



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF S-M-H-

DATE: MAY 15, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a military scholar, seeks classification as an individual of extraordinary ability in education. *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 only shown that he met 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 four 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 a military scholar. As he 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 found that the Petitioner had only met one of these criteria. On appeal, the Petitioner asserts that he meets three other criteria which we will discuss below.<sup>1</sup> 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

*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 record contains evidence demonstrating that the Petitioner was a significant contributor to the documentary [REDACTED] that aired on [REDACTED] and the [REDACTED] in 2009. The record contains a letter from [REDACTED] the Joint Managing Director of [REDACTED] which is the company that co-produced the documentary with [REDACTED]. She asserts that the Petitioner “was one of the historical consultants on the firm and was also a filmed contributor.” She adds that “he took part in important research into the

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<sup>1</sup> While we note that the Petitioner originally indicated that he met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), he has not raised this issue on appeal and the evidence in the record does not establish that he meets this criterion.

naval history and the underwater archaeology, helping to pinpoint the wrecks and plan the exploration of the [REDACTED] and [REDACTED].”

While we acknowledge the Petitioner’s expertise in providing research and performing as a filmed contributor for this documentary, the record does not establish that this documentary was about him. In her letter, [REDACTED] specifically states that [REDACTED] followed the expedition of [REDACTED] retired United States Navy officer, professor of oceanography at the [REDACTED] and the discoverer of the Titanic, as he searched for the shipwrecks involved in a WWI naval engagement.” She further indicates that the Petitioner “offered the Turkish naval view point as well as offering an emotional touchstone from a Turkish perspective” and that he “played a critical role in assisting us with the administrative hurdles that were often put in our way by the authorities.” Thus, the documentary focuses on [REDACTED] and his search for shipwrecks and the Petitioner provided a support role in the production. In addition, the record does not contain a transcript of the portion of this documentary in which he was interviewed, and therefore, we are unable to determine whether the program satisfies this criterion.

The record contains two newspaper articles about the Petitioner and others that reference him briefly in the [REDACTED] and [REDACTED] newspapers, among others, but the record does not contain full translations of these articles. 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 these articles, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner’s claims.

Even if the record contained certified translations of this documentation, the two letters that are about the Petitioner include the article [REDACTED] in the [REDACTED] newspaper and [REDACTED] in the [REDACTED] magazine. The Petitioner has not demonstrated that these newspapers constitute major media. Accordingly, the Petitioner does not meet this regulatory criterion.

*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 Director held that the Petitioner did not demonstrate that his contributions have risen to the level of major significance in the field. On appeal, the Petitioner asserts that his four book publications and thirteen article publications are of major significance, particularly when viewed alongside the expert statements provided by members of the military community. First, we note that the Petitioner has not indicated how his published work constitutes contributions of major significance. The record indicates that he has published material pertaining to the fortification, battles, and other military history in Turkey from 1770 to 1918. However, the Petitioner has not shown the impact these publications have had in the field.

In a letter from [REDACTED], retired Lieutenant General in the U.S. Army, he asserts that the Petitioner's "background with the Turkish military, his specialties which include Maritime, World History, European History, Maritime History . . . and his knowledge regarding Turkish politics and regional dynamics makes him a leading scholar and expert with respect to the situation in the Middle East region and issues that have a direct impact on the United States' interest in this area." [REDACTED] further states and that "[the Petitioner's] knowledge would be extremely helpful to our country's ongoing ability to determine and make strategic decisions with respect to diplomatic and military issues." This refers to prospective contributions that the Petitioner *will* make rather than contributions that he *has* made.

Similarly, one of two letters from [REDACTED] a retired commander in the U.S. Navy, references the Petitioner's resume and states that the Petitioner "is recognized internally for his work as a student and as practitioner of strategic naval warfare" and that "[h]is understanding for the military and political factors inside Turkey . . . makes him an important, indeed critical, voice that U.S. policy makers need to hear." This letter references the Petitioner's experience and understanding of Turkish military, but it also addresses prospective contributions that the Petitioner may make and does not establish that he has already demonstrated contributions of major significance. The evidence in the record does not demonstrate that the Petitioner's contributions are of major significance in the field of military scholarship, and we conclude that he 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 Director determined that the Petitioner meets this criterion. The Petitioner submits evidence of articles he has published pertaining to certain naval battles during World War One in the [REDACTED] [REDACTED] citing the prestige of this magazine. Accordingly, we find that the Petitioner meets 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 Director found that the Petitioner did not meet this criterion, noting counsel's statements regarding the Petitioner's role in the Turkish military and holding that the record did not contain additional corroborating evidence of this role. The Director also held that governmental groups do not qualify as organizations or establishments for purposes of meeting this criterion. A second letter from [REDACTED] states that the Petitioner served as a captain in the Turkish Navy overseeing a frigate and later as a Commodore overseeing ten ships and more than one thousand officers and sailors.

In her letter, [REDACTED] Deputy Chief of Mission of the U.S. Embassy in Iraq, indicates that the Petitioner rose to the ranks of Commodore of the Turkish Training Division. The record contains a Service Certification from the Admiral of the Turkish Naval Forces regarding the Petitioner service as a commodore in the Turkish Navy, which corroborates the information in these letters. The record contains sufficient evidence demonstrating the distinguished reputation of the Turkish military. We find that the Petitioner has persuasively demonstrated on appeal that the Petitioner's role overseeing a frigate and later a significant portion of the Turkish Navy constitutes a leading role in an organization with a distinguished reputation. Therefore, the Petitioner 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-M-H-*, ID# 1081749 (AAO May 15, 2018)