



U.S. Citizenship
and Immigration
Services

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

MATTER OF S-M-V-S-M-

DATE: APR. 30, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a mountaineer, 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 petition was initially approved. Subsequently, the Director of the Nebraska Service Center issued the Petitioner a notice of intent to revoke the approval of the petition (NOIR). Upon receipt of the Petitioner's response to the NOIR, the Director revoked the approval of the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that he met at least three of the ten initial evidentiary criteria but that he did not qualify for this classification in the final merits analysis.

On appeal, the Petitioner submits contends that he qualifies as an individual of extraordinary ability.

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).

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

II. ANALYSIS

As the record does not establish that the Petitioner has received a major, internationally recognized award, he must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director held that the Petitioner met the following criteria: awards, membership, published material, judging, and leading or critical role at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv), and (viii) respectively, but that he had not established eligibility in the final merits analysis. Here, we agree that the Petitioner has established the leading or critical role criterion, but we disagree with the Director regarding the criteria for awards, membership, published material, and judging; we find that the record does not establish that the Petitioner meets these requirements.

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 Director concluded that the Petitioner met this criterion, but we find that the evidence in the record is insufficient to establish that he has received such prizes or awards in the field. The record contains an August 2016 letter from [REDACTED] the president of the [REDACTED] I [REDACTED], stating that “the [REDACTED] has set its standards for [the] championship awards of

members” for climbing summits. This letter contains a chart prepared by [REDACTED] regarding the championship standards for ascending summits of differing heights, noting the type of medal as a bronze, silver, or gold medal from the categories of National, Asia, and World depending on the height of the summit. [REDACTED] refers to these accomplishments as being equivalent to a medal in these categories. For example, he states that the Petitioner “has won several national and international championships,” noting that “[h]is highest achievement is [the] equivalent of [an] International Silver Medal due to his climb of [REDACTED] . . . in 2010.”¹ The record contains documents from the [REDACTED] with the title, “Championship Certificate,” which identify the peak that the Petitioner has climbed and which also state what its equivalency is as a medal. For example, the “Championship Certificate” indicating that the Petitioner climbed the [REDACTED] in 2014 states that this ascent is the “equivalent of Asia’s Gold Medal.” The use of the term “equivalent” demonstrates that this is a certificate of an achievement that is equivalent to an award, but the record does not demonstrate that the Petitioner actually received a prize or an award to meet the regulatory requirements of this criterion.²

In addition, the record does not contain corroborating evidence of these championships, such as bylaws from the [REDACTED] or press coverage discussing the championships and whether awards are given for climbing these mountains. We also note that the record contains certificates from the government of Nepal about certain summits the Petitioner has climbed, but these certificates are called into question because they do not use the same language in referencing the governmental entity that issued the certificate. For example, the record contains a certificate from the [REDACTED] certifying that the Petitioner successfully climbed [REDACTED] in 2008. The record contains similar certificates indicating that the Petitioner climbed [REDACTED] in 2010 and [REDACTED] in 2011, but these documents state that they were issued by the [REDACTED] for the government of Nepal and omit the term [REDACTED]. While the record does contain objective evidence indicating that the Petitioner did climb these summits, this discrepancy calls into question these certificates. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). We also note that the [REDACTED] certificate indicating that the Petitioner ascended the [REDACTED] states that it is a height of [REDACTED], but the certificate from the government of Nepal for this climb states that it is [REDACTED]. When viewed together, these inconsistencies diminish the persuasiveness of the evidence submitted as to whether the Petitioner has received a prize or award that is nationally or internationally recognized for excellence in the field of endeavor. *Id.*

The record contains other certificates indicating that the Petitioner climbed the [REDACTED] in 2014, for example, but it is unclear what entity issued this certificate. For the reasons stated above, the Petitioner has not established that the certificates in the record constitute a prize or award, nor does the record contain other evidence indicating that these are nationally or internationally recognized for excellence in the field. While we acknowledge the Petitioner’s accomplishment in having climbed [REDACTED] and these other peaks, the record does not

¹ The record reflects that [REDACTED] tallest mountain in the world.

² While we do not cite to each certificate submitted in support of the petition, we have considered all of them. *See Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 544 (S.D.N.Y. 2012) (noting that it is not erroneous that a USCIS decision does not cite from each and every letter in support of a petition).

reflect that he received a nationally or internationally recognized prize or award as a result. Therefore, he has not established that he meets the requirements of 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 Director held that the Petitioner met this criterion, but we disagree. The Petitioner states that he meets this criterion based on his membership in the [REDACTED] team of mountaineering. In another letter written by [REDACTED] in December 2016, he states that the Petitioner was one of only [REDACTED] out of 240 professional mountaineers who applied for the [REDACTED] expedition. However, the Petitioner does not indicate what being on the [REDACTED] team entails and whether it requires outstanding achievements of its members for membership on the team. Instead, [REDACTED] states that after “several rounds of evaluation and camp participation,” [REDACTED] qualified for the [REDACTED] team.” [REDACTED]’s letter from August 2016 indicates that these evaluations are based on the applicants’ “physical fitness, endurance, temperance, and understanding,” which he notes are “crucial characteristics for successful mountaineers.” This demonstrates that membership on the [REDACTED] team is based on an applicant’s physical and mental abilities rather than being based on outstanding achievements. The record does not contain any evidence of the membership bylaws or the official admission requirements for the [REDACTED] team of mountaineering. The Petitioner has not identified the national observers who evaluated him, nor has he submitted evidence to demonstrate that they are nationally or internationally recognized experts in the field.

The Petitioner cites one of our decisions concerning an athlete’s membership on a [REDACTED] team, *Matter of K-S-Y-*, ID# 14269 (AAO Mar. 9, 2016). First, we note that this decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Here, we conclude that the facts in this matter are distinguishable from those of that decision. In that case, the record demonstrated that the petitioner competed in selection matches that were judged by nationally recognized experts, to determine who would be on the national judo team. Additionally, the evidence indicated that Korea had the third highest number of Olympic medals in judo of any other country, which meant that qualifying for that team required outstanding achievements. Here, the Petitioner has not provided sufficient evidence about the [REDACTED] team of mountaineering, its requirements for membership, or documentation establishing that the individuals who selected him for this team were nationally or internationally recognized experts in the field.

The Petitioner indicates that the [REDACTED] is an active member of the International Climbing and Mountaineering Federation (UIAA), and the record contains the UIAA articles of association and its 2017 annual report, which lists the [REDACTED] as a member, but this evidence does not establish that the Petitioner is a member of the UIAA or that it requires outstanding achievements of its members for membership. Therefore, the Petitioner has not established 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 Director held that the Petitioner had established that he met this criterion. We disagree. In order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

Here, we note that the record contains articles from the Kurdpress International News Agency (KINA) about the Petitioner, but these articles do not meet the requirements of this criterion as they do not state the name of the author, as required. We also note that in both articles from the KINA, from 2015 and 2016, they state that the Petitioner has been a member of the [REDACTED] mountaineering team for 14 years, which would mean that he would have joined in 2001 or 2002, but the August 2016 letter from [REDACTED] indicates that the Petitioner has been a member of this team since 2004. The Petitioner must resolve this inconsistency with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. While this discrepancy calls into question this evidence, the fact that the authors are not listed means that this evidence does not meet the requirements for this criterion under 8 C.F.R. § 204.5(h)(3)(iii). The record also contains articles from the Islamic Republic News Agency (IRNA) and the HamshahriOnline News Website that do not state the names of the authors and therefore do not meet the regulatory requirements. Therefore, the Petitioner has not shown 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 claims that he meets this criterion for having evaluated the performances of those seeking to join [REDACTED] mountaineering teams. In his August 2016 letter, [REDACTED] states that since 2012, the Petitioner had attended eight camps across [REDACTED] as a national observer of mountaineers. [REDACTED] indicates that in this role, the Petitioner was tasked with evaluating their performances to determine whether they had the capacity to climb the summits as a member of the “Himalayan climbs national team.” The Petitioner must show that he has actually participated in the judging of the work of others.³ Here, he has not provided evidence corroborating [REDACTED] letter, such as documentation detailing his responsibilities as a national observer for [REDACTED] or identifying specific instances of his judging. Therefore, the Petitioner has not established that he meets the requirements of this criterion.

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

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).

For a leading role, the evidence must establish that the petitioner is or was a leader.⁴ If a critical role, the evidence must establish that the petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the petitioner's performance in the role is or was important in that way. It is not the title of the petitioner's role, but rather his or her performance in the role that determines whether the role is or was critical.⁵

The plain language of the criterion requires the petitioner to show his leading and critical role for organizations and establishments, as a whole, not merely events organized by organizations and establishments. [REDACTED] states in his July 2018 letter that [REDACTED] has arranged 14 Himalaya expeditions since 2008 and that the Petitioner has been the team leader for three of these expeditions. Here, we find that the evidence in the record does not establish that his role as a team leader on three out of 14 expeditions constitutes a leading or critical role to the organization as a whole. For example, with respect to whether he performed a leading role, the Petitioner has not provided evidencing demonstrating how his role as a team leader affected the [REDACTED] overall or how his position fits within the hierarchy of those employed by the [REDACTED]. With respect to whether this constitutes a critical role, the Petitioner has not demonstrated how his role as a team leader is of significant importance to the outcome of the [REDACTED]'s principal activities. For example, the record does not demonstrate the Petitioner's duties as a [REDACTED] team leader or whether he was the primary leader on these three expeditions or how many expeditions the [REDACTED] arranges to show the influence he has had in the organization as a whole. Thus, the Petitioner has not established that he meets this criterion.

III. CONCLUSION

In summary, we conclude that 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 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. Accordingly, the approval of the petition was properly revoked.

ORDER: The appeal is dismissed.

Cite as *Matter of S-M-V-S-M-*, ID# 2397447 (AAO Apr. 30, 2019)

⁴ USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁵ *Id.*