



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

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

MATTER OF L-D-C-

DATE: FEB. 5, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner 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 Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not shown that she met any of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that she 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).

## II. ANALYSIS

The Petitioner intends to work as a financial advisor and asserts that she qualifies as an individual of extraordinary ability in business. As the record does not establish that the Petitioner has received a major, internationally recognized award, she must demonstrate that she satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Acting Director held that the Petitioner did not meet any of these criteria. On appeal, the Petitioner asserts that she meets the criteria for awards, membership, judging, original contributions of major significance, scholarly articles, display, leading or critical role, and high salary at 8 C.F.R. § 204.5(h)(3)(i), (ii), and (iv)-(ix). Upon reviewing all of the evidence in the record, we find that the record does not support a finding that the Petitioner satisfies at least three criteria.<sup>1</sup>

*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 on appeal that she meets this criterion based on awards she received from the [REDACTED] and from a barangay chairman in the Philippines. Specifically, the award certificates from [REDACTED] indicate that she was nominated as

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<sup>1</sup> On appeal, the Petitioner contends that the Director erred in conducting the two step analysis set out in *Kazarian*. She states that under the approach in *Buletini v. INS*, 860 F. Supp. 1222, 1234 (E.D. Mich. 1994), once three of the regulatory requirements are met, she has met *prima facie* eligibility and the burden of proof shifts to USCIS to demonstrate by "specific and substantiated evidence" why the petitioner is not qualified. Here, we need not address this claim because the Petitioner has not established that she meets three criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x).

the "Top Grosser of the Month," the "Employee of the Month," and that she received the "[redacted] Apprentice I" award. The record contains certificates of recognition from other corporations, including one from [redacted] for being the [redacted] 2003 GOLD awardee – financial advisor level, and another from [redacted], for ranking fifth in regional sales in the [redacted] region of Manila. The Petitioner also submitted a "Certificate of Excellence" from the Chairman of the Barangay [redacted] locality in [redacted] Philippines, stating that this certificate was awarded for her continuing excellence and contributions to the barangay.

The record contains other award certificates, some of which appear incomplete. We note that one award contains signature lines and an individual's title but it is not actually signed and there is no indication of the company in which the award was given. Doubt cast on any aspect of the petitioner's evidence may 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. 582, 591-592 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.*

Upon review of the record in totality, the Petitioner has not submitted evidence regarding the criteria for these certificates, and thus has not demonstrated that they are awards for excellence in her field of endeavor. Similarly, the Petitioner has provided proof that these awards receive national or international recognition. Therefore, she has not established that she 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 she meets this criterion on account of her employment with [redacted]. She cites a letter from [redacted] team leader, indicating that the Petitioner provides "outstanding support" as a "finance experience advisor." This letter refers to the Petitioner's work performance but does not indicate that outstanding achievements are required for employment with [redacted]. The record does not contain evidence regarding the hiring practices of [redacted] to demonstrate that it requires outstanding achievements as a condition of employment with the company as judged by "recognized national or international experts in their disciplines or fields." Therefore, the Petitioner has not established that she 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 record contains two letters inviting the Petitioner to judge events. [redacted] invited the Petitioner to serve as a judge of a debate at [redacted] School, and [redacted] asked her to serve as a judge for the business development marketing campaign of [redacted]. However, the letter from [redacted] does not identify the subject of the student debate, and the record lacks

other evidence demonstrating that this event involved judging the work of others in the same or an allied field. Furthermore, the regulation required evidence of participation as a judge, not simply an invitation to do so. The Petitioner has not submitted evidence demonstrating that she actually performed as a judge at either of these events.

In addition, the Petitioner references her participation in the “Outstanding Young Achievers” event in 2002, but the record does not establish that her involvement in this event entailed judging the work of others. We note that the Acting Director discussed the lack of supporting documentation for these events in the RFE and the decision, but the Petitioner has not submitted additional evidence to corroborate these claims. Therefore, she has not established that she meets 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).*

This regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The contributions must be original and scientific, scholarly, artistic, athletic, or business-related in nature. Next, the contributions must rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The term “contributions of major significance” connotes that the Petitioner’s work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134.

The Petitioner correctly notes that the Director failed to address her claim to this eligibility criterion. The Petitioner submitted a recommendation letter from [REDACTED] who states that the Petitioner worked part-time for her company as an agent and finance officer. [REDACTED] speaks highly of the Petitioner’s dedication to her work, but this does not represent evidence of her original contributions and does not establish that any of her contributions are of major significance in the field.

On appeal, the Petitioner submits additional letters from former managers attesting to her dedication and positive attitude. [REDACTED] President of the [REDACTED], discusses the Petitioner’s dedication to the organization, noting that “her contributions in [the company’s] workplace over the years have been substantial” and were the main reason for the company’s success. In one letter, [REDACTED] states that under her leadership running a finance department, productivity increased by 25 percent while maintaining high standards of quality. Similarly, the letters in the record from the Petitioner’s colleagues at [REDACTED] discuss her customer service support, her knowledge of the company’s products and operating procedures, and her leadership.

We note that these letters identify contributions to a particular company, and the Petitioner has not shown that they had an impact on the greater field. Letters from colleagues that do not specifically identify contributions or detail how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d at 1036; *aff’d in part* 596 F.3d 1115. Therefore, the Petitioner has not established that she meets this criterion.

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*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).*

For the first time on appeal the Petitioner asserts that she meets this criterion based on her association with [REDACTED] USA and [REDACTED] Philippines. She states that she has authored articles published in major media.

Beyond her statement in the brief, the Petitioner has not submitted evidence related to the articles to establish that they are scholarly or that they were published in qualifying media. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Therefore, these requirements have not been met.

*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 states that her webpage relating to her [REDACTED] products is sufficient to satisfy this criterion, but the record does not contain evidence supporting this assertion. She has not submitted a copy of this webpage and has not shown that this was displayed at an artistic exhibition.<sup>2</sup> Therefore, the Petitioner has not established that she 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).*

For a leading role, the evidence must establish that the petitioner is or was a leader.<sup>3</sup> 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.<sup>4</sup>

The record contains a letter from [REDACTED] who identifies herself as the head financial advisor of [REDACTED], indicating that the Petitioner "assumed a leadership role in finance

<sup>2</sup> The Petitioner cites 8 C.F.R. § 204.5(h)(4) which states that comparable evidence may be submitted to establish eligibility if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to her occupation. This regulation requires that a petitioner demonstrate why a criterion is not readily applicable to his or her occupation and how the submitted evidence is comparable to that criterion. 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 12* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>. Here, the Petitioner has not discussed why this criterion does not readily apply to her occupation and does not submit evidence that is comparable to this criterion.

<sup>3</sup> 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 10* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

<sup>4</sup> *Id.*

meetings, inspiring and motivating other employees and representatives of [the] organization.” This letter does not specify the details of what leadership position the Petitioner held or how her work had a significant impact on the organization’s activities. Furthermore, the Petitioner has not submitted evidence establishing that [REDACTED] has a distinguished reputation.

The record also contains a letter from [REDACTED] the head of the [REDACTED] Philippines, stating that the Petitioner served as a financial advisor in her office. [REDACTED] attests to the Petitioner’s productivity, positive attitude, organizational skills, and diligence in the organization, but this does not demonstrate that she had a leading or critical role. The record does not contain evidence indicating she performed a leadership role in [REDACTED] or otherwise performed activities that were critical to the success of the organization. The Acting Director noted that the Petitioner had not shown that she performed a leading or critical role for [REDACTED] or [REDACTED] and had not submitted evidence establishing that these organizations have a distinguished reputation. The Petitioner has not submitted additional evidence about the [REDACTED] group or her role in the organization on appeal. Therefore, the record does not demonstrate that she meets 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 record contains a letter from [REDACTED] manager at [REDACTED] attesting to the Petitioner’s salary as a brand specialist, but this letter does not contain specific details of her compensation, using the phrase “more or less” and an approximation of amounts received in monthly incentives. The Petitioner also submitted documentation from payscale.com, providing details of salaries for finance and administration managers in the [REDACTED]. However, she has not established that the salaries of finance and administration managers relate to her work as a brand specialist. Due to the lack of specific details regarding the Petitioner’s salary, and without additional corroborating evidence, she has not established that she has had a high salary in relation to others in the field to meet this criterion.

### III. CONCLUSION

The Petitioner is not eligible because she 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of L-D-C-*, ID# 1956574 (AAO Feb. 5, 2019)