



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

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

MATTER OF S-S-L-

DATE: JUNE 18, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an industrial engineer, seeks classification as an alien 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 Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of the ten evidentiary criteria.

On appeal, the Petitioner asserts that he meets the requirements of a third criterion in addition to the two that the Director determined he meets.

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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

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 currently employed by [REDACTED] as a principal engineer. The Director found that he met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to the authorship of scholarly articles and a high salary. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to a leading or critical role for a distinguished organization. After reviewing all of the evidence in the record, we find that he does not meet the requisite three evidentiary criteria.

*Evidence of the individual’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 his decision, the Director acknowledged the Petitioner’s patent, as well as several reference letters from experts in his field, but concluded that the evidence established only that he is a productive member of his research team. The Petitioner does not challenge this conclusion, and we agree that the evidence 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)

The evidence establishes that the Petitioner authored two scholarly articles which were published in the journal *Quality Engineering*, and we therefore find that he meets this criterion.

*Evidence that the individual 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)

We first note that the Petitioner correctly indicates in his appeal brief that this criterion requires two determinations; whether the foreign national has played a leading or critical role, and whether the organization or establishment has a distinguished reputation. The evidence is sufficient to establish the distinguished reputation of [redacted]

In his analysis of the evidence submitted in support of this criterion, the Director found that the Petitioner's role was not critical to an entire organization or establishment such that he was responsible for its success or standing. The Petitioner asserts on appeal that this is not the appropriate standard for this criterion, and refers to Chapter 22.2(i)(1)(A) of the USCIS Adjudicator's Field Manual, which states that a foreign national plays a critical role when he or she "has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities."

The evidence submitted in support of the Petitioner's critical role for [redacted] consists of reference letters written by the Petitioner's current and former supervisors. These authors explain his work on [redacted]'s Advanced Process Control (APC) team, which is responsible for implementing controls in the company's manufacturing processes to ensure quality and consistency. [redacted] Vice President and General Manager of Wafer Operations at [redacted] states that within the APC team at the manufacturing facility where he's employed, the Petitioner is the only industrial engineer, and that he has developed his expertise in the more than ten years of employment with the company and "become a critical member of the APC team." [redacted] goes on to describe several projects that the Petitioner has been involved with while employed by [redacted] including leading the development of an "internal R2R control solution" that "has been deployed on more than 20 process tools in the 6" wafer line," and developing and delivering APC training to engineers and technicians, including those in Japan and the Philippines. [redacted] writes that he was the Petitioner's colleague and manager for several years, and verifies his role in developing, testing and deployment of the APC solution mentioned by [redacted], as well as development and delivery of associated training for [redacted] engineers. In addition, a letter from [redacted] who like [redacted] is a retired former supervisor of the Petitioner, describes him as a "skilled and proficient practitioner of run-to-run process control and system modelling." [redacted] explains that the Petitioner developed an algorithm that was implemented into a specific manufacturing process and "yielded increased process capability," also resulting in a patent. He concludes by noting that the Petitioner "has taken a lead role in implementing R2R a variety of different semiconductor manufacturing processes" and has spread the use of R2R within [redacted] through his training classes.

These letters reveal that the Petitioner has made contributions to [redacted] beyond the scope of his team and the facility where he is employed, but they do not sufficiently establish the importance of those contributions to [redacted]'s overall activities. [redacted] indicates that an introductory training course developed by the Petitioner has been delivered to over 40 new engineers and technicians. However, the impact of this training, and other more advanced classes developed by the Petitioner, on the company's APC teams and overall activities is not explained. Further, [redacted] mentions that the Petitioner's R2R solution has been applied to manufacturing processes for one product, but the

importance of this contribution to that product and [ ]'s overall portfolio of products is not demonstrated. He also notes that the Petitioner's experience will be valuable in applying R2R techniques to [ ]'s newly acquired solid state and flash drive manufacturing business, but does not suggest that he has already made an important contribution in this regard. Similarly, while the evidence shows that the Petitioner has recently performed and presented research on the implementation of machine learning to R2R techniques, which [ ] notes "will be a revolutionary change in manufacturing," the evidence does not establish that this research has already made an important contribution to [ ]'s activities. Accordingly, we find that the Petitioner has not established that he meets this criterion.

*Evidence that the individual 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 submitted evidence of his current salary and his total remuneration, as well as information from the Office of Foreign Labor Certification's Online Data Center and public sources, which verifies his salary and demonstrates that it is high compared to others in his field. Accordingly, we find that he meets this criterion.

### III. CONCLUSION

The evidence does not establish that the Petitioner received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in its entirety, and conclude that it does not support a finding that the Petitioner has established the level of acclaim and standing in his field required for the classification sought. For these reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

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 S-S-L-*, ID# 3522701 (AAO June 18, 2019)