



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

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

MATTER OF L- CORP.

DATE: JUNE 28, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a professional networking company, seeks classification of the Beneficiary 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 Beneficiary met the required three of the ten initial evidentiary criteria but that he did not qualify for extraordinary ability classification in the final merits analysis.

On appeal, the Petitioner submits additional evidence and contends that the Beneficiary qualifies for this classification.

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 professional networking internet company and seeks to employ the Beneficiary as business operations manager. As the record does not establish that the Beneficiary has received a major, internationally recognized award, the Petitioner must demonstrate that the Beneficiary satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

The Director held that the Beneficiary met 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), and original contributions at 8 C.F.R. § 204.5(h)(3)(v) but that he did not meet the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). Because he met the three initial requirements, the Director considered the evidence in the record regarding a final merits determination and concluded that the record did not establish that the Beneficiary had the sustained national or international acclaim in the field of business strategy and leadership required for this classification.

Specifically, we agree with the Director’s conclusions that the Beneficiary meets the membership and original contributions criteria. We find that the evidence in the record supports these criteria due to his membership in the ██████████ in 2015 and his original contributions through his work within ██████████ which we will discuss further below. While the Director concluded that the Beneficiary met the published material criterion, he did not provide an explanation of his

analysis, and upon review of the totality of the record we find that the Beneficiary's eligibility under this criterion has not been established. The Petitioner relies on a quote of the Beneficiary in a book and several web articles related to his experiences in business school. The record reflects that [REDACTED] an author, quoted the Beneficiary in one page of his book [REDACTED]. To qualify, the plain language of the criterion would require the Beneficiary to be the subject of published material; thus, a single citation to him in a chapter about another subject does not meet the regulatory requirements.

The record contains a number of articles from websites focusing on business schools, such as [REDACTED], [REDACTED], and [REDACTED]. Rather than relating to the Beneficiary's work in the field, these articles discuss his experiences in graduate school and his advice to students. Furthermore, the record does not contain evidence demonstrating that these websites and blogs are professional or major trade publications or other major media. Therefore, we withdraw the Director's finding that the Beneficiary meets the published material criterion, as the record does not support it.

However, we conclude that the documentary evidence in the record demonstrates that he meets the leading or critical role criterion. As will be discussed in greater detail below, the record reflects that at [REDACTED] the Beneficiary led the Product Strategy and Business Operations for Sponsored Content and that he led a team to develop a product eventually called [REDACTED], which has been very successful for [REDACTED]. This demonstrates that the Beneficiary meets three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). Accordingly, we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether the record demonstrates, by a preponderance of the evidence, that the Beneficiary has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3); see also *Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not established the Beneficiary's eligibility.

The Petitioner acknowledges this two-step analysis in *Kazarian* but states that the Director erred in not providing a clear basis for concluding that the Beneficiary did not meet the final merits determination. The Petitioner asserts that "the subordination of objective regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3) to a subjective under-defined merits determination thwarts efforts to achieve transparency, consistency, predictability and ultimately due process and fundamental fairness." As the Petitioner cites due process concerns throughout the brief, we note that USCIS administers extraordinary ability visas pursuant to statutory and regulatory authorities, and the Petitioner does not argue that a specific provision of the statute or regulations is unconstitutional. To the extent that the Petitioner's due process argument had been grounded in the constitutionality of the statute and pertinent regulations, we lack jurisdiction to rule on the constitutionality of laws

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enacted by Congress or of regulations promulgated by DHS. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992). Therefore, we will consider the Petitioner's due process concerns as they relate to whether USCIS complied with the applicable statute and regulations.

The Petitioner states that the Director's decision on the final merits does not provide "an overall understanding of what converts someone from a merely ordinary individual to 'one who has risen to the very top of the field of endeavor while enjoying sustained national or international acclaim.'" Accordingly, the Petitioner states that the appellate brief "will scrutinize eligibility at the second step of the adjudicative analysis." Here, we highlight the fact that this second step final merits determination, as indicated by the court in *Kazarian*, is based on the requirements in 8 C.F.R. § 204.5(h)(2) (determining whether the individual is "one of that small percentage who have risen to the very top of the field of endeavor") and 8 C.F.R. § 204.5(h)(3) (whether the individual has achieved "sustained national or international acclaim and that his or her achievements have been recognized in the field") and we note that objective evidence may be submitted to establish these factors. *See Kazarian* at 1119-20. Accordingly, we base our analysis in a final merits determination on the totality of the evidence. In doing so, we note that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but it is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought). *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

Regarding membership, the record contains evidence that the Beneficiary became a member of the [REDACTED] in 2015. In the letter notifying the Beneficiary of his receipt of the scholarship, [REDACTED] states, that he was selected based upon his "academic excellence and demonstrated leadership." [REDACTED] indicates that "[t]he [REDACTED]'s program was founded in 2000 to recognize the most talented students at the world's leading graduate schools . . . to form an active, lifelong community among an ever-growing group of leaders" and that "[e]ach year, 93 graduate students at the top of their class are selected from some of the most prestigious universities to be honored as [REDACTED]." This scholarship shows that he was selected as part of a small percentage of graduate students on account of his "academic excellence and demonstrated leadership." While we acknowledge the honor it was for the Beneficiary to receive this scholarship, the record lacks evidence showing that the Beneficiary has received national or international acclaim for being a [REDACTED] scholarship recipient.

For published material, while we note that it is a positive indicator of acclaim for the Beneficiary to be quoted in [REDACTED]'s book, the record reflects that the Beneficiary is included in the acknowledgements page with 43 other people, and it is unclear to what extent this establishes sustained national or international acclaim.

With respect to the Beneficiary's original contributions under 8 C.F.R. § 204.5(h)(3)(v), the Petitioner asserts that the Director changed his position on this criterion from the time of the request for evidence (RFE) to the final decision. The Petitioner states that in the RFE the Director conceded that it met its burden of establishing the original contributions criterion but then challenged this

category in the overall merits determination. Here, we find that the Director did not change his position on this point. The Director held that while the Petitioner established that the Beneficiary met the original contributions criterion, the record did not establish that he has sustained national or international acclaim or that he has risen to the very top of his field of endeavor. As the court held in *Kazarian*:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2), and “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered “sustained national or international acclaim” are eligible for an “extraordinary ability” visa. 8 U.S.C. § 1153(b)(1)(A)(i).

596 F.3d at 1119–20. Accordingly, the Director held that the record showed the Beneficiary had the requisite level of expertise but did not establish he has sustained national or international acclaim. For the reasons that follow, we agree with this determination.

The record reflects that the Beneficiary has worked for [REDACTED] since 2014. In a letter from [REDACTED] the Vice President and Global Head of its Business Operations, he highlights the Beneficiary’s contributions in two key initiatives: [REDACTED] and [REDACTED]. He states that the Beneficiary led a team “to develop a comprehensive framework that outlined an exhaustive list of areas where [REDACTED] could use our data to provide value to our Premium members.” He “prioritized the list of potential new offerings based on what would be most impactful for our members and . . . secured approval from our Vice President of Monetization Products to build the product.” [REDACTED] states that this product, “eventually called ‘[REDACTED]’ was launched to the public in June 2016 to extensive press coverage and has since proved to be a key growth driver to our [REDACTED] business.” While the Beneficiary appears to have led a successful initiative within [REDACTED] this does not establish national or international acclaim to the Beneficiary personally. The record contains an article from [REDACTED] entitled, “[REDACTED]” which discusses [REDACTED]’s “[REDACTED]” feature, but this represents acclaim to [REDACTED], not to the Beneficiary in his personal capacity. The record does not contain other evidence regarding the acclaim to [REDACTED] regarding its [REDACTED] feature or that discusses the Beneficiary’s role in its development.

[REDACTED], the Vice President and Global Head of Products for [REDACTED], states in his letter that the Beneficiary “created and leads the [REDACTED] strategy newsletter,” which he states “is an invaluable resource, helping us compete effectively in the market.” [REDACTED] further indicates that the Beneficiary was invited to share his insights regarding [REDACTED] to the [REDACTED] team in Asia Pacific, adding that this document “is an extremely valuable internal resource.” Similarly, in a letter from [REDACTED] the former Global Head of Product for [REDACTED], he states that at [REDACTED], “[REDACTED]”

██████████' . . . is a leading source insight into Ad Tech.” He further states that this newsletter “deserves the highest praise for its depth of insight” and that the Beneficiary’s “ability to analyze complex topics . . . and to develop incisive strategy are indispensable assets to ██████████. This further demonstrates that the Beneficiary’s contributions for ██████████ have been noticed within the company, but the record does not establish that his achievements have been recognized more broadly in the field of expertise. Thus, while the Petitioner has shown that the Beneficiary has made original contributions of major significance to the field, it has not demonstrated that he has received sustained national or international acclaim for his work.

In his letter ██████████ states that the Beneficiary “has made significant original contributions in the field via his blog, ██████████.” Then he adds that “his writing and insights have been shared by more than a million people around the world, making a significant contribution to our understanding of commerce, entrepreneurship and leadership.” In the letter cited from ██████████ the Associate Dean at ██████████ he states that the Beneficiary’s blog “attracts a distinguished readership,” but the record regarding the extent of its reach is unclear. For example, the record contains documentation from ██████████, which states in one section that the Beneficiary’s blog “██████████ has 200 daily visitors with 1,258 subscribers, although another section of this document states that the blog has 63 subscribers. While we find it to be a positive consideration that ██████████ states that the Beneficiary’s blog “is better than ever,” the record does not indicate how this statement equates to sustained acclaim, nor does it contain evidence to substantiate the claim that the Beneficiary’s writing has reached a million people.

The record contains a letter from ██████████, a partner at ██████████ which he states is “one of the world’s top technology venture capital firms.” ██████████ indicates that he connected with the Beneficiary when he agreed to give an interview for his blog and that he has been following his work and career ever since. ██████████ states that he has subscribed to the Beneficiary’s blog for over four years and notes two of his posts in particular that had an impact on him. He also points out five notable subscribers to his blog, ██████████ highlighting their backgrounds as “leading business leaders and thinkers.” While indicative of the readership of the Beneficiary’s blog, the record does not establish that this constitutes sustained national or international acclaim.

In a letter from ██████████, Clinical Professor of Innovation and Entrepreneurship at ██████████ he indicates that the Beneficiary “has authored a very insightful 1 page leadership framework,” which he states, “brings together the most concise explanations of leadership, management and culture I’ve seen.” He adds, “It is no surprise that this framework has been read and shared by over 100,000 people.” We note that the record does not contain evidence corroborating the number of people this document has influenced or that demonstrates it has resulted in national or international acclaim for the Beneficiary.

With respect to the leading or critical role, the Petitioner highlights the Beneficiary’s roles at ██████████ and as a student at ██████████. In the letter referenced above from ██████████ he states that the Beneficiary led a team to develop what became known as ██████████, and he led

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Product Strategy and Business Operations for Sponsored Content, which he states is “our fastest growing product at scale and one of the most important (not to mention complex) products in the company.” This establishes the results of the Beneficiary’s leadership within [REDACTED] but the record does not reflect that this amounts to sustained national or international acclaim in the field.

The Petitioner has also submitted letters regarding the Beneficiary’s role at [REDACTED]. In a letter from [REDACTED] its Associate Dean, he states that the Beneficiary transformed the school’s orientation strategy “by focusing it on three core tenets (sharing [REDACTED]’s culture, ensuring the students are prepared for their MBA experience and enabling students to build strong relationships among themselves).” He further states that the Beneficiary created the [REDACTED] in which he led a “combined team of students, faculty and administrators, to create the inaugural version of this summit.” This demonstrates the Beneficiary’s leadership internally at [REDACTED], but the record does not reflect that he has received recognition for this that would constitute national or international acclaim.

[REDACTED] comments in his letter that “[b]y creating programming and offering coaching, [the Beneficiary] has directly impacted the lives of dozens of his classmates from [REDACTED]’s MBA program.” While his letter indicates the Beneficiary’s efforts at the school have resulted in some acclaim by others in the field, it does not establish a national or international scope.

[REDACTED] praises the Beneficiary’s work in developing “[REDACTED]” at [REDACTED] and in inviting experts in their fields to speak there. This establishes that the Beneficiary has had significant influence on students at [REDACTED], but we do not find evidence in the record demonstrating that this constitutes sustained national or international acclaim.

The evidence in the record does not establish that the Beneficiary is within the small percentage of those who have risen to the very top of the field with sustained national or international acclaim under 8 C.F.R. § 204.5(h)(2)-(3).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary is eligible as an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of L- Corp.*, ID# 1229530 (AAO June 28, 2018)