



U.S. Citizenship
and Immigration
Services

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

MATTER OF S-K-

DATE: APR. 17, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a travel agency director, 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 not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits further documentation and a brief, arguing that he fulfills three of the ten 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). If that petitioner does not submit this evidence, then he or she must provide 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).

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 travel agency director for [REDACTED] in [REDACTED] Georgia. Because he has not indicated or 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). In denying the petition, the Director found that the Petitioner did not fulfill any of the initial evidentiary criteria.

On appeal, the Petitioner maintains that he meets three criteria, discussed below.¹ We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of 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 contends that he meets this criterion based on a [REDACTED]. The record reflects that the Petitioner submitted a letter from [REDACTED] co-founder and managing partner of [REDACTED], who indicated that [REDACTED] participated as a nominee at the first ever held ceremony in 2015 for the category, [REDACTED].

¹ Although he previously claimed to meet the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner indicates that he “misunderstood the requirement[s] for this section” and his “membership does not require outstanding achievement[s] to become a member.” As the Petitioner concedes his ineligibility, we will not further address this issue.

In order to fulfill this criterion, the Petitioner must demonstrate his *receipt* of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.² Here, the Petitioner did not receive a [REDACTED], rather, the company, [REDACTED] finished as a finalist. The description of this type of evidence in the regulation provides that the focus should be on “the alien’s” receipt of the awards or prizes, as opposed to his or her employer’s receipt of the awards or prizes.³ In addition, the Petitioner did not establish that finishing as a finalist, as opposed to winning the award, is tantamount to a prize or award for excellence consistent with this regulatory criterion. Moreover, although the Petitioner provides evidence reflecting the purpose and background of the awards, the Petitioner did not show that the [REDACTED] [REDACTED] are nationally or internationally recognized for excellence in the field.

For the reasons discussed above, the Petitioner did not establish that he meets this criterion.

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 Petitioner claims eligibility for this criterion based on an article posted on georgianjournal.ge and georgiatoday.ge. In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.⁴

While the article mentions the Petitioner as being the founder of [REDACTED] the article is about the tourism company.⁵ Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).⁶ Moreover, the Petitioner did not include the required author of the material. Furthermore, while the Petitioner provides screenshots from *SimilarWeb* showing that georgianjournal.ge has a global ranking of 327,968, a country ranking of 1,181, and total visits of “135.90K,” and georgiatoday.ge has a global ranking of 681,905, a country ranking of 3,427, and total visits of “68.35K,” the Petitioner did not show the significance of the rankings and viewing statistics or explain how such information reflects status as major media.⁷

² 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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

³ *Id.*

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

⁵ The record also contains a transcription for a [REDACTED] television commercial. However, the advertisement is about the company rather than about the Petitioner. See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (providing that marketing materials created for the purpose of selling the Petitioner’s products or promoting his or her services are not generally considered to be published material about him).

⁶ See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (finding that the published material should be about the petitioner relating to his or her work in the field, not just about his or her employer or another organization with whom he or she is associated).

⁷ *Id.* (instructing that evidence of published material in professional or major trade publication or in other major media

Because he did not establish that his evidence meets the eligibility requirements, the Petitioner does not satisfy 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).

The Director found that the Petitioner's organization of a site inspection tour for ██████████ to ██████████ in 2016 did not show how his role was leading or critical. In addition, the Petitioner determined that the Petitioner did not establish that ██████████ enjoys a distinguished reputation. On appeal, the Petitioner argues that he did not organize one tour but "worked to gain a partnership in ██████████ that allowed ██████████ access to Georgia so that they could take advantage of the demand from Georgian and International tourists in Georgia wanting to go to ██████████." Further, the Petitioner submits a letter from ██████████ managing director for ██████████, who stated that the Petitioner "had cooperated with our company before" and "had organized a site inspection tour to ██████████ in 2016 of the different VIP Travel Agencies from Georgia and was their group leader."

As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.⁸ Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.⁹

Although ██████████ letter confirms the Petitioner's involvement with ██████████, it does not demonstrate that he performed in a leading or critical role for the tour company. ██████████ did not explain how the Petitioner's organization of a one-time site inspection tour reflects a leading role to ██████████ overall. Moreover, while ██████████ claimed that the Petitioner "played a critical role" and listed other tour agencies he brought along and hotels that were inspected, she did not further elaborate to show how his organized tour contributed to the successes of ██████████ or resulted in increased visitors. Here, the letter does not establish that he held a leading position, and it does not contain specific information signifying that he was essential to the tour company.¹⁰ In addition, the Petitioner did not address, nor does the record reflect, that ██████████ enjoys a distinguished reputation.¹¹

Accordingly, the Petitioner did not demonstrate that he fulfills this criterion.

publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

⁸ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁹ *Id.*

¹⁰ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

¹¹ *Id.* at 10-11 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *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.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-K-*, ID# 2757688 (AAO Apr. 17, 2019)