

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, the president of a manufacturing company, 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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not 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

The Petitioner is the founder of a manufacturing company that supplies components to companies in the aerospace industry and other high technology fields. As he has not received a major, internationally recognized award, the record must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner had not met any of these criteria. On appeal, the Petitioner maintains that he meets the following criteria: original contributions of major significance, leading or critical role, and high salary under 8 C.F.R. § 204.5(h)(3)(v), (viii), and (ix), respectively. For the reasons discussed below, we conclude that the record does not support a finding that the Petitioner satisfies at least three criteria.

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 have already been realized, rather than being prospective possibilities. They must be original and scientific, scholarly, artistic, athletic, or business-related in nature. Finally, 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. *See Visinscaia*, 4 F. Supp. 3d at 134.

The Petitioner bases his claim to eligibility under this criterion on the successes of the company he founded, its technological achievements, and upon his own business acumen. In 2007, he founded [redacted] a manufacturing company in [redacted] India, focused on producing components, sub-systems, and assemblies in the aerospace and other high technology industries. Through his leadership, [redacted] was able to enter into business relationships with major entities in the aerospace industry, such as [redacted], [redacted], [redacted] and the Indian [redacted]. In 2011, [redacted] also entered into a joint venture with [redacted] for the machining of aircraft parts.

On appeal, the Petitioner asserts that his company demonstrated remarkably high business growth in a short period of time in that he “conceived and designed a revolutionary advanced manufacturing

facility,” and in two years of being in business he had built “an unprecedented” order backlog with [redacted] to be performed over 10 years. The Petitioner states that [redacted] had also entered into a substantial agreement with [redacted] by the end of 2009 which preceded the joint venture between with [redacted]. He also notes the business agreements with the companies discussed above, and attests to his company’s job creation results and business volume growth in India.

While the growth of [redacted] shows the Petitioner’s business-related successes, the record does not establish that these achievements represent original contributions of major significance in the field. Here, the Petitioner has not submitted evidence demonstrating what impact the company’s successes have had on the field. See *Kazarian*, 580 F.3d 1030, 1036; *aff’d in part*, 596 F.3d at 1122 (holding that the petitioner had not established how his contributions had influenced the field to equate to contributions of major significance).

On appeal, the Petitioner also identifies several technological advancements [redacted] has achieved that he asserts demonstrate original contributions of major significance. He contends that a team from [redacted] and a global equipment supplier developed a new technology for machining and manufacturing diffuser cases, which reduced the global benchmark manufacturing time from 40 hours to under 20, while resulting in improved quality and efficiency. The Petitioner also claims that he developed an innovative new technology for turbine blade repair that was successfully flight tested. He also asserts that [redacted] achieved high scores on several certifications, such as AS9100 and [redacted] 97.¹

The record does not corroborate the Petitioner’s claims regarding his company’s technological successes. As evidence of [redacted]’s work on diffuser cases, he submitted a letter from [redacted] [redacted] from [redacted] thanking him for the support and work both their organizations performed “on equipment & feature selection and technology development on [redacted] Diffusor Case, culminating in successful project....” The record contains no evidence supporting the Petitioner’s claims of improved quality, efficiency, or reduced manufacturing time. Additionally, in his response to the Director’s RFE, the Petitioner states that “[s]ubsequently [redacted] used similar technology in Poland for their internal manufacturing.” However, he submitted no evidence to substantiate this claim.

As evidence of the company’s work on turbine blade repair, the Petitioner relies on two letters from [redacted] of the Indian [redacted]. In a letter from 2013, [redacted] expresses his appreciation of [redacted] work reclaiming turbine blade and noting that the technology, which was developed by the Petitioner’s “elite firm,” will “go a long way in reclamation technology and substantial savings to National Exchequer.” The second letter, from 2014, does not specifically reference [redacted]’s turbine work, but notes the work that the company has done in design, development, manufacturing, and reclamation of aerospace parts, and indicates that there is potential for more growth in long term support of base repair depots. The impacts described in these letters are prospective and potential, while the criterion requires the Petitioner to establish, at the time of filing, that his original contributions have had a significant impact. Furthermore, the impacts described in

¹ AS9000 is a quality management standard for the aviation, space, and defense industries, organized by the Society of Automotive Engineers. [redacted] is a certification standard promulgated by [redacted]

the letters are limited to [redacted] the Indian [redacted] and the National Exchequer; the record does not contain evidence demonstrating what impact is has on the field in general.

Similarly, the record lacks evidence demonstrating the significance of [redacted] certification scores, such as how they demonstrate an original contribution or what significance they were to the field. While the described technological achievements indicate that [redacted] is a successful and reputable business, they do not establish that the Petitioner has met the regulatory criterion.

Finally, the Petitioner claims that his business acumen demonstrates an original contribution of major significance to the field. He contends that his background in business development, sales, and management have allowed him to achieve uncommon goals, establish his core business in a very uncommon way, and implement strategic plans and optimized business opportunities. Additionally, he asserts that he designed and implemented a “cyber-physical advanced manufacturing system,” which required “a new class of manufacturing engineers, who were comfortable both in the digital and the physical world[,]” and that as a result, he “developed the entire training program which spanned technology, operations, quality and soft skills.”

In support of his business acumen claims, the Petitioner has submitted a number of letters. Correspondence from [redacted] president of Products and Technology at [redacted] and [redacted] the president of [redacted] both note that manufacturing capacity limits progress in product development, as it has not kept up with design systems. Both letters go on to state that the Petitioner understands this, and that this understanding “coupled with his experience running an international manufacturing entity has enabled him as a person of extraordinary ability in the business of advance manufacturing.” (emphasis in originals) In addition, the record contains a letter from [redacted] chief executive officer at [redacted] stating that he believes the Petitioner to be an individual who demonstrates an extraordinary ability in the field of business. Similarly, a letter from [redacted] an aerospace and defense expert at [redacted] states that he has found the Petitioner to be “a person with extraordinary abilities in advance manufacturing for critical sectors.”

While complimentary, the letters fail to establish that the Petitioner’s business acumen can be considered an original contribution of major significance to the field. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value; letters that lack 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. 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 8-9 (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>. Here, the letters lack specifics about what original contributions the Petitioner has made and how they have impacted the field. Rather, they claim, without explanation, that the Petitioner is an individual of extraordinary ability. Merely repeating the language of the statute or regulations does not satisfy the Petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d Cir. 1990).

The record does not include support for the Petitioner's claim that he designed and implemented a cyber-physical advanced manufacturing plant that required the creation of a new class of engineer for which he developed a comprehensive new training program. In his 2014 letter, [redacted] states that visitors to [redacted] "witness[ed] one of the finest industrial infrastructures in the country" and goes on to indicate that "there is a great potential, skill and expertise available at your firm for design, development and precision parts machining, manufacturing of re-engineered parts and reclamation of technology of critical spares." The record also contains several photographs of a building, various machines, and machined parts. However, the record does not demonstrate that the facility was designed by the Petitioner, that he developed a training program for engineers, or that this facility needed "a new class of manufacturing engineers, who were comfortable both in the digital and the physical world." Furthermore, assuming *arguendo* that the Petitioner did those things, the record does not establish that these contributions were of major significance to the field.

After reviewing the evidence in the record, we recognize the business success the Petitioner's company, [redacted] has experienced, but he has not established that this success equates to original contributions of major significance in the field. *See Visinscaia*, 4 F. Supp. 3d at 130 (indicating that success alone is insufficient to establish eligibility for this classification); *see also id.* at 134 (upholding a finding that "contributions of major significance" connotes that the Petitioner's work has significantly impacted the field). Therefore, the Petitioner has not 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).

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 Director held that the Petitioner had shown that he had performed in a leading or critical role for [redacted] but that the record did not establish that his company has a distinguished reputation through evidence of the company's reputation in the community or awards or rankings. As the record contains sufficient evidence of the Petitioner's role within [redacted] as its founder, we agree with the Director that he has performed in a leading or critical role. At issue here is whether he has performed in such a role in an organization that has a distinguished reputation.

On appeal, the Petitioner asserts that the evidence in the record establishes that [redacted] has a distinguished reputation in its own way. He states that the defense industry in India requires it to keep a low profile because of the sensitive nature of its work. The record contains documentation supporting this point from the Indian [redacted] demonstrating that [redacted] is prohibited from disclosing its role in providing the products it develops. The record reflects that the Indian [redacted] [redacted] invited the Petitioner to make a presentation at the [redacted] Conference. The Petitioner also submits evidence that members of the Indian military visited [redacted] facilities as part of their principal maintenance officers committee meeting. While the evidence in the record does not establish widespread recognition of the Petitioner's company, we find that its

partnerships with such well-established companies such as [redacted] and [redacted], together with its reputation within the Indian [redacted] demonstrate that it has a distinguished reputation. Therefore, the Petitioner has established 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).

On appeal, the Petitioner contends that he earned high income as the owner of [redacted], and that the Director failed to consider evidence of compensation from that company's joint venture with [redacted]. The Director discussed the evidence submitted regarding the Petitioner's income for 2008, 2010, and 2011, concluding that the record did not establish that he met this criterion. The record reflects that the Petitioner's income for 2010 and 2011, as stated on his Indian tax forms, was 7,209,600 and 1,645,464, respectively, in Indian rupees. In addition, the Petitioner also submitted evidence demonstrating that in 2011, he commanded an additional salary of \$220,000 for his work as the managing director of [redacted] the joint venture between [redacted] and [redacted].

Upon review of the record in its totality, the Petitioner has not established that he has commanded a high salary. In his explanatory note on salary and remuneration, he claims a salary from [redacted] equivalent to \$231,000, based on 2008 exchange rates. As evidence, he submits an account statement from Citibank for a jointly held account shared with his wife, showing all transactions in 2008. Using handwritten notations, he has marked certain deposits as being received from [redacted]. However, Citibank identifies [redacted] as the source of only some of the deposits claimed by the Petitioner, but does not indicate the origin of the others. As such, the Petitioner has not demonstrated that those deposits represent income from [redacted] as he claims. Additionally, he has not submitted evidence to demonstrate that any income he did receive from [redacted] in 2008 was high in relation to others in the field.

The Petitioner has submitted Indian tax documents, which show he received 7,209,600 rupees in 2010. He claims that amount was equivalent to \$180,000, and that it exceeded the income of 92 percent of households in India. To establish eligibility under this criterion, the relevant inquiry is how the Petitioner's income compares to others in the field, not with the general populace. Thus, he must establish his salary was high in comparison to those performing similar work in the field. USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11. The record contains a document from Monster Salary Index from 2017 which compares salaries of "managers, chief executives, senior officials and legislators" in India, but he has not shown that this evidence is relevant to time period for which he documented his income. On appeal, the Petitioner has not submitted similar information regarding salaries in 2010, or evidence of his salary in 2017, despite being alerted by the Director of these evidentiary shortcomings. As such, he has not established that his income during that time period was high in relation to others in the field.

Finally, the record contains documentation from the U.S. Department of Labor's Occupational Outlook Handbook, dated May 2016, related to compensation of chief executives. This evidence indicates that the top ten percent for those in this occupation earn \$208,000 per year, which the

Petitioner contends demonstrates he has commanded a high salary. However, when a petitioner works outside of the United States, salary comparisons should be evaluated on wage statistics or other comparable data in that country, rather than by converting the salary to U.S. dollars and viewing whether that salary would be considered high in the United States. *Id.* Thus, the Petitioner's use of the Occupational Outlook Handbook in relation to his salary from [] to establish eligibility for this criterion is inapposite.²

For the reasons discussed above, the Petitioner has not established that he has commanded a high salary in relation to others in the field.

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. 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.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's 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 R-J-S-*, ID# 1746454 (AAO June 6, 2019)

² The Petitioner has previously claimed that he would receive compensation over \$250,000 per annum in the United States once he received his work authorization, which the Director discounted, noting that eligibility could not be established based on future events. On appeal, the Petitioner has not raised this issue, and we will not consider it.