



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

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

MATTER OF J-D-

DATE: OCT. 29, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, the general manager of a traditional Chinese shoe 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 Nebraska Service Center denied the petition, concluding that the Petitioner had not provided documentation satisfying the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement, or evidence that meets at least three of the ten alternate regulatory criteria.

In his appeal, the Petitioner argues that the Director erred in finding he did not meet the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3). The Petitioner further states that the evidence demonstrates his standing 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 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 the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying 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 the current general manager of [redacted] Company [redacted] in [redacted] China, which was established in 1911 and sells handmade traditional Chinese shoes and clothing. In 2010, this company established the Chinese [redacted] in [redacted] which showcases traditional Chinese women’s shoes from seven dynasties covering a period of 3000 years. The Petitioner states that he will continue his work in the traditional Chinese shoe industry in the United States by establishing a U.S.-based museum of Chinese shoe culture and history, establishing the [redacted] brand in the United States through an e-commerce platform and franchised retail stores, and establishing a research and design center.

Because the Petitioner 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 had met only the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner authored an article titled “[redacted]” published in the professional publication *West Leather*. Accordingly, we agree with the Director that the Petitioner fulfilled the scholarly articles criterion.

On appeal, the Petitioner maintains that he satisfies three additional 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 meets the requirements of at least three criteria.

A. Evidentiary Criteria

Published material about the individual 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 Petitioner initially stated that he meets this criterion based on articles published in *CHR Magazine*, a Chinese trade publication; the Japanese edition of *People's China*, a state-owned monthly magazine; *Asian Pacific Daily*,¹ described as a daily newspaper; and [redacted] *Today Evening News*, a daily newspaper.²

The Director found that the Petitioner submitted articles about himself relating to his work, but did not provide independent evidence that the articles appeared in major trade publications or other major media. On appeal, the Petitioner asserts that the Director mistakenly “downplayed the significance of media reports” and particularly emphasizes the article in *People's China* as evidence that he meets this criterion.

We disagree with the Director's determination that the submitted articles were about the Petitioner, but agree that the record does not contain the required evidence to establish that the published materials appeared in major trade publications or other major media.

The April 2015 Japanese edition of *People's China* included two short articles titled “[redacted]” and “[redacted]”, and “[redacted]”. The first article discusses the origins and history of the [redacted] brand and its founder [redacted] and states that the store's shoes make popular Lunar New Year gifts for parents. The article identifies the Petitioner as the current general manager and includes a quote from him regarding the store's customer service practices. The second article discusses [redacted]'s expansion into different product lines over the years and includes quotes from the Petitioner regarding advancements in technology, the company's commitment to hand-made products, and the popularity of the company's traditional shoes among young people in [redacted]. The article also mentions the company's agreement with a Japanese shoemaker, [redacted] to develop new textile technologies and develop new markets.

¹ Although the Director stated in the decision that the Petitioner submitted published material from *Asia Pacific Daily*, we note that the Petitioner did not submit an article from this publication, despite listing an article titled “[redacted]” among its initial evidence. The Petitioner submitted a description of *Asia Pacific Daily* from an online source in response to a request for evidence (RFE) and it appears the Director may have been referring to this material.

² The Petitioner submitted additional published materials in response to the RFE, but they were submitted as evidence under the “leading or critical role” criterion. We have reviewed these articles, published by the website of the [redacted] Tourism Bureau, *Beijing Daily*, and “house.enorth.com.cn” and they do not meet the requirements of this criterion as they are not about the Petitioner, do not identify an author, and are not accompanied by evidence to establish that these publications are major trade publications or other major media.

These articles are not about the Petitioner and his work in the field, but rather are about his employer. Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). We also note that neither of the articles from *People's China* identify the author of the material, as required by the criterion. Furthermore, the Petitioner did not demonstrate that *People's China* is a professional or major trade publication or other major medium, such as through circulation statistics or other relevant data as requested in the RFE. In lieu of such data, the Petitioner stated "according to Baidu Encyclopedia, People China [sic] is official magazine of Foreign Language Bureau under The Ministry of Culture of People's Republic of China. As an official publication of a state agency, it is of national and international significance." The Petitioner provided a translated page from Baidu³ which discusses the Ministry of Culture and the Foreign Languages Bureau, and names *People's China* as one of the five publications distributed by the bureau. The record lacks information related to the distribution data of these publications to demonstrate that they are considered to be major media and the Petitioner has not established these publications are professional or major trade publications as required by the regulation. *See Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012).

A [redacted] 2010 article in *CRH Magazine*, titled [redacted] is about the Petitioner's employer and does not mention his name. Similarly, the submitted 2017 article from [redacted] *Today Evening News*, titled [redacted] identifies [redacted] as one of many participants in a Chinese cultural heritage exhibit at the [redacted] Festival and does not mention the Petitioner by name. These articles are therefore not about the Petitioner. Further, as with the publications discussed above, the Petitioner did not submit information related to the circulation or distribution data of these publications.

Finally, the Petitioner submitted evidence of videos in which he appears. These included several interviews or other appearances on "[redacted] TV Station"; a Chinese New Year feature on "Channel of Chinese"; and a promotional video titled "[redacted]" The submitted evidence lacks the elements required by the language of the regulation as it is not published material. Each document includes a screenshot from the video and a very short description of the date, content, and location. However the evidence is not accompanied by written transcripts identifying the content of each video. For the reasons outlined above, the Petitioner has not satisfied the requirements of this criterion.

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 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.

³ The Petitioner added that "Baidu is widely considered as China's equivalent of Google" and "is a reliable search engine."

The Petitioner maintains that he meets this criterion as the “founder of the [redacted] Museum, which is arguably the only [redacted] museum in the world” and as “the inventor of quite a few novel women shoes that represent the major improvements on traditional Chinese Women shoes.” The Petitioner submitted his Chinese patent for a [redacted] reference letters that are primarily from persons who work outside his field, a letter from a business partner, and evidence related to his appearances on “[redacted] TV Station.”

The Petitioner provided evidence that he has been granted a “Patent Right for Utility Model” for a [redacted] from the Chinese State Intellectual Property Office. A patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. Rather, the significance of the innovation must be determined on a case-by-case basis. A patent recognizes the originality of the idea, but it does not demonstrate that the petitioner made a contribution of major significance in the field through his development of this idea. The Petitioner did not submit corroborating evidence demonstrating that this invention is considered a contribution of major significance within the shoe industry.

Next, we will turn to the submitted reference letters. In evaluating this criterion, we take into account the opinions of experts in the Petitioner’s field regarding the significance of the Petitioner’s contributions.⁴ On appeal, the Petitioner asserts that he has submitted “substantial testimonials from major figures in the field” and assert that the testimonials demonstrate that “there are international cooperation based on beneficiary’s expertise/work.”

However, the majority of the letters are from persons who claim no expertise in the Petitioner’s field and who make no specific claims regarding how the Petitioner has made an original contribution of major significance in his field.⁵ For example, the Petitioner submitted a letter from [redacted] Assistant Director, Overseas Exchange Department for a [redacted]-based newspaper. [redacted] describes the Petitioner as a “transcendent art curator whose efforts and achievement in facilitating and promoting the art of design of traditional Chinese shoes are internationally recognized,” as “an art guru in the sphere of Chinese shoe culture.” She mentions [redacted] Company’s participation in the [redacted] Festival, where she was present as an on-site reporter, and she mentions the Petitioner’s establishment of the [redacted] Museum, which she describes as the only museum of its kind. [redacted] concludes that the Petitioner “is a leader in his field of in [*sic*] endeavor, with sustained national / international acclaim.”

Another letter, from [redacted] an actress in the [redacted] opera, states that the Petitioner is “the most significant person in protection and promotion of traditional Chinese shoe culture,” and states that he is a “relentless artist” who has received “considerable international attention.” She mentions that the Petitioner established the [redacted] Museum and states that “the import of [the Petitioner’s] endeavor is far reaching.” The Petitioner provided similar letters from a jewelry designer and a paint company executive. The authors of these letters work in diverse and unrelated fields and

⁴ 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* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

⁵ Although we may not discuss every letter in the record, we reviewed and considered all evidence in reaching our conclusion.

do not explain the source of their knowledge regarding the Petitioner or their own expertise in traditional Chinese shoes.

Finally, Petitioner submitted a letter from [redacted], president of the [redacted] Intangible Heritage Protection Association. [redacted] states that the Petitioner is “an extraordinary artist in the design and development of traditional Chinese shoes,” and a “prominent art curator” whose “achievements in the field are unprecedented,” but he does not describe those achievements in detail or discuss their major significance in the field.

While these testimonial letters generally praise the Petitioner’s abilities, they are not opinions from experts in the field, 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.⁶ 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.⁷ 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).

The Petitioner claims that his establishment of a business relationship with the Japanese shoe company [redacted] is evidence of his “national/international impact” in the field. The Petitioner provided a letter from [redacted], president of [redacted] a subsidiary of [redacted] [redacted] states that “the design and R&D of [redacted] products are not to be underestimated and are considered an authority within the footwear industry in China.” [redacted] notes that the two companies have established a research and development center in China and are committed to working together, and he mentions their mutual business activities. Finally, [redacted] states that [redacted]’s sales in the Chinese market have been increasing under the Petitioner’s leadership. While this letter speaks to the success of the Petitioner’s employer and broadly describes his contributions to that success, it does not state how the Petitioner made an original contribution of major significance in the field.

Finally, the Petitioner initially stated that the above referenced interviews and reports that appeared on [redacted] TV Station are evidence that he “has influenced the industry and spread the charm of traditional shoes among consumers, which is part of [his] contributions in the field.” As discussed above, the Petitioner did not provide transcripts for the submitted interviews or television reports and we cannot determine whether the evidence supports the Petitioner’s claims.

The phrase “major significance” is not superfluous and thus has meaning. See *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995), quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). “Contributions of major significance” connotes that the petitioner’s work has significantly impacted the field. See *Visinscaia*, 4 F. Supp. 3d at 134. While the evidence generally reflects that the [redacted] Museum may be original in terms of its subject matter, the

⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁷ *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).

Petitioner has not met his burden to establish that the museum has had a demonstrable impact on the traditional footwear industry as a whole or in the promotion of the art of traditional footwear.

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).

The Petitioner contends that he qualifies for this criterion based on his roles as “founder and president” of the [redacted] Museum and general manager of [redacted] Company, which he describes as “nationally renowned organizations.” 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.⁸ 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. In addition, this criterion requires that the organizations or establishments must be recognized as having a distinguished reputation, which is marked by eminence, distinction, or excellence.⁹

Although the record contains secondary evidence confirming the Petitioner’s employment with [redacted] Company, which established the [redacted] Museum, he has not submitted a letter from either entity or from any individual who worked with him at [redacted] or the museum. Further, the Petitioner has not submitted organizational charts or other evidence that would independently confirm his position and placement in the organizations’ hierarchies. The Petitioner instead, submits a letter in which he briefly describes his leadership positions with [redacted] Company and [redacted] Museum, noting that he holds the highest position, made the decision to open the museum on behalf of the company, promotes the public image of both entities, and makes decisions regarding personnel, budgets and marketing strategies. However, the Petitioner’s letter cannot substitute for letters from his employers or colleagues describing his role within these organizations. See 8 C.F.R. § 204.5(g)(1) (stating that evidence of experience ‘shall’ consist of letters from employers).

The only other reference letters submitted, as discussed under the “original contributions” criterion, are vague and although they mention that the Petitioner held leadership roles with these two organizations, the writers share no personal knowledge of his work and do not offer detailed and probative information that specifically addresses how the Petitioner’s role for these organizations was leading or critical. Therefore, the record does not contain sufficient independent evidence to establish that the Beneficiary has held a leading or critical role with either [redacted] or the [redacted] Museum.

We also considered the Petitioner’s claim that both his employer and the museum enjoy a distinguished reputation. The relative size or longevity of an organization or establishment is not in and of itself a determining factor. See USCIS Policy Memorandum PM 602-0005.1, *supra*, 10-11. The Petitioner notes that [redacted] is more than 100 years old and notes that it has been recognized as a “China Well-known Trademark,” a “China Time-Honored Brand,” and has been designated as representing

⁸ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁹ *Id* at 10-11.

China's "intangible cultural heritage." However, the Petitioner has not provided evidence explaining on what criteria these recognitions are given in support of its claim that they are indicative of the company's eminence, distinction, or excellence, which might confirm its distinguished reputation. *See id.* at 11. (providing Webster's online dictionary's definition of "distinguished"). In addition, the record does not contain independent evidence that would enable us to compare [redacted]'s market position, commercial success and reputation to that of its competitors in the industry.

Further, while the [redacted] Museum have received some media coverage, the Petitioner has not submitted sufficient evidence to demonstrate that the shoe museum has a distinguished reputation in comparison to other museums. The uncommon subject matter alone is not sufficient to establish its "eminence, distinction or excellence" in the field.

For all of these reasons, the Petitioner has not established that he meets this criterion.

B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner is not eligible because he has not submitted the required initial evidence of either a one-time achievement or evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we need not 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, and conclude that it does not support a finding that the Petitioner has established eligibility for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his accomplishments is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

The Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The appeal will be dismissed for the above stated reasons. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of J-D-*, ID# 5169323 (AAO Oct. 29, 2019)