



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

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

MATTER OF J-Y-

DATE: SEPT. 3, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a blogger, writer and political analyst, 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 initial evidentiary criteria.

On appeal, the Petitioner asserts that he meets five of the ten initial evidentiary criteria, has sustained national or international acclaim, and is one of the few at the very top of his field.

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 Director found that the Petitioner met none of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that he meets five of the evidentiary criteria. After reviewing all of the evidence in the record, we find that he does not meet the initial requirement of at least three evidentiary 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 initially submitted articles which indicate that he has been listed as one of the top bloggers in China. The first such listing, [REDACTED] is reported by what appears to be a different blog. A different website provides a list of ten names for the 2011 version of this award, including the Petitioner’s, and indicates that they were chosen because their blogs “have the highest click rate and great influence.” Upon review, we agree with the Director’s conclusion that these lists do not constitute a prize or award by themselves.<sup>1</sup> In addition, no evidence is provided regarding the awarding entity, [REDACTED], or either of the websites on which these lists appear. The record therefore lacks evidence to establish that, even if the Petitioner did receive some kind of award or prize, it was nationally or internationally recognized.

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<sup>1</sup> The Petitioner indicated that he no longer has the original certificates relating to these and other lists on which his name appeared, but we note that the evidence does not indicate that those appearing on these lists received any form of prize or award.

Also, another set of articles indicates that the Petitioner was named as one of China's [redacted] [redacted] in 2009, 2010 and 2011 by boxun.com. As with the above lists, the evidence does not indicate that the individuals named received a prize or award, and the record does not include evidence of such an award.

In responding to the Director's request for evidence (RFE), the Petitioner submitted a copy of a certificate stating that his novel, [redacted] had been awarded the [redacted] in the [redacted] category by the [redacted] in 2006. An accompanying article or press release, which was posted on www.epochtimes.com, states that first, second, and third prize winners receive cash awards, while an unspecified number of "other excellent works will be awarded certificates." Although the press release provides some information regarding the selection process for these awards, the record does not establish that the [redacted] and in particular the certificate received by the Petitioner, is recognized nationally or internationally for excellence in the fields of either political analysis or writing. Accordingly, the Petitioner has not established that he meets this criterion.

*Published material about the alien 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)*

In his decision, the Director refers to articles in the record from major media outlets which report on the Petitioner's disappearance in [redacted] 2011, and concludes that these articles are not about the Petitioner and his work. This accurately describes a blog which appeared on the website of the *Wall Street Journal*, which focuses not on the Petitioner's work but on the impact of his disappearance and that of others on Sino-Australian relations. However, another article concerning his disappearance, published in *The New York Times* on [redacted] 2011, also describes his background and career at length. Another article published in the *Sydney Morning Herald* about the Petitioner's comments on demonstrations by Chinese students in Australia in 2008 also describes his career as a spy novelist, political commentator and former diplomat.

While additional articles about the Petitioner and his work were submitted, the evidence does not establish that these were published in one of the three types of qualifying media. Further, several articles which only cite to or briefly quote the Petitioner, such as one which appeared on the website of *CNN* concerning Internet publication in China, are about the topics on which he is quoted. Therefore, based upon the articles which appeared in *The New York Times* and *Sydney Morning Herald*, we disagree with the Director and find that the Petitioner 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.

Here, the Petitioner first focuses on the impact his writings have had on other political analysts, referring to a critique of one of his writings as well as multiple references to his work in the published writings of others. The critique, which claims that the Petitioner's lack of experience and limited sources led him to an incorrect conclusion regarding China-Taiwan relations, was posted on one website and then reposted on another. Although the Petitioner asserts that this evidence shows that his article led to a debate in the field on this topic, the record lacks evidence of the prestige or reach of the websites where the critique was posted, or that other political analysts reacted in either a positive or negative way.

The Petitioner also notes that his work has been cited in academic journals, and submits copies of several such articles. Those which discuss or comment upon his work include *The Journal of Asian* [redacted] while others in the record either do not include the text of the citing article or make brief reference to his work without comment. While this evidence establishes that he has made original contributions to the political discourse on China, the record does not include evidence by which the significance of his contributions can be measured, such as comparative data to illustrate his impact versus that of his peers.

Similarly, a letter from [redacted] editor-in-chief of [redacted] indicates that when the Petitioner's blogs were translated and posted on the magazine's website, several received more than 15,000 views, and one exceeded 30,000. However, as her letter indicates that the magazine is not targeted solely towards political analysts or scholars, this evidence does not demonstrate the impact these posts had on other analysts or scholars. In addition, while two of the citing articles noted above indicate that the material cited was published by [redacted] thus providing evidence that at least some portion of these views were by fellow scholars in his field, the Petitioner has not shown that the quantity and quality of these citations, or the overall pageviews, is sufficient to establish a contribution of major significance.

Further, the Petitioner asserts that media coverage of his 2011 disappearance "proves he has been a successful and influential writer and blogger, acclaimed by the international community." However, we note that this evidence has been considered under the appropriate criterion in the analysis above, and that the Petitioner does not explain the link between general media coverage and the significance of any original contributions to the fields of political analysis and writing. More importantly, the issue of his sustained national or international acclaim is reserved for the final merits determination, should he successfully establish that he meets the initial evidence requirements.

For all of the reasons discussed above, we find that the evidence does not establish that the Petitioner has made contributions of major significance to his field.

*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 Petitioner describes three groups of evidence submitted under this criterion. The first includes four collections of essays and commentaries that he wrote and which were published between 2008 and 2012, and the second is the spy novel trilogy he completed in 2004. On appeal, he does not articulate why he believes the Director's determination that these do not qualify as "scholarly articles" was incorrect, nor does he submit additional evidence in support of the scholarly nature of this evidence. As noted by the Director in his decision, scholarly articles are generally written for learned persons in that field.<sup>2</sup> The Petitioner has not demonstrated that these materials were written for learned persons in the field of political commentary or writing, or can otherwise be characterized as scholarly articles.

In direct response to the Director's finding that his articles cannot be considered to be scholarly, the Petitioner points to two articles that he asserts were published in academic books, one of which he co-edited. This evidence is supported by a reference letter from [redacted] of [redacted] [redacted] who notes that the Petitioner's chapter in the book [redacted] [redacted] analyzes the effect of the Internet on the policies of the Chinese Communist Party and includes multiple references to the work of other scholars. In addition, the editor of this book, [redacted] of the [redacted] writes that the chapter "was written in accordance with academic standards" including footnotes and scholarly language. A copy of this chapter, together with a partial English translation, generally supports these statements. Accordingly, this article can be characterized as a scholarly article for the purposes of this criterion.

[redacted] also describes the Petitioner's chapter in the book he co-edited, [redacted] [redacted] (also translated as [redacted] [redacted] elsewhere in the record,) as a "scholarly essay" which was published along with essays written by other well-known scholars. Although he describes it as part of a "recognized scholarly genre" which doesn't require footnotes, the record does not differentiate between this essay and the collections of essays described above which were written by the Petitioner alone. In addition, the record includes an article from *The New York Times* which does not describe [redacted] the publisher of the book, as an academic or scholarly publisher, instead noting that it "publishes its share of rumor-filled books."

The Petitioner further notes that several of his blogs have been translated and published in the online magazine *The Diplomat*, which [redacted] indicates "bridges academic writing and general interest" and strives to "make scholarly discourse on Asian affairs accessible to those outside academia." He also point to [redacted] letter, in which he writes that some Chinese bloggers such as the Petitioner can have similar influence as scholars in the United States can by writing in journals such as *The Atlantic* and *The New York Review of Books*. However, neither writer suggests that either the Petitioner's original blogs or the translations appearing on *The Diplomat's* website target learned persons as opposed to the general public.

After review, the Petitioner meets this criterion based solely on his book chapter in [redacted]  
[redacted]

<sup>2</sup> See 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.

*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)

This criterion requires that evidence establish 1) performance in a leading or critical role for 2) an organization or establishment having a distinguished reputation. 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 an individual's impact on the organization or the establishment's activities. His or her performance in this role should establish whether the role was critical for the organization or establishment as a whole.<sup>3</sup>

Here, the Petitioner asserts that his position as one of two vice presidents for the [redacted] [redacted] is a qualifying leading role<sup>4</sup>, but the record does not include evidence regarding the duties of this role or the organizational structure of the association. While a title may aid in demonstrating that a position is leading, in this case it is insufficient to establish the qualifying nature of the Petitioner's role. Similarly, the Petitioner submitted evidence that he is listed as a consultant on the website of the magazine [redacted] but submitted no evidence to support his assertion that this is a leading role for the magazine.

In addition, although not mentioned in the Director's decision, the record does not include evidence to demonstrate that either the [redacted] or [redacted] enjoy distinguished reputations. While the evidence from the website of [redacted] includes the magazine's number of "WeChat" subscribers, this unsubstantiated data is insufficient to establish that it enjoys a distinguished reputation.

For all of the reasons stated above, we conclude that the Petitioner does not meet 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 sustained 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

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<sup>3</sup> *Id.*

<sup>4</sup> The Petitioner asserts that the Director's conclusion that this role does not pertain to his occupation as a writer "is not cogent." However, we note that while an individual's role for an entity whose purpose or function is unrelated to their claimed field of expertise will have little or no bearing on their national or international acclaim or standing in that field, such a relation is not one of the conditions for this criterion.

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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 J-Y-*, ID# 4162718 (AAO Sept. 3, 2019)