



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

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

MATTER OF R-K-

DATE: NOV. 7, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a business executive in the television industry, 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that he met only one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner cites the evidence submitted previously and contends that he meets five 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

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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 the president of strategy and planning international business of [REDACTED]. As he has not 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).

A. Evidentiary Criteria

The Director concluded that the Petitioner met the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii) but that he had not met the criteria for awards, membership, published material, judging, original contributions of major significance, scholarly articles, high salary, or commercial success under 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner states that he meets the requirements of four of these criteria in addition to the leading or critical role criterion. We find that the evidence in the record sufficiently establishes that he meets the criteria for judging, leading or critical role, and high salary.

For judging, the record contains evidence demonstrating that the Petitioner had served as a judge for the [REDACTED]. The Director held that the evidence submitted regarding this judging experience could not be verified and contained a dark photograph of the Petitioner and another individual holding something framed. We find that the certificate from the [REDACTED] regarding his participation as a judge for the group TV Drama sufficiently establishes that he participated as a judge of the work of others. Thus, he meets the judging criterion.

For leading or critical role, the record demonstrates that the Petitioner has been employed as a senior executive at [REDACTED] for more than 11 years and has led its expansion throughout Asia and into Latin America. The Director of Human Resources at [REDACTED] a subsidiary of [REDACTED] confirms in a letter that the Petitioner was promoted to the position of president of strategy and planning international business in 2018 and that he oversees 600 employees across the United States. The record also reflects that [REDACTED] has a distinguished reputation. Therefore, the record reflects that the Petitioner meets the leading or critical role criterion.

As to high salary, the Director concluded that the Petitioner had not provided sufficient evidence to establish that his salary is high in relation to others in the field. On appeal, the Petitioner submits additional documentation from the U.S. Department of Labor and PayScale reflecting salaries of individuals in similar positions. The record contains an employment contract for his position which confirms his base salary, a pay statement from December 2017, and documentation demonstrating the significant promotion he has received. When viewed together, we conclude that the evidence in the record establishes that the Petitioner's salary is high in relation to others in the field under 8 C.F.R. § 204.5(h)(3)(ix). Because he has met three of the initial evidentiary criteria, as required, we will discuss the remaining documentation in the context of a final merits determination.¹

B. Final Merits Determination

As the record satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. We evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who have risen to the very top of the field of endeavor. *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. Here, the Petitioner has not shown his eligibility for this classification.

For awards, the Petitioner submitted evidence that [REDACTED] won the gold award for marketing in the [REDACTED] in 2009 for the category of "Media/Content/Internet Provider." The record contains a letter from [REDACTED], who identifies her title as the president of the [REDACTED], stating that she met the Petitioner "when he created and launched the highly successful [REDACTED] in the Middle East."² She states that "the [REDACTED] are the [REDACTED] of the Marketing and Advertising world," noting that the Petitioner and his team were awarded the [REDACTED] in

¹ On appeal, the Petitioner maintains that he also meets the criteria relating to awards at 8 C.F.R. § 204.5(h)(3)(i) and published material at 8 C.F.R. § 204.5(h)(3)(iii). We will consider the evidence relating to these criteria in our final merits determination.

² We note that this letter does not appear to be on letterhead and the record does not contain corroborating evidence about the author. The [REDACTED] website does not identify [REDACTED] as president of this organization.

2009 due to “his direct marketing campaigns and success of the network.” We note that the record does not show what involvement he had in overseeing the media, content, internet provider, or direct marketing campaign aspects of [REDACTED] and how this constitutes national or international acclaim to him personally. While [REDACTED] states that the [REDACTED] are the [REDACTED] for marketing, we note that the [REDACTED] website indicates that there are the following [REDACTED] categories: “the [REDACTED] [REDACTED] and more than 40 national [REDACTED] [programs], including what are now called the [REDACTED]”³ The record does not demonstrate the level of prestige and acclaim one enjoys from receiving the [REDACTED] and what role the Petitioner played in [REDACTED] to receive this award.

Regarding published material about the Petitioner, the record does not sufficiently demonstrate his acclaim in the field. Most of the publications in the record quote him and reference his job title at [REDACTED] but the focus of these publications is about certain initiatives the company is undertaking. The published material must be about the petitioner relating to his work in the field, not just about his employer.⁴ It is insufficient that the published material merely mentions the petitioner. See *Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 545 (S.D.N.Y. 2012) (concurring with USCIS’s determination that the articles about the Iranian Table Tennis Team and only briefly mention the beneficiary do not establish eligibility under the published material criterion). Here, these articles are about the company and not about the Petitioner.

Several articles report on the Petitioner’s employment change when he became president of the [REDACTED] network, including a page entitled [REDACTED] that was published by *Variety*. While this is an indication of acclaim, we find that the brief announcements arising from a single employment change, when viewed with the totality of the evidence, does not rise to the level of sustained national or international acclaim.

The record contains an article from a 2016 Wall Street Journal blog post about the work the Petitioner is undertaking. The title of the article is, [REDACTED]. The article quotes the Petitioner several times regarding the company’s goal of taking the Indian productions to Spanish-speaking audiences. We note that this article is about [REDACTED] and relates to acclaim to the company, not the Petitioner.

The Petitioner submits a letter from [REDACTED] Business Editor for the [REDACTED] stating that his colleague wrote this article adding, “The reason he is interviewed and quoted is because, firstly he is the President of [REDACTED] and second he is the leading authority in the industry.” [REDACTED] states that he has known the Petitioner for over 15 years and that he seeks him out “for advice on the state of the film and television market in India and [the] Middle East.” While this letter speaks to the author’s high opinion of the Petitioner’s expertise, the record does not

⁴ 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 10* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

contain sufficient evidence demonstrating national or international acclaim in the field on this basis. [REDACTED] does not state how often he reaches out to the Petitioner or otherwise demonstrate how these consultations have resulted in publications supporting his acclaim in the field. As stated above, the article written by [REDACTED] colleague is about [REDACTED] and not the Petitioner. In addition, the record does not contain evidence establishing that other journalists or media professionals regularly interview the Petitioner for similar reasons. We recognize that this evidence show's one individual's perspective on the Petitioner's knowledge in the industry, but the record does not contain supporting evidence to establish his national or international acclaim.

As to judging, the Petitioner submits evidence of his role as a judge for the 2nd and 3rd [REDACTED] [REDACTED] stating that he was a judge for the special class group, TV Drama. The record contains a certification from the [REDACTED] thanking the Petitioner for participating as a judge for this competition. The record does not show to what extent, if any, he received acclaim for being a judge.

With respect to the Petitioner's leading role, the record establishes that he has been employed as a senior executive at [REDACTED] for more than 11 years and has led its expansion throughout Asia and into Latin America. The Director of Human Resources at [REDACTED] verifies that the Petitioner oversees 600 employees across the United States. [REDACTED] the CEO of [REDACTED] states in a letter that the Petitioner directly directs 17 stations and networks around the world. [REDACTED] president of the legal department for [REDACTED] indicates that the Petitioner "handles over \$250 million dollars in the U.S. and close to \$10.3 billion dollars globally." He adds that under his direct supervision, the company has created new networks in the Middle East, the United Arab Emirates, India and Pakistan, Russia, Indonesia, South Africa, France, Germany, countries throughout South America, Vietnam, the Philippines, China, and the United States. We acknowledge that the Petitioner has been instrumental in helping [REDACTED] spread throughout these countries, but he has not shown that this work has led to acclaim to him personally.

In a letter from [REDACTED] the head of [REDACTED], he states, "With [the Petitioner] expanding [REDACTED] to South American countries, Middle East and South-East Asia the company has tremendously prospered under his leadership." Similarly, [REDACTED] the executive vice president of [REDACTED] states that "Anyone who is in the television industry knows about [REDACTED] . . . a massive multi-billion dollar company." [REDACTED] then indicates that the Petitioner "was and is the architect of [the] entire network [REDACTED]," stating, "It was his idea and the execution was flawless." He further notes that [REDACTED] has been a huge success in South American and Latin countries." We note that the Petitioner's leadership success is apparent here, but these letters refer to the company's acclaim. The record does not show the acclaim he received on account of establishing [REDACTED]

For high salary, the record contains an employment contract for his position, which confirms the Petitioner's base salary. The record further demonstrates that he received a significant promotion in his current position. However, the evidence in the record does not demonstrate that he has received acclaim on account of his salary.

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Therefore, we find the record does not sufficiently demonstrate that the Petitioner has sustained national or international acclaim and that he is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3).

III. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of R-K-*, ID# 1685712 (AAO Nov. 7, 2018)