



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF B-D-C-

DATE: FEB. 19, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a testing and commissioning engineer, seeks classification as an individual of extraordinary. 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 additional documentation and a brief, arguing that he meets at least 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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 provides evidence of current employment at [REDACTED] and [REDACTED].<sup>1</sup> 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 six criteria, discussed below. 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 offered various certificates of recognition, achievement, and participation from his previous employers, such as a “Certificate of Recognition” from [REDACTED] for “2008 Most Outstanding

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<sup>1</sup> The documentation, in the form of paychecks and paystubs, does not show in what capacity the Petitioner is employed or whether he works in his field of expertise as a testing and commissioning engineer.

Employee of the Year,”<sup>2</sup> “Certificate of Achievement” from [REDACTED] for “outstanding contribution and support to this organization,” and a “Certificate of Participation” from [REDACTED] for “participation in the construction of coal plans in [REDACTED] Quezon.” While the Petitioner offered evidence showing his receipt of certificates, he did demonstrate that they are nationally or internationally recognized prizes or awards for excellence in the field.<sup>3</sup> Here, he did not show that his employer certificates are recognized by the overall field as awards for excellence. Accordingly, the Petitioner did not establish that he satisfies 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 argues that he meets this criterion based on membership with the [REDACTED]. In order to satisfy this criterion, membership in the association must be based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.<sup>4</sup> He submits a letter from [REDACTED] who confirms the Petitioner’s membership with [REDACTED] and claims that “members of this society requires [sic] outstanding membership.”<sup>5</sup> However, [REDACTED] did not include specific, detailed, and source-cited information supporting his assertion. Moreover, according to previously offered screenshots from [REDACTED] “[a]ll persons whose names now appear in the roll of professional mechanical engineers, mechanical engineers, and certified plant mechanics . . . or those who may hereafter be included therein upon registration and payment of the required fees shall automatically become members.” Thus, automatic membership is bestowed on those who are in the profession, register, and pay the required fees, which are not indicative of outstanding achievements.<sup>6</sup> In addition, the Petitioner did not establish that membership is judged by recognized national or international experts. For these reasons, the Petitioner did not demonstrate that he fulfills this criterion.

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<sup>2</sup> The record also contains a letter from [REDACTED] CEO of [REDACTED] confirming that the Petitioner received the company award, as well as the nomination criteria and screenshots from aagp.ph relating to background and history of the company.

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

<sup>4</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

<sup>5</sup> The Petitioner also provided a “Certificate of Membership” from [REDACTED].

<sup>6</sup> *Id.* at 7 (finding that payment of a fee is not based on outstanding achievement in the field).

*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 to satisfy this criterion based on having “been invited, served and participated in the [redacted] of 2011.” In order to meet this criterion, the Petitioner must show that he participated in the judging of the work of others in the same or allied field of specialization.<sup>7</sup> Previously, the Petitioner submitted a “Certificate of Participation” from [redacted] president of the student council for [redacted] “for sharing [his] knowledge on [redacted] 2011 at [redacted], 2011. On appeal, the Petitioner provides a letter from [redacted] “thank[ing] [him] for judging the Institute [redacted] 2011 at [redacted].” Here, the Petitioner’s certificate and brief conflicts with the letter regarding whether he judged at the [redacted] 2011. Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). He did not present credible, supporting evidence establishing that he participated as a judge at the event. Unresolved material inconsistencies may lead to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Accordingly, the Petitioner did not establish that he 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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner claims that “[n]umerous reference letters were submitted that provide contextual information about [his] significant contribution in his field.” Specifically, the record reflects that he submitted three letters. [redacted] who has an unidentified position at [redacted] thanked the Petitioner for his “hard work and dedication.” In addition, [redacted] supervisor at [redacted] indicated that the Petitioner “has shown an exceptional level of understanding and commitment to the construction process” and “is a dedicated professional who wins the respect of others through his hard work, integrity, and desire.” Further, [redacted] general manager at [redacted] recommended the Petitioner “for any employment in the field of Testing Engineering” and “found that he is a self-driven person and full of initiatives.”

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<sup>7</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

While the letters applaud the Petitioner's personal and job abilities, they do not identify original contributions that he has made to the field, nor do they explain how his contributions have been of major significance. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.<sup>8</sup> On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.<sup>9</sup> Moreover, 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).

For these reasons, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

*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 Petitioner contends that he qualifies for this criterion based on his previous employment with [redacted] and [redacted]. The Petitioner references letters from [redacted] and [redacted] discussed above, as well as letters from [redacted] and [redacted]. 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.<sup>10</sup> 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.<sup>11</sup>

Although the letters confirm the Petitioner's employment, they do not demonstrate that he performed in a leading or critical role for any of the companies. For instance, [redacted] claimed that "[t]here is no doubt that [the Petitioner] plays a significant role in our company," without further elaborating or supporting his assertions. Moreover, although [redacted] maintained that the Petitioner "contributed to the successful release of LED anchor mastheads underwater lightning [sic] products," he did not explain significance of the contribution to [redacted] or how it demonstrates a leading or critical role. In addition, [redacted] indicated that he served as an adviser and mentor to the Petitioner and "showed himself as a promising skilled Mechanical testing expert." However, [redacted] did not provide detailed information showing how his role as a testing expert was leading or critical to [redacted]. Further, [redacted] stated that the Petitioner "reported to him when he worked as a supervisor in the filter production clean room department" and increased production by 25% in the

<sup>8</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

<sup>9</sup> *Id.* at 9. See also *Kazarian*, 580 F.3d at 1036, *aff'd* in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

<sup>10</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

<sup>11</sup> *Id.*

department. While [REDACTED] discussed the Petitioner's impact on the department, he did not show how the Petitioner contributed to the success or standing of [REDACTED] overall. Here, the letters do not establish that he held a leading position, and they do not contain specific information signifying that he was essential to any of the companies.<sup>12</sup>

In addition, the letters do not contain information demonstrating that [REDACTED] or [REDACTED] have a distinguished reputation.<sup>13</sup> Moreover, although the Petitioner claims that the "companies are all reputable" and he provided screenshots from their websites, the record contains insufficient evidence to support his assertion. As such, the Petitioner did not show that the companies enjoy an eminent reputation.

Accordingly, the Petitioner did not demonstrate that he 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).*

In order to fulfill this criterion, a petitioner must demonstrate that he commands a high salary or other significantly high remuneration for services in relation to others in his field.<sup>14</sup> He references a previously submitted letter from [REDACTED] who indicated the Petitioner's salary was ¥5,500,000 as a "Testing Engineer" and claimed that it "is 10% beyond national coverage in Japan." The record also contains a screenshot from payscale.com reflecting that the median wage for mechanical engineers in Japan is ¥3,916,083, with a salary range of ¥542,479 - ¥8,721,506.

The Petitioner, however, did not provide comparative wage data of other testing engineers, nor did he establish that testing engineers are similar to mechanical engineers consistent with the regulatory criterion's requirement of "in relation to others in the field." See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); see also *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Regardless, even considering the average wages of mechanical engineers in Japan, the Petitioner's wages are not at the higher end of the scale. Furthermore, the Petitioner did not establish that being "10% beyond the national coverage in Japan" is indicative of a "high salary." As such, the Petitioner did not demonstrate that he meets this criterion.

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<sup>12</sup> 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).

<sup>13</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

<sup>14</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

### 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 foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-D-C-*, ID# 2093436 (AAO Feb. 19, 2019)