



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

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

MATTER OF R-M-G-

DATE: NOV. 15, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an entrepreneur, 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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not shown that he met any 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 entrepreneur. 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 held that he had not established that he met any of these criteria. On appeal, the Petitioner asserts that he meets the criteria for awards, membership, published material, judging, contributions of major significance, scholarly articles, display, and high salary under 8 C.F.R. § 204.5(h)(3)(i)-(x).¹ For the reasons discussed below, we conclude that the record does not support a finding that the Petitioner satisfies at least three criteria.

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 Petitioner claims to meet this criterion based on his being awarded the [REDACTED] [REDACTED] 2010.” The Director noted that this award was issued by the [REDACTED] for Colombia but held that the evidence in the record did not establish that this award has national or international recognition or that it was awarded for excellence in the field. On appeal, the Petitioner states that this award resulted from a national contest that was situated in [REDACTED] the capital city of Colombia. He asserts that although the Mayor of [REDACTED] presented the award, the contest is national in scope in partnership with several entities led by Colombia’s [REDACTED] which governs the contest.

¹ The Petitioner does not address the leading or critical role criterion on appeal under 8 C.F.R. § 204.5(h)(3)(viii).

To support the national recognition of the award, the record contains a letter from [REDACTED] the Director of the General Division of Public Service of the [REDACTED] stating that “[t]he winners will receive a medal of recognition . . . and their success story will be published to strengthen their national projection.” Additionally, the [REDACTED] 2010 Contest Guide” (Contest Guide) states that one of the benefits of winning an award in this program is the national dissemination of the winner’s success case by being published in the *MisionPyme* magazine. The record contains an article published in *MisionPyme* about the contest indicating that the Petitioner received the [REDACTED] Award. The Petitioner references this evidence and claims that *MisionPyme* is Colombia’s leading business magazine and that it has 100,000 readers across the country. While the circulation details of *MisionPyme* have not been translated into English,² we find that the statement of a government official and the Contest Guide indicate that this is a nationally recognized award.

The Director also held that the record does not establish that this award was issued for excellence in the field, quoting the Contest Guide which states that the [REDACTED] award is issued for being an “entrepreneur with an innovative idea” or an “original business idea” that is “proving itself as a successful company.”³ The Petitioner cites the Contest Guide requirements, indicating that he qualified in one of two categories: first, as an entrepreneur “with an innovative idea or who is in the process of creating and/or developing a company;” and second, as an employer “who founded and/or [ran] stratified companies . . . of any kind . . . with a minimum operating time of 18 months.” It appears that the Petitioner’s award falls in the first category, as the requirements of the [REDACTED] award demonstrate that an individual could win for having an innovative idea or an original business idea, not for excellence in the field. Accordingly, the record does not establish that the Petitioner’s award was based on his excellence in the field. Therefore, he has not demonstrated that he meets this criterion.

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 asserts that he meets this criterion through his membership in the [REDACTED] [REDACTED]⁴ The record contains a letter from [REDACTED] the secretary of [REDACTED] indicating that this is a “non-profit organization created with the

² Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3).

³ We note that there are additions or omissions of words in some of the translations in the record. Here, it appears that the translation refers to having a successful business whereas the original text refers to ideas with the potential of becoming a successful business. The word “potencial” has been omitted from the translation. The Petitioner must resolve this issue in any further filings.

⁴ In a request for evidence (RFE), the Director also addressed the Petitioner’s membership with the [REDACTED] the Professional Council of Business Administration, the Chamber of Commerce, and as a graduate of [REDACTED] School of Marketing. The Petitioner did not address these issues in response to the Director’s RFE and has not raised them on appeal.

purpose of identifying and promoting the best business marketers in Colombia.” [REDACTED] states that the Petitioner has been an active member since 2014. The Director stated that he had not provided primary evidence of his membership in [REDACTED] such as a membership card, noting that the letter from [REDACTED] was unacceptable because it does not provide the signatory’s address. We find that it is not a regulatory requirement that [REDACTED] must include his address on this letter in this instance, and the evidence in the record has established the Petitioner’s membership in the [REDACTED]

Moreover, the Director found that the record did not establish that [REDACTED] requires outstanding achievements of its members as judged by recognized national or international experts in their fields. On appeal, the Petitioner states that the evidence in the record demonstrates that [REDACTED] requires prospective members to have won an award in business marketing and be approved by the board of directors plus one honorary member.” We note that the bylaws for this organization identify four requirements for membership. These are that an individual must “[b]e an independent businessperson, and [h]ave won a regional, international award in marketing, and [p]rovide a portfolio of achievements, and [b]e approved by 50% of the directors plus 1 of the honorary member[s].” The Petitioner has not established that winning such an award in marketing constitutes an outstanding achievement. Due to the variety of awards that may be given in marketing, it is unclear that an award which meets the requirements stated above would necessarily equate to an outstanding achievement. The record also does not establish that these achievements are judged by recognized national or international experts in their field. The bylaws state that a prospective member must be approved by half of the directors and one of the honorary members, but it is unclear whether all of these individuals are recognized national or international experts in the field. The record contains a certificate from [REDACTED] identifying five of the judges and listing their qualifications, which indicates that these individuals have significant experience in marketing, but the record does not establish that they are nationally or internationally recognized.

The Petitioner states on appeal that he became a member of [REDACTED] in June 2014 and that 35 marketing executives “who are part of or affiliates of” the organization “evaluated [his] candidacy and offered [him] membership.” He states that these marketing executives wrote, “[h]is achievements demonstrate that he is one of the top marketing managers in the country.” We note that here he is citing the letter from [REDACTED]. However, the letter from [REDACTED] contradicts the Petitioner’s claims because his letter states that five directors of marketing granted the Petitioner membership in the organization, whereas the Petitioner asserts that 35 executives offered him membership. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not established that membership in [REDACTED] required outstanding achievements of its members as judged by recognized national or international experts in their field. Therefore, he has not established that he meets this criterion.

⁵ The Director also stated that the Petitioner had not identified his level of membership. Here, we note that the [REDACTED] bylaws do not indicate different levels of membership.

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 considered evidence in the record of articles published in *Publimotos*, *Esquire Colombia*, *Gente*, and *MisionPyme*, and held that the Petitioner had not met this criterion. On appeal, the Petitioner states that he meets this criterion based on the publications in the record from *Gente*, *Publimotos*, and *MisionPyme*.

The Director held that the article entitled [REDACTED] in *Gente* magazine did not contain a full translation of the cover and that the date of the publication on the cover is illegible. On appeal, the Petitioner states that this article was published in [REDACTED] 2011 and that it is about his work as a businessman and author of a book that discusses a marketing strategy he developed. While we find that this article is about the Petitioner and relates to his work in the field, the record does not establish *Gente* magazine as major media. In addition, the record does not contain a full translation of the cover or the circulation data as required by 8 C.F.R. § 204.5(h)(3)(iii). See also 8 C.F.R. § 103.2(b)(3) (requiring that any document in a foreign language must be accompanied by a full English language translation). The Director noted this translation issue, and it has not been resolved on appeal.

With respect to the article published in *Publimotos*, the Director concluded that the record does not contain circulation information for this magazine or other evidence that establishes it as a professional or major trade publication or other major media. The record contains the Facebook homepage for *Publimotos* that includes a description of the magazine as well as copies of the covers from previous issues. While we find that *Publimotos* appears to be a professional publication, we conclude that the article in the record is about the Petitioner's business and not about him. The article is entitled, [REDACTED] and while it mentions the Petitioner briefly as the owner, the focus of the article is about the customer-service aspects of the [REDACTED] dealership. The evidence in the record does not establish that this article meets the requirements of this criterion.

Regarding the article in *MisionPyme*, the Director held that it discusses the history about the [REDACTED] Award rather than focusing on the Petitioner and his work. We disagree with this conclusion. This article notes that he won the [REDACTED] Award and that he is the owner of several companies including [REDACTED] which it states "is one of the largest motorcycle dealers in Colombia." The article then indicates that "[he] offered a proposal to position Colombia as the main point of manufacture of motorcycles and similar vehicles for all of Latin America." The article further discusses his background, noting that "his studies in marketing, viability and sustainability called the attention of the jury and awarded him with the [REDACTED] Award [REDACTED] While we find that this article is about the Petitioner and is related to his work in the field, we note that the record does not establish *MisionPyme* as a professional or major trade publication or other major media. Apart from the actual article, the other evidence in the record about *MisionPyme* has not been translated into English under 8 C.F.R.

§ 103.2(b)(3), including the cover and circulation details, as noted by the Director. This issue has not been resolved on appeal. Because the record does not establish that the articles about the Petitioner appeared in qualifying publications, he has not established 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 asserts that he meets this criterion for having served as a judge for the [REDACTED] Chamber of Commerce, verifying that the Petitioner participated as a panelist and judge in this conference for small and medium businesses in 2014. The Director held that the Petitioner's field of expertise is in business, specifically in the motorcycle/automotive industry, and that the record does not demonstrate that his role in judging the work of others in fashion businesses relates to his field. On appeal, the Petitioner indicates that this conference "consisted of grading the best new fashion product launch marketing plan among 30 fashion businesses" and that he was chosen for the position due to his academic background and his nationwide reputation as one of the best business marketers. The certificate from the [REDACTED] Chamber of Commerce indicates that the Petitioner's role as a panelist and judge required that he "[i]dentify the companies with [the] best business opportunities," the "[m]ost economic growth," the [i]mprovement of productivity," the "[d]evelopment of products and services with [the] best quality," and the "strategy that garners [the] most revenue." We note that the criterion requires that he judge the work of others "in the same or an allied field of specification for which classification is sought" and that marketing is an allied field to business. *See* 8 C.F.R. § 204.5(h)(3)(iv). Therefore, the Petitioner has established that his participation as a judge for the conference discussed above constitutes judging in the same or an allied field as business, and he has demonstrated that he meets this criterion.⁶

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 states that he meets this criterion on account of his publication [REDACTED] which he identifies as one of his most significant contributions to the business industry. He asserts that his book "has proven to be a major success across Colombia's marketing industry." The record contains the patent of literary invention for this book, letters supporting the use of this book at universities, and one letter discussing its implementation in business endeavors. The record reflects that the Petitioner's book was co-published and certified by the [REDACTED]. The Director held that although this book appears to have been added to the

⁶ While the Petitioner has established that he meets this criterion, we note that the translation of the certification from the Chamber of Commerce of [REDACTED] about this judging experience omits a word "textil" from the original and adds the words "with best quality" into the translation. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591-92.

list of required reading at several universities, the record did not contain evidence of citations to it outside of the university setting or other evidence sufficiently establishing it as a contribution of major significance in the field. The Director indicated that most universities offer numerous courses that typically require several textbooks as required reading, noting that it does not follow that every author of academic textbooks has made a contribution of major significance in the field.

On appeal, the Petitioner states that three of Colombia's largest universities teach his marketing theory and that many other universities use aspects of it in their instruction. The record contains several letters from those who have utilized his book in the university setting or who can attest to its use. In a letter from [REDACTED], the director of marketing specializations at [REDACTED] he states that he uses the Petitioner's book "as a source of study" and notes that it has been used in three semesters of marketing specialization. Similarly, a certification from the president and the secretary general of the [REDACTED] indicates that the Petitioner's book "is utilized as a source of study in semester 5 in the division of sales in the School of International Business and Marketing." In a letter from [REDACTED] the Deputy Director of Marketing for the [REDACTED] he states that the Petitioner's book "is used as a required academic text for the capstone semester for graduation" and that it "is considered by our university as one of the best contributions in marketing." He further notes that it has had 65,000 visits online and that every six months 150 marketing students are instructed with it. [REDACTED] marketing professor at [REDACTED], states that his book "was a resounding success" and that it had 50,000 consultations online at the university's main library to date. While the numbers of between 50,000 and 65,000 online visits as described in these letters are notable, the record does not contain sufficient evidence demonstrating how this has impacted the field of marketing as a whole apart from these universities discussed above.

The record contains a letter from [REDACTED] the Minister of National Education, stating that "[t]he impact of the contribution has been so great that 85% of public university marketing courses use the content of the [REDACTED] in some way in their curriculum." We note that this statement "in some way" makes it unclear as to what extent the book is used in public universities apart from the ones that use it as required reading.

The Petitioner states that the large companies of [REDACTED] and [REDACTED] have applied the principles from his book. The record contains a letter from [REDACTED] the National Sales Manager of the [REDACTED] who states that after having implemented the Petitioner's principles in each of his companies he has experienced growth of up to 33 percent in income. While we find this to be a positive consideration here, the record does not contain evidence demonstrating that his book has influenced the marketing industry such as to represent a contribution of major significance. Therefore, the Petitioner has not established that he meets 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 asserts that he meets this criterion due to his book [REDACTED]. We agree. As stated above, the record reflects that this book has been used in university curricula and represents the authorship of scholarly material. Therefore, the Petitioner has established that he meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner claims that he meets this criterion for having had his book [REDACTED] on display at the 29th International Book Fair at the [REDACTED]. The record contains several photographs of the Petitioner's book on display and a letter from [REDACTED] the Director of the Counsel of Literature at [REDACTED] inviting the Petitioner to display his book. The Director held that the record reflects that this occurred after the petition was filed and could not be considered toward meeting this criterion. The record demonstrates that this book fair took place at the end of April 2016, but the petition was filed in January 2016. While we note that this evidence does not establish eligibility under this criterion, this evidence of display would be considered under a final merits determination regarding his acclaim in the event the Petitioner had established that he met three criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x).⁷

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).

The Director held that the evidence in the record did not establish that the Petitioner met this criterion. The record contains his 2013 revenue tax declarations sheet for Colombia, which states that he received \$101,564,280 Colombian pesos (COP) in that year, but does not indicate the sources of his income. The record also contains a survey of salaries in marketing for Colombia, published by Merca2.0, and an article from *MisionPyme* which references a survey regarding salaries for different industries, stating that a general manager chief marketer earns \$4,115,804 COP per month in guaranteed pay. The Petitioner also references a Project Management Institute (PMI) document entitled, "Earning Power: Project management Salary Survey," which indicates that marketing professionals with 10 to 15 years of experience earns approximately \$44,850 and that those with 20 years of experience earn \$56,550 per year.⁸

The Petitioner states that based upon the Merca2.0 survey, his salary is comparable to the five highest paid marketers in Colombia in 2014. He then notes that his salary is higher than the salaries

⁷ The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied at the time of the filing. 8 C.F.R. § 103.2(b)(1).

⁸ We note that the Petitioner did not provide any evidence of the conversion of Colombian pesos to the U.S. dollar to support the accuracy of his statements about the conversion of currencies.

of marketing general managers and sales executives as the survey published by *MisionPyme* indicates. Finally, he states that the evidence from the PMI document shows that his salary of \$54,283 is high in relation to the marketing professionals with the large range in years of experience noted above.

The Director held that the evidence in the record discusses positions in marketing generally but does not provide a sufficient comparison in relation to the Petitioner's specific field, which in this case is as a business owner in the motorcycle/automotive industry. We agree with this conclusion. The Petitioner must submit evidence of earnings in comparison with those performing similar work. *Matter of Price*, 20 I&N Dec. 953, 955 (Assoc. Comm'r 1994); *see also Crimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Accordingly, the Petitioner must compare his income with income earned by those in his field as a business owner in the motorcycle/automotive industry during the same time period. We find that the evidence in the record is insufficient to demonstrate that he has commanded a high salary in relation to others in his 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), or comparable evidence establishing his eligibility. Thus, we do not need to fully address the totality of the materials in a final merits determination. *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.

ORDER: The appeal is dismissed.

Cite as *Matter of R-M-G-*, ID# 1708436 (AAO Nov. 15, 2018)