications or other major media. Therefore, the record does not establish that he meets this criterion.

*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).*

The Petitioner submits a letter from [REDACTED], the Executive Manager of [REDACTED] and asserts that [REDACTED] and “its high profile client, [REDACTED] relied on the independent judgement of the Petitioner to accurately and reliably define its objectives for the future.” He further asserts that [REDACTED] has relied upon the Petitioner as an expert accountant “creating innovative and achievable solutions to business problems for our prominent clientele.” He adds that the company turned to the Petitioner “to produce a Risk Management Report in 2015 on behalf of [REDACTED] and that he performed a vital role in addressing risk exposures and recommending “suitable corrective actions” which “resulted in significant strategic decision-making in the best interest of the company.”

The record also contains a letter from [REDACTED] who specializes in risk and regulatory advising at [REDACTED] in the Middle East. [REDACTED] states that in 2015 he incorporated the Petitioner’s risk

assessments and internal auditing judgments into the final auditor's report for "one of Kuwait's highest profile companies, [REDACTED] He further indicates that "the [REDACTED] believe the judgements contained in [the Petitioner's] in-depth Entity Wide Risk assessment provided a vehicle for [REDACTED] continuous improvement and its ranking as one of the top tourism infrastructure developers in the region." While we find that the Petitioner demonstrated exemplary decision-making skills in carrying out the risk assessments and audits for [REDACTED] this does not constitute judging under 8 C.F.R. § 204.5(h)(3)(iv). The record does not reflect that the Petitioner judged the work of others in the field as an objective observer who would determine one's level of expertise. Therefore, the Petitioner does not meet 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 submits an article published in [REDACTED] in December 2001 with a translation stating that this is a "specialized scientific journal issued by [REDACTED] [REDACTED] This article does not contain a properly certified translation. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

The Petitioner also submits an article he authored entitled, [REDACTED] [REDACTED] in 2002, but the record does not establish what entity published this article. Therefore, the Petitioner has not met 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 asserts that he provided a critical role in the [REDACTED]. In a letter from [REDACTED], the manager of [REDACTED] he states that the company hired the Petitioner in 2014 "to perform a financial overhaul of the company" to help the company rebound from the downgrading of its bond rating, a volatile market in the housing finance sector, and new finance laws affecting the industry. [REDACTED] indicates that the Petitioner's "mission was to set the stage for strong performances from every sector as well as dedication of our highly skilled team of experts to pursue new and novel approaches to diversify the company's activities to suit the

market needs and demands, in accordance with a clear strategy and ambitious plans set by our Board of Directors.” [REDACTED] states that “[b]y June 2015, [the Petitioner] had memorialized his institutional changes and subsequently, growth clearly materialized in our specialized field of real estate” and that in 2016, [REDACTED] recorded a surge of 139.5% in profits over the same quarter the prior year. [REDACTED] adds, “At [REDACTED] we are convinced that [the Petitioner] played a critical role in securing a new financial dimension to the company where it wasn’t enough just to make sure [REDACTED] was compliant, but took the opportunity to help our organization look forward and address issues that could impact business performance.” This letter indicates that there are two objectives the Petitioner focused on: compliance and issues that “could impact business performance.” [REDACTED] focuses on the financial results the company achieved two years after hiring the Petitioner “to perform a financial overhaul of the Company,” but it also appears that the Petitioner was working closely with [REDACTED] team of experts. It is unclear what amount of the Petitioner’s work focused on compliance with new finance laws and what role this team had in achieving the company’s overall financial objectives. Accordingly, the record does not contain sufficient objective evidence to establish what extent the growth at [REDACTED] in 2016 is directly attributable to the Petitioner. In addition, the record does not contain evidence demonstrating that [REDACTED] has a distinguished reputation in the industry.

The record contains a letter from [REDACTED], legal counsel for the [REDACTED] law firm in Kuwait. [REDACTED] states that the Petitioner has served as a financial expert at least 45 times, highlighting specifically three major cases in which he asserts that the Petitioner played a critical role in the outcome of the litigation. It is unclear how the Petitioner’s testimony in these instances was a determining factor in the outcome of these cases. [REDACTED] also states that the firm has relied upon him “to provide the legal financial foundation to sophisticated business transactions, help protect the rights and interest of our clients, and assist them in achieving their objectives while saving them both time and money.” However, the Petitioner has not provided evidence demonstrating that his role has been critical to the outcome of these matters. In addition, while the record contains documents printed from the law firm’s website, stating that the firm is “one of the oldest legal service providers in Kuwait,” the record does not contain objective evidence that this organization has a distinguished reputation.

As stated above, the record contains a letter from [REDACTED] the owner of the accounting firm [REDACTED], stating that he hired the Petitioner to prepare the 2014 end-of-year financial accounts for [REDACTED]. [REDACTED] states that the Petitioner’s “final accounts for the financial year ending December 31, 2014 proved to be impeccable as they provided crucial information to [REDACTED] General Secretariat, Ministerial Council, the Executive Office, and the Judiciary, as to the financial and administrative status of [REDACTED]. However, [REDACTED] does not state why this “crucial information” had a critical role for [REDACTED].

We find that the evidence in the record does not establish that the Petitioner performed a critical role for organizations with a distinguished reputation. Therefore, the Petitioner does not meet 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).

This Petitioner states that he has earned an average monthly salary of 3,267 in Kuwaiti dinar (KWD) and that the average monthly compensation for chief accountants in Kuwait is 850 KWD and for auditing managers is 1,550 KWD. The Petitioner also submitted documentation from [REDACTED] which provides salary estimates for occupations. This document states that “salary estimates . . . are calculated using data provided by candidates registered on [REDACTED].” The record also contains a document from Salary Explorer, which states that it is “a salary comparison and career resources website for both employees and employers” based on “the information submitted by [its] users.” We find that it is unclear whether both of these documents sufficiently represent others in the industry.

The record contains the Petitioner’s bank account statements, highlighting his income received from June 2015 through June 2016. We note that these bank account statements state the income as being the salary from local banks, whereas others are from [REDACTED] and others are from [REDACTED]. It is unclear why this income is from different sources. Further, we note that the Petitioner is claiming income from positions with [REDACTED]<sup>1</sup> during the same period of time. These discrepancies call into question the bank account statements and whether the Petitioner received these funds in the same position in the field. Therefore, the Petitioner has not established that he meets 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-A-A-E-*, ID# 1232896 (AAO June 15, 2018)

---

<sup>1</sup> We also note that the letter of the Audit Committee Meeting for [REDACTED] is not properly translated under 8 C.F.R. § 103.2(b)(3).