



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

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

MATTER OF D-S-

DATE: JUNE 26, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a mountain climber, 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 satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief, arguing that he meets at least three of the ten 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). 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to a beneficiary's occupation.

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 last worked as a mountain climber and guide for ██████████ in ██████████ Nepal.¹ Because he has not indicated or established that he has received a major, internationally recognized award, he 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 met only one of the initial evidentiary criteria, published material under 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the Petitioner maintains that he meets three additional criteria, discussed below.² We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

¹ The Petitioner's documentation indicates that he last entered the United States in June 2014 and has not been employed here.

² The Petitioner also states in his brief that, under the comparable evidence provision, “[t]he evidence of this filing clearly show[s] that [he] is an internationally well regarded leader in the field of mountaineering.” The comparable evidence regulation at 8 C.F.R. § 204.5(h)(4) requires that a petitioner demonstrate why a criterion is not readily applicable to his occupation, and how the submitted evidence is comparable to that criterion. Here, the Petitioner does not explain which criteria do not apply to a mountain climber, which evidence should be considered, and how the documentation is “truly comparable.” *See USCIS Policy Memorandum PM-602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 12* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>. Accordingly, the Petitioner has not established that he meets the requirements of the provision at 8 C.F.R. § 204.5(h)(4).

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 "Letter of Commemoration" from the [REDACTED], a "Certificate of Appreciation" from the [REDACTED] and the [REDACTED], and a certificate from the [REDACTED].

In addition, the Petitioner provided letters from the associations explaining why he received their awards. For instance, [REDACTED], president of [REDACTED], stated that "[REDACTED] dedicated a Letter of Commemoration to [the Petitioner] in tribute to his successful climbing of Mt. Everest, the tallest peak in the world."³ Further, [REDACTED], interim president of [REDACTED], indicated that [REDACTED] "chose [the Petitioner] as the recipient of [the [REDACTED] Hero 2014 Award] in recognition of his extraordinary mountaineering abilities and achievements." In order to meet this criterion, a petitioner must demonstrate that his prizes or awards are nationally or internationally recognized for excellence in the field.⁴ Here, the letters do not show that his awards are nationally or internationally recognized for excellence in the field, nor does the record include other evidence demonstrating such recognition. Accordingly, the Petitioner did not establish that he satisfies 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 Director determined that the Petitioner met this criterion. The record contains an article reflecting published material about him relating to his field. As the Petitioner established that he fulfills this criterion, we concur with the Director's finding.

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).

The Petitioner argues that he "submitted 13 expert letters detailing his major contributions to the field of mountaineering" and "[h]is original significant contributions consist of his unique ability to lead successful summit attempts of the world's highest peaks a record number of times." In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

³ Although we discuss a sampling of letters, we have reviewed and considered each one.

⁴ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 6.

The letters praise the Petitioner for his talents and experience. For example, [REDACTED] mountain guide, described the Petitioner as a “professional mountain guide with [a] lot of experience” and “a superior person with many different skills.” Moreover, [REDACTED], mountain guide, indicated that the Petitioner’s “ability to lead, communicate and work with people who are undertaking this difficult task made him one of the skilled and experienced climbers in the industry.” In addition, [REDACTED], mountain guide, stated that the Petitioner “has the rare leadership, communication and technical skills to lead climbers in extreme conditions where severe injury and death are possible.” Although the letters praise the Petitioner for his skills, they do not explain what specific contributions the Petitioner has made, or how they are “of major significance in the field.” Having a diverse skill set is not a contribution of major significance in-and-of itself. Rather, the record must be supported by evidence that the Petitioner has already used those unique skills to impact the field at a significant level.

The letters also describe specific events and accomplishments from the Petitioner’s experience. For instance, [REDACTED] mountain hiker and climber, stated that the Petitioner “heroically saved the life of a fellow Sherpa mountaineer, [REDACTED], a, by catching him on the hand while he slipped off from the safety of a fixed rope on a[n] icy slope on Mt. Everest at 26300 ft.” Further, [REDACTED] a film director, recounted the Petitioner’s assistance in filming the documentary, [REDACTED] and indicated that he is “very friendly, amiable, hard working and [a] good storyteller.” In addition, [REDACTED], mountain guide, confirmed that the Petitioner “has successfully scaled the peaks of numerous mountains including Mt. Everest which he summited 14 times.” The letters, however, do not establish that the Petitioner’s personal accomplishments and experiences have risen to a level of constituting original contributions of major significance to the overall field.⁵

The letters considered above primarily contain attestations of the Petitioner’s status in the field without providing specific examples of contributions that 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 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.C. Dist. 1990). Accordingly, the Petitioner did not demonstrate that he satisfies this criterion.

⁵ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9; see also *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).

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 Petitioner contends that he performed in a leading or critical role for [REDACTED] and [REDACTED]. For a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.⁶ If a critical role, the evidence must establish that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.⁷

The record contains letters from [REDACTED], managing director of [REDACTED] and [REDACTED] president of [REDACTED]. According to [REDACTED], the Petitioner has worked for [REDACTED] "since 2002 with numerous expeditions," and [REDACTED] "has benefited greatly through his work and received very positive comments from our clients." In addition, [REDACTED] stated that the Petitioner has worked for [REDACTED] for nine years "and his skills are incredibly useful to our company." Although the letters confirm the Petitioner's employment, they do not indicate that the Petitioner ever held a leadership position within the companies. Accordingly, the Petitioner did not demonstrate that he performed in a leading role with [REDACTED].

As it relates to a critical role, the letters do not show that the Petitioner contributed to the successes or standings of [REDACTED] or [REDACTED]. While [REDACTED] indicates that [REDACTED] has received positive comments from their clients about the Petitioner, the letters do not establish that his role as a mountain guide rose to a level consistent with a critical role. The Petitioner did not demonstrate, for example, that his mountain guide role resulted in increased revenue or participation with [REDACTED] or [REDACTED]. For these reasons, the Petitioner did not show that he performed in a critical role for [REDACTED] or [REDACTED].

In addition, this criterion requires that the organizations or establishments must be recognized as having a distinguished reputation, which is marked by eminence, distinction, or excellence.⁸ While [REDACTED] indicated that [REDACTED] is "a government-registered, [REDACTED]-based adventure tour operator" and Mr. Burlison claimed that [REDACTED] "has lead expeditions around the world and . . . is the finest mountaineering school," the letters do not contain specific, detailed information evidencing their reputations in the field. Moreover, the Petitioner did not provide supporting documentation to demonstrate that they enjoy distinguished reputations.

Finally, the Petitioner argues that he "played a leading role in a major documentary produced by [REDACTED]. The Petitioner, however, did not establish how his participation in a documentary shows his leading role for an organization or establishment. The previously discussed

⁶ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁷ *Id.*

⁸ *Id.* at 10-11.

letter from [REDACTED], as well as the letter from [REDACTED] (department head of documentary series at [REDACTED]), does not indicate the Petitioner's role for [REDACTED]. Moreover, the Petitioner claims that "[i]n regards to [REDACTED], it is apparent that it is 'distinguished,' as it is the major television channel of Switzerland." He did not, though, support his assertion with documentary evidence. For these reasons, the Petitioner did not demonstrate 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 acclaim and recognition 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 D-S-*, ID# 1480786 (AAO June 26, 2018)