



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

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

MATTER OF M-G-

DATE: SEPT. 17, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a financial journalist, seeks classification as an individual of extraordinary ability in business. *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 satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief asserting that he fulfills 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 the 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

At the time of filing, the Petitioner was working as a special reporter in New York for [redacted] a Nepali business magazine. 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 met only the awards and leading or critical role criteria under 8 C.F.R. § 204.5(h)(3)(i) and (viii), respectively. On appeal, the Petitioner maintains that he also satisfies seven additional regulatory criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that he 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).

As evidence under this criterion, the Petitioner submitted documentation indicating that he received an Excellent Economic Journalist Award (2011) from the [redacted] [redacted] and media coverage showing that this award was nationally recognized in Nepal.

Accordingly, the record supports the Director's determination that the Petitioner meets this regulatory 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 contends that he meets this criterion based on membership with [REDACTED], Nepal America Journalist Association (NEAJA), and U.S. Department of State's Foreign Press Centers (FPC). In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.¹ The Petitioner offered letters from [REDACTED] and NEAJA identifying him as a member and screenshots from the associations' websites. Although the screenshots relate to the background and history of [REDACTED] and NEAJA, the Petitioner did not provide their membership requirements, so as to demonstrate that they require outstanding achievements, as judged by recognized national or international experts in the field consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

In addition, the Petitioner provided his press credential from FPC and information from that organization's website entitled "Foreign Press Center Media Credential Application Guidelines (Washington, DC)." This information stated that FPC issues "press credentials to foreign media with a primary audience/circulation located outside the United States" and that "these credentials grant access to FPC events, facilities and services in Washington, DC and New York, NY" The documentation from FPC further indicated that "[v]alidity of the FPC credential is in accordance with the terms of the applicant's visa status, duration of eligibility to work in the United States, and/or reciprocity with the employing media agency's home country." According to the information from FPC, the Petitioner's credential from that organization represents a press qualification or media pass rather than membership in an association. The Petitioner has not demonstrated that he acquired "membership" with FPC based on his outstanding achievements, as judged by recognized national or international experts. For the above reasons, the Petitioner has not demonstrated 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).

As documentation for this criterion, the Petitioner presented articles in *Republica*, *Kathmandu Post*, and *Nepalnews.com*, but the author of these articles was not identified as required by the language of

¹ 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).

the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Furthermore, the date of the article in *Nepalnews.com* was not provided as required by this criterion. In addition, these articles only briefly mention the Petitioner.² 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). For example, the article in *Nepalnews.com* is about remarks given by Nepal's finance minister at the [redacted] meeting and not the Petitioner. Finally, the record does not include evidence showing that *Republica* and *Nepalnews.com* are major media. Based on the foregoing, the Petitioner has not established that he meets this criterion.

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).

For this criterion, the Petitioner submitted four letters from his employers. Two of these letters are from [redacted] news section chief of [redacted] Television Network. [redacted] asserted that the Petitioner was "Chief of 'Banking and Share Beat' of Economic News bureau" and "Sub-editor of News Department." He further stated: "[O]ur correspondents from outside capital started sending news related to Banking and Share Beat. Because of that we had given responsibility to [the Petitioner] to collect all the news outside from [redacted] Valley from our correspondent and given task judge himself to prepare as well as edit news to be broadcasted." The aforementioned letters from [redacted] [redacted] however, do not discuss whose work the Petitioner judged or the specific news reports he edited. The lack of specific, detailed information is not sufficient to demonstrate that the Petitioner meets the regulatory requirements of this criterion. Here, the Petitioner has not shown that his activities with [redacted] Television Network constituted his participation, either individually or on a panel, as a judge of the work of others in the field.

In addition, the record contains a letter from [redacted] chief executive producer for [redacted] Television, appointing the Petitioner as a "content editor" effective March 1, 2018, and stating that his duties will include deciding "how and which news will be broadcast on the TV." This appointment to serve as a content editor is not evidence of his participation as a judge of others' work. The language of 8 C.F.R. § 204.5(h)(3)(iv) specifically requires "[e]vidence of the alien's participation . . . as a judge of the work of others."³ Here, the record does not include evidence from [redacted] Television indicating that the Petitioner actually participated in judging correspondents' news submissions.

Furthermore, the Petitioner provided a letter from [redacted] editor-in-chief of [redacted] appointing the Petitioner as "International Bureau Chief" with the responsibility of editing international news effective September 1, 2018. This appointment, however, post-dates the filing of the petition. Eligibility must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Again, the appointment to an editorial position does not necessarily demonstrate that he actually judged the work of others. Accordingly, the Petitioner has not established that he meets this criterion.

² For instance, the article in *Nepalnews.com* had only one sentence mentioning the Petitioner and the articles in *Republica* and *Kathmandu Post* had just two sentences mentioning him.

³ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8 (instructing that a petitioner must show that he has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization).

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).

As evidence under this criterion, the Petitioner submitted letters of support discussing his work reporting on economic, financial, and banking matters. In order to meet this criterion, a petitioner must establish that he has made original contributions of major significance in the field. For example, a petitioner may show that his 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 contends that he has “made significant contributions by collecting and effectively broadcasting economic/financial and banking and share beat news in Nepal.” He argues that the recommendation letters demonstrate his eligibility for this criterion.⁴ As discussed below, these letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to demonstrate the nature of specific “original contributions” that the Petitioner has made to the field that have been considered to be of major significance.

For example, [redacted] president of [redacted] stated that the Petitioner “is the first journalist/reporter who professionally made banking and share beat as his working area, there are more than 2 dozen television station[s] broadcast the program. Due to his excellent reporting, he established himself banking beat reporter in the banking field.” Likewise, [redacted] associate editor for [redacted] asserted that the Petitioner was “the first reporter to have focused on banking and share beat in Nepal’s television” and that his work was “instrumental in bringing banking literacy” and financial awareness to Nepal’s public. The record, however, does not include sufficient information or evidence demonstrating that the Petitioner’s work has affected the field in a substantial way or otherwise constitutes original contributions of major significance in his field.

In addition, [redacted] executive director of [redacted] Bank, asserted that the Petitioner provided an “important contribution in promoting economic and banking news by way of information collection and news dissemination in ‘Banking and Share’ beat.” [redacted] further indicated that the Petitioner “contributed in making people who save and invest aware by promoting financial literacy through analysis of latest trends, investigative reporting and its dissemination.” Similarly, [redacted] director of the [redacted] stated that the Petitioner “played an important role as a bridge in increasing awareness about share markets among general public [The Petitioner], through the reports he prepared, regularly informed investors about how to invest in primary and secondary shares and what affects share market.” While the [redacted] and [redacted] contended that the Petitioner’s work has informed the Nepali public about financial and investment matters, they did not offer specific examples of how his news reports have risen to the level of contributions of major significance in the overall field.⁵

⁴ While we discuss a sampling of these letters, we have reviewed and considered each one.

⁵ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9; see also *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

Letters that specifically articulate how a petitioner's contributions are of major significance in the field and his 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). Without sufficient information and evidence demonstrating that his work constitutes original contributions of major significance in the field, the Petitioner has not established 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).

As documentation for this criterion, the Petitioner submitted articles he wrote for *BRTNepal.com*, *Share Market*, *Kantipur Daily*, and *Nepal National Weekly*. In addition, the Petitioner contends that his journalistic work was broadcasted by [REDACTED] Television. The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires his "authorship of scholarly articles in the field, in professional or major trade publications or other major media."⁸ Furthermore, a scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field.⁹ Here, the Petitioner has not established that his articles and television news segments were for "learned" persons, rather than for the general population. Moreover, he has not shown that his articles and television news segments contain the characteristics of scholarly articles.¹⁰ The Petitioner therefore has not established that he satisfies 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).

The Director found that that the Petitioner had demonstrated his eligibility under this criterion. For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary evidence showing that he meets the requirements of this criterion. Accordingly, the Director's determination on this issue will be withdrawn.

The Petitioner contends that he has performed in a leading or critical role for [REDACTED] Television Network and [REDACTED]. For 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.¹¹ 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

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).

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

⁹ *Id.*

¹⁰ *Id.* (indicating that scholarly articles "should have footnotes, endnotes, or a bibliography").

¹¹ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

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.¹²

Here, the Petitioner has not demonstrated that his positions as a banking beat report for [redacted] Television Network and as a special reporter for [redacted] reflect his leading or critical role for these organizations overall. With respect to his role for [redacted] Television Network, the Petitioner presented two letters from [redacted] dated January 2014 and June 2014. [redacted]'s January 2014 letter stated: "[redacted] Television appointed [the Petitioner] at Economic News Department to gather news related to Banking and Share Beat in the capital and prepare as well as edited [sic] collected news to broadcast." In addition, the June 2014 letter from [redacted] identified the Petitioner as "Chief of 'Banking and Share Beat' of Economic News bureau" and "Sub-editor of News Department," but did not further elaborate on his duties and responsibilities in those positions. The lack of specific, detailed information about the aforementioned positions is not sufficient to demonstrate that the Petitioner's role was leading or critical for [redacted] Television Network.

Regarding his role for [redacted] the Petitioner offered two letters from [redacted] dated September 2015 and September 2018. The September 2015 letter from [redacted] stated that "[redacted] has assigned [the Petitioner] as [redacted] reporter through August 15, 2020." In addition, [redacted] September 2018 letter indicated that [redacted] had appointed the Petitioner as "International Bureau Chief" with the responsibility of editing international news effective September 1, 2018. This "International Bureau Chief" appointment post-dates the filing of the petition. Eligibility, however, must be established at the time of filing. See 8 C.F.R. § 103.2(b)(1).

Although the aforementioned letters confirmed the Petitioner's employment and discussed his news assignments, they did not contain detailed, probative information demonstrating the specific nature and outcomes of his roles with [redacted] and [redacted] Television Network. As it relates to a leading role, the Petitioner did not provide evidence to establish where his positions fit within these organization's overall hierarchy. Further, although [redacted]'s June 2014 letter identified the Petitioner as "Chief of 'Banking and Share Beat' of Economic News bureau" and "Sub-editor of News Department," this information is not sufficient to show that these positions were leading or critical for [redacted] Television Network overall. Furthermore, the aforementioned letters did not explain how the Petitioner's positions were leading compared to [redacted] and [redacted] Television Network's other editorial staff, nor did they indicate that his roles were of significant importance for these organizations' success or standing so as to demonstrate a critical role.

Finally, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the organizations or establishments to have a distinguished reputation, which is marked by eminence, distinction, or excellence.¹³ While the record contains information about [redacted] Television Network and [redacted] from their websites, this information is not sufficient to demonstrate that they have a distinguished reputation in the news industry. USCIS need not rely on self-promotional material. See *Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9). For the above reasons, the Petitioner has not demonstrated that he fulfills this criterion.

¹² *Id.*

¹³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10-11.

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).

As documentation for this criterion, the Petitioner submitted a January 2018 letter from the chief executive producer for [redacted] Television offering him a position as content editor with a monthly salary of NRS 80,000.00. This letter is addressed to the Petitioner in New York and states that [redacted] Television “reporters will email you their news stories on a daily basis” and that the Petitioner will be “helping us from U.S.” The letter does not indicate that the Petitioner will be working as a journalist in Nepal.

In addition, the record includes a September 2018 letter from the editor-in-chief of [redacted] promoting the Petitioner to the position of International Bureau Chief in New York with a monthly salary of NRS 65,000.00 effective September 1, 2018. This promotion and its accompanying salary, however, post-date the filing of the petition. Eligibility must be established at the time of filing. See 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner has not presented evidence demonstrating that his salaries from [redacted] Television and [redacted] are high relative to other journalists working in the United States.

The Petitioner also provided a January 2014 letter from [redacted] chairman of the [redacted] [redacted] (Nepal), listing the monthly salaries of the Petitioner and four journalists working in Nepal. [redacted] asserted that the Petitioner’s January 2014 monthly salary of “\$232.00 as per today’s exchange rate (NRS 22,960.50) . . . is the highest salary in Nepal” for a journalist employed as a television business reporter or financial sector reporter. The record, however, indicates that the Petitioner has worked in New York since April 2013. Accordingly, his January 2014 U.S. monthly salary does not represent a proper basis for comparison with the salaries of journalists working in Nepal.¹⁴ Because the Petitioner was working in New York in January 2014 and not Nepal, he must submit evidence showing that he earned a high salary relative to other journalists in the United States at that time. Without information comparing the Petitioner’s earnings to high salaries of financial journalists working in the United States during the same time period, the Petitioner has not established that he meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales. 8 C.F.R. § 204.5(h)(3)(x).

The Petitioner requests on appeal that we consider comparable evidence for this criterion, stating: “I implore you to consider the totality of my evidence. My track record and career milestones will reflect my commercial successes in journalism.”¹⁵ The regulation at 8 C.F.R. § 204.5(h)(4) allows for

¹⁴ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11 (instructing that individuals “working in different countries should be evaluated based on the wage statistics or comparable evidence in that country”).

¹⁵ The regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of the Petitioner’s commercial success, “as shown by box office receipts or record, cassette, compact disk or video sales.” Moreover, the evidence must show that the volume of sales and box office receipts reflect a petitioner’s commercial successes relative to others involved in similar pursuits in the performing arts.¹⁵ Here, the Petitioner has not shown that journalism falls within in the “performing arts,” nor does the record include receipts or sales that represent evidence of his commercial successes.

comparable evidence if the listed criteria do not readily apply to his occupation.¹⁶ A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence he has included is “truly comparable” to that required under 8 C.F.R. § 204.5(h)(3).¹⁷

Here, the Petitioner has not shown why he cannot offer evidence that meets at least three criteria. The fact that he did not provide documentation that satisfies at least three is not evidence that a journalist could not do so. Furthermore, the Petitioner does not explain which evidence should be considered and how that documentation is truly comparable to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(x). For these reasons, the Petitioner did not establish that he qualifies for this criterion through the submission of comparable evidence.

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.

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 and recognition of his work are indicative of the required sustained national or international acclaim or that they are 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).

For the foregoing 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 M-G-*, ID# 4194519 (AAO Sept. 17, 2019)

¹⁶ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

¹⁷ *Id.*