



U.S. Citizenship
and Immigration
Services

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

MATTER OF W-M-E-

DATE: APR. 30, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a civil engineer, seeks classification as an individual of extraordinary ability in the sciences. *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 shown 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

As the Petitioner 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) or offer comparable evidence under 8 C.F.R. § 204.5(h)(4) to meet the basic eligibility requirements. The Director held that he did not meet any of these criteria.

The Petitioner asserts throughout his brief that the Director violated the U.S. Constitution by failing to consider evidence, repeating errors, requiring further evidence, holding prior judgment, concluding the decision before receiving the Petitioner's response to the request for evidence, and creating unknown rules. As the Petitioner cites constitutional concerns throughout the brief, we note that USCIS administers extraordinary ability visas pursuant to statutory and regulatory authorities, and the Petitioner does not argue that a specific provision of the statute or regulations is unconstitutional. To the extent that the Petitioner's argument had been grounded in the constitutionality of the statute and pertinent regulations, we lack jurisdiction to rule on the constitutionality of laws enacted by Congress or of regulations promulgated by DHS. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992). Therefore, we will consider the Petitioner's constitutional concerns as they relate to whether USCIS complied with the applicable statute and regulations.

A. Evidentiary Criteria

On appeal, the Petitioner asserts that he meets the seven criteria relating to awards, membership, published material, original contributions, scholarly articles, leading or critical roles, and salary. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (v), (vi), (viii), and (ix). For the reasons discussed below, the

record does not support a finding that the Petitioner satisfies at least three criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 asserts that he meets this criterion based on a number of awards he received as a youth or student. The record contains a certificate of merit from the [REDACTED] stating that the Petitioner won first place awards in the field of "articles," "culture," and "individual talents" at the respective 17th, 18th, and 19th [REDACTED].¹ He also contends that his awards for "Creative Writing," "Short Story," and an acceptance letter to represent the [REDACTED] satisfy this criterion. Finally, the Petitioner submitted certificates received for voluntary work at camps in [REDACTED].

The record does not establish that any of these awards satisfy the requirements of the criterion. The certificates related to the work camps note they are for the Petitioner's "role in strengthening friendship," and thus appear to be acknowledgements of his participation rather than an award. The Director noted in her decision that no evidence was submitted to establish that any of the awards were for excellence in the field of endeavor. On appeal, the Petitioner has not submitted additional evidence to overcome that ground. Finally, although the Petitioner contends that the awards from the [REDACTED] receive national recognition as they are presented by the government, he submits no evidence to support his position regarding their recognition.

The Petitioner has not established that he has received nationally or internationally recognized awards for excellence in his field of endeavor. Therefore, the evidence does demonstrate that the Petitioner 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 contends that his membership in the [REDACTED] satisfies this criterion. The record contains the Petitioner's membership card, a document entitled "History of the Syndicate," and a webpage from the World Federation of Engineering Organization (WFEO), stating that the [REDACTED] "is considered an advisory body of the State in the field of specialization." The Petitioner references the law organizing the work of the [REDACTED] in his appeal brief, but such documentation is missing from the record.

¹ We note that the translations of these documents, and the majority of the translations in the record, do not state that they are complete and accurate. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.*

On appeal, the Petitioner claims that “any scientific syndicate, including Egypt, requires governmental accreditation as a stipulation for joining” and that “earning a PhD in civil Engineering [sic], from a reputable governmental university in Egypt, is in itself and by itself a major outstanding achievement; because the PhD is judged by national experts in the field, and accredited by the government.” (Emphasis in the original). However, he has provided no evidence or support for his claim that his doctorate degree equates to an outstanding achievement as contemplated by the regulation. Additionally, he has not demonstrated that his degree was judged by nationally or internationally recognized experts in their fields.

Furthermore, the evidence that has been submitted by the Petitioner does not establish that his membership in [redacted] satisfies the regulatory requirements. The record lacks documentation of the membership criteria, and thus does not establish that the Petitioner’s advanced degree is required for entry. Additionally, the translated document related to the history of the organization is not properly certified in accordance with 8 C.F.R. § 103.2(b)(3), and therefore we cannot meaningfully determine if it supports the Petitioner’s claims. Thus, the record does not demonstrate that his membership in [redacted] establishes eligibility under 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 published material in the record was not entirely about the Petitioner and that the articles were not published in a professional or major trade publication or other major media. After review, we agree that most of the articles do not qualify under this criterion, either by not being about the Petitioner, not appearing in a qualifying publication, or by failing to provide all the information required by the regulation, such as the author’s name. The Petitioner also claimed that several television appearances established his eligibility, but he submitted no evidence, such as transcripts, to support his claim.

However, we find that one article, discussing the Petitioner and his research on the use of environmental waste as a shield against radiation, satisfies the requirements of the regulation. Therefore, the Petitioner has established eligibility under this criterion.

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 introduces this criterion on appeal and references several contributions he has made. First, he references a paper that was presented at the 22nd [redacted] in [redacted] in 2014, entitled, [redacted].” The Petitioner has not submitted evidence demonstrating how this presentation has impacted the field, such as evidence that it has elicited widespread commentary or

received notice from others in the field.² Even though this appears to be an original scientific contribution, the Petitioner has not provided evidence that it is of major significance in the field.

The Petitioner cites a portion of his curriculum vitae which contains two photographs of him with Prince ██████████ the Prince of the ██████████ in 2015. The Petitioner states that the photographs show him presenting the Prince with a development study for the region. The record contains a letter from the Prince, thanking the Petitioner for the proposals while stating that they are under study in the in his administration and other departments. The record does not contain a copy of this development study or other evidence demonstrating that it has had an impact in the field.

The record contains a letter from ██████████, Founder and President of the ██████████, which she indicates is an organization “that encourages Arab women, as a minority, to engage positively in U.S. society.” She adds that the Petitioner assisted ██████████ with translating an educational kit about autism into Arabic as part of a charitable project to the Arab community of Morocco. She describes his help as “priceless, valuable and generous” and indicates that he “significantly contributed in helping both the poor autistic children and their families in the US and across the world, who will benefit from this project now and in the future.” Letters that specifically articulate how contributions are of major significance to the field and its impact on subsequent work add value. Letters that lacks specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.³ Here, ██████████ letters speaks only in generalities of the impact of the Petitioner’s work, without providing specifics about the impact of his work as a translator, and thus fails to demonstrate the significance of his work.

Finally, the Petitioner also claims that he supervised a master’s degree researcher, but provides no information to support this claim or to demonstrate its impact on the field. Therefore, for the reasons discussed above, the record does not establish 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).

As noted above, the record contains an article entitled, “██████████” that was presented at the 22nd ██████████ in ██████████ in 2014. The record reflects that this was published in the *World Academy of Science, Engineering and Technology* in ██████████ 2014, which is a professional journal. Accordingly, the Petitioner has established that he meets 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).

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 ADJJ-14* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

³ *Id.*

A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

The Petitioner raises this claim for the first time on appeal. He bases his assertion that he meets this criterion on a number of bases. Initially, he claims that the recommendation letter from [REDACTED], the editor-in-chief of the [REDACTED] newspaper establishes eligibility. The recommendation letter, the Petitioner claims in his brief, is "strong proof for the appellant's unique undivided talent, as a think-tank, who genuinely can employ his overall academic skills in providing practical life solutions in different fields." While this letter compliments the Petitioner, it does not identify any leading or critical role he has performed for any organization or establishment. Therefore, it cannot establish eligibility.

The Petitioner then claims that his role in translating the autism educational kit into Arabic for [REDACTED] meets this criterion. While the letter from [REDACTED] describes his background and his translation work, it does not address how his work for the organization was leading or critical. Nor has the Petitioner submitted evidence to demonstrate that [REDACTED] has a distinguished reputation. Thus, he has not established that his work with the organization satisfies the evidentiary criterion.

The letter of appreciation the Petitioner received for his work in Saudi Arabia from [REDACTED] provides the basis for his next claim of eligibility under this criterion. The relevant portion of the prince's letter states "[w]e have received number [sic] of your good propositions. We thank you for these propositions. We inform you that these propositions are under study in the [REDACTED] and other departments." The letter does not identify what propositions its author is referencing, nor does it indicate that the Petitioner's role is either leading or critical. Aside from photographs of the Petitioner with the Prince, the record does not contain other evidence related to his work in Saudi Arabia that would establish eligibility under this criterion.

Finally, the Petitioner claims that his role at [REDACTED] satisfies the requirements of this criterion. In his brief, he does not identify what role he held or explain why it was leading or critical. He refers to a letter from [REDACTED] an assistant professor of philosophy at [REDACTED] who discusses the Petitioner's role in forming and presiding over a club at the university, the [REDACTED]. [REDACTED] does not describe how this role with a student club was leading or critical for the university, nor does the record contain additional evidence related to this organization. The Petitioner also cites to several documents referencing him as a member of the "Diamond Team" and inviting him to continue on as a member. Neither the Petitioner nor the evidence in the record explain what the Diamond Team is, what the Petitioner's role was, or how it was leading or critical. Therefore, the Petitioner has not submitted sufficient evidence to establish that his roles at [REDACTED] or any other organization meet this criterion.

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 Petitioner asserts that he has a high probability of receiving higher remuneration than his peers in the field, based upon the letter from the Prince of the [REDACTED] in 2015. As discussed above, the Prince thanks the Petitioner for the propositions he has presented and states that they are under study in his administration and other departments, but there is no discussion about compensation. Nor has the Petitioner submitted other evidence of salary. While he asserts that he is likely to receive higher remuneration than his peers in the field, the regulation requires that he has already commanded a high salary or significantly high remuneration for services, in relation to others in the field. Therefore, the Petitioner does not meet this criterion.

B. Comparable Evidence

Finally, the Petitioner cites 8 C.F.R. § 204.5(h)(4) which allows him to submit comparable evidence to establish his eligibility if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation. He asserts that his three post-graduate academic degrees constitute comparable evidence to establish his eligibility. First, the Petitioner has not established why the criteria addressed above do not readily apply to his occupation. Second, the Petitioner has not established that this other evidence establishes his eligibility. He has not shown how his master's degree in teaching Arabic as a foreign language from the [REDACTED] constitutes evidence of his expertise or acclaim in civil engineering research and teaching. While the Petitioner has a Ph.D. in structural engineering from [REDACTED] and a master's degree in structural engineering from [REDACTED], he has not provided support for why these degrees are comparable to the listed criteria. Similarly, the record contains recommendation letters from [REDACTED] Assistant Professor of Philosophy at [REDACTED] from [REDACTED] Dean of Students at [REDACTED] and from [REDACTED] Counsellor. These letters attest to the Petitioner's membership on the Diamond Team at [REDACTED] and his academic successes, but they do not demonstrate comparable eligibility to the standards under 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 1119-20.⁴ 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.

⁴ We note that the Petitioner's appeal brief includes a discussion of case law relating to how eligibility should be determined once initial evidentiary requirements are met. Here, as the Petitioner did not satisfy the initial evidentiary requirements, we need not address these arguments.

Matter of W-M-E-

ORDER: The appeal is dismissed.

Cite as *Matter of W-M-E-*, ID# 1410339 (AAO Apr. 30, 2019)