



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

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

MATTER OF M-A-F-

DATE: OCT. 12, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an information technology executive, seeks classification as an alien 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 petition, concluding that the record did not establish, as required, that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of ten evidentiary criteria. The Director also found that the Petitioner did not demonstrate that his entry will provide a substantial prospective benefit to the United States.

On appeal, the Petitioner submits additional evidence and asserts that he meets the requirements of two evidentiary criteria in addition to the two that the Director found that he meets, and that he will substantially benefit prospectively the United States.

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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that U.S. Citizenship and Immigration Services (USCIS) examines “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”). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Director found that the Petitioner meets two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)(x), those relating to judging the work of others and playing a leading or critical role for organizations with a distinguished reputation. On appeal, the Petitioner asserts that he also meets the criteria for lesser nationally or internationally recognized awards and a high salary. After reviewing all of the evidence in the record, we find that the Petitioner does not meet the requisite three evidentiary criteria.¹

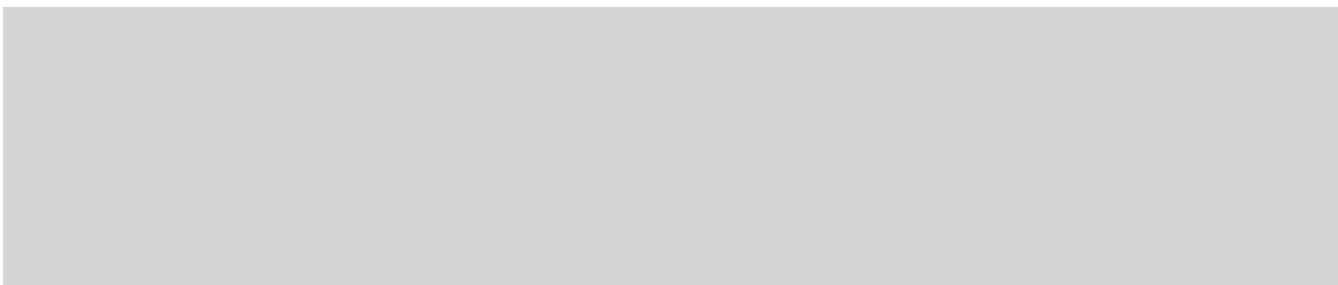
Documentation of the individual’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner’s claim to this criterion is based upon both personal and team awards. Regarding his personal recognition, the record includes three certificates awarded to the Petitioner for his participation in the [REDACTED] in 2003, 2004 and 2005, as well as a listing of the team standings in the 2004 [REDACTED] portion of the competition. On appeal,

¹ As we do not find that the Petitioner meets the requisite initial evidence, we need not determine whether the Petitioner’s entry will substantially benefit prospectively the United States.

he provides additional information about this annual international competition, including information about the organization's structure and previous competitions. However, the evidence does not indicate that the Petitioner received a prize or award other than these acknowledgments of his participation. While the Petitioner claims that he was a member of the fifth place [REDACTED] team in 2004, he has not submitted evidence to corroborate his membership, or that a prize was awarded to members of the fifth place team.

The Petitioner also submitted a certificate which indicates that he obtained the eighth rank in computer engineering in the [REDACTED] in 2006. This certificate is dated September 10, 2015, nine years after the event, and the Petitioner has not submitted evidence of any prize or award that he received for achieving this ranking at the time of this competition. As for the awards that the Petitioner asserts should be attributed to him, despite not having received them as an individual, he provided evidence of three awards that were received by his current and former employers:



On appeal, the Petitioner asserts that these awards should be attributed to him due to his positions within these companies, stating that “you know when a company received the award this is result of work of its key employees.” We acknowledge that team or group awards may be attributed to a member who is integral to the receipt of the award by the team or group. As proof of his contribution towards these companies receipt of these awards, the Petitioner submits a letter dated January 2017 from [REDACTED] CEO of [REDACTED], thanking him for his “valuable companionship, sympathy and supports for eleven years.” In addition, the record includes a photograph of a trophy which the Petitioner asserts was awarded to him by [REDACTED] for his “significant work.” However, as the photograph is not accompanied by a translation of the inscription on the trophy, we are unable to determine the purpose of the trophy or that it was awarded to the Petitioner. Finally, the Petitioner submitted a document on [REDACTED] letterhead entitled [REDACTED]. This undated document states that the Petitioner is selected as a “trustee of operating company” and that his “responsibility is limited to continuing production procedure.” The totality of this evidence does not support the Petitioner’s assertion that he was directly responsible for, or played an integral part in, [REDACTED] receipt of these awards, as it does not provide specific details of his duties, projects or accomplishments which might have led to the awards.

Regarding the award received by [REDACTED] the Petitioner refers to a letter from [REDACTED] the company’s CEO, which indicates that since 2013, he has worked as a technical deputy with

management of all technical departments within the company, including software development and maintenance. Although this evidence verifies the Petitioner's leadership role within this company, the record does not establish the basis of the [REDACTED] award. The Petitioner's assertions regarding the organization awarding this prize and the criteria used are not supported by evidence in the record. Therefore, we cannot determine that the Petitioner's leadership role in [REDACTED] was integral to its receiving the [REDACTED] award.

Finally, we note that even if the record established that these company awards should be attributed to the Petitioner, we agree with the Director that it does not establish that these are nationally or internationally recognized awards for excellence. While the Petitioner has made assertions regarding the criteria by which they were awarded and their significance, these assertions are not supported by documentary evidence in the record. For example, we recognize that the signature of the [REDACTED] of Iran lends a certain amount of evidentiary weight to the award received by [REDACTED] at the [REDACTED]. But the record lacks documentary evidence regarding this festival, the history of the award, other rewards received at the festival, the criteria by which competitors were judged, and any notice of this award outside of the festival. Without such evidence, we cannot determine that the award was recognized in the field of information technology at the national or international level.

For all of the reasons given above, the Petitioner has not established that he meets this criterion.

Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner asserts that he has served as a judge of the work of others in the information technology field in three different settings. First, he submitted a letter from [REDACTED] of the [REDACTED] in [REDACTED] Iran, who writes that he "introduced [the Petitioner] as a technical committee member of [REDACTED] competitions to the organizers of the event in 2006." [REDACTED] indicates that the Petitioner was responsible for organizing the competitions, but does not mention that he acted as a judge.

Second, the Petitioner refers to a letter dated November 30, 2015, from [REDACTED], a member of [REDACTED] board of directors, thanking him for his "participation in [REDACTED] as a judge for selecting the chosen startups in 2014." The Petitioner asserts that his role was to help choose a winner between two teams competing for funding from a startup accelerator program, but the record does not include evidence which provides further detail regarding the duties performed by the Petitioner, the entities judged, or the criteria by which they were judged. Absent such evidence, we cannot determine that the Petitioner judged the work of others in the same or an allied field.

Finally, the Petitioner submitted a certificate which expresses appreciation for his participation in a roundtable discussion at an electronic banking conference in January 2016. This evidence does not indicate that he served as a judge of the work of others in this role.

Therefore, we disagree with the Director's decision and find that the Petitioner does not meet this criterion.

Evidence that the individual 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)

Although we agree with the Director's finding that the Petitioner meets this criterion, we base that determination on the evidence of his role as a technical deputy with ██████████ which counts some of Iran's largest banks as its clients. In particular, the previously mentioned letter from ██████████ demonstrates that he leads all technical departments for the company and is its highest paid employee. The record regarding the Petitioner's employment with ██████████, consisting primarily of his resume and written statements, is insufficient to establish that he played a leading or critical role. Accordingly, the evidence establishes that the Petitioner meets this criterion.

Evidence that the individual 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)

In support of his claim to have earned a high salary, the Petitioner submitted evidence that he earned more than 192 million Iranian real (IRR) in one month in 2016, and received total compensation of more than 3.4 billion IRR in the year 1395 of the Persian calendar (2016-2017). On appeal, the Petitioner submits a salary report from ██████████ which states that it is based upon an online questionnaire with over 100,000 Iranians participating. According to this report, monthly salaries for senior managers and executives in production or operation roles averaged 45 million IRR, and the 80th percentile was at 80 million IRR. For those same positions in programming and Web development roles, those figures were 40 million IRR and 70 million IRR, respectively. In addition, a response posted on a website cites to a 2014 report from the Iranian government which indicates that the average monthly household income in Iran is just over 17 million IRR. We therefore disagree with the Director's decision and find that the Petitioner has commanded a high salary or other significantly high remuneration for his work as an information technology executive. Accordingly, he meets this criterion.

III. CONCLUSION

The evidence does not establish that the Petitioner received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in its entirety, and conclude that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. For these reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

Matter of M-A-F-

ORDER: The appeal is dismissed.

Cite as *Matter of M-A-F-*, ID# 1630167 (AAO Oct. 12, 2018)