



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

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

In Re: 7406398

Date: APR. 27, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an attorney, seeks to classify the Beneficiary, a systems analyst, as an alien of extraordinary ability.<sup>1</sup> *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 that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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.

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<sup>1</sup> The record does not formally designate the Beneficiary as the Petitioner's client, but, as the Petitioner notes, "any person" may file a petition to classify a given beneficiary as an alien of extraordinary ability. *See* 8 C.F.R. § 204.5(h)(1).

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 a beneficiary’s sustained acclaim and the recognition of their 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 they 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 beneficiary 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).

## II. ANALYSIS

The Petitioner states that the Beneficiary is “an ERP [Enterprise Resource Planning] Systems Analyst, specializing in Product Life Management (PLM) and Business Intelligence (BI).” At the time the present petition was filed in April 2019, the Beneficiary was employed by [REDACTED] which filed approved nonimmigrant petitions on his behalf in July 2013 and July 2016. Subsequently, in May 2019 and again in January 2020, [REDACTED] filed nonimmigrant petitions on his behalf. The 2019 petition was approved; the 2020 petition is still pending.<sup>2</sup>

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, the Petitioner must show that the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims that the Beneficiary meets four criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director found that the Beneficiary met the criteria numbered (iv) and (vi), but not (viii) and (ix). On appeal, the Petitioner asserts that the Beneficiary meets all four claimed evidentiary criteria. After reviewing all of the evidence in the record, we agree with the Director that the Beneficiary meets the criteria relating to judging and authorship of scholarly articles. However, for the reasons explained below, we conclude that the Beneficiary does not meet the criteria pertaining to a leading or critical role and high remuneration.

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<sup>2</sup> Part 4, line 8 of the petition form asked whether any other immigrant petitions had been filed by the Beneficiary or on his behalf. The Petitioner answered “no.” The Beneficiary, however, filed a petition on his own behalf in August 2011, seeking a lower-priority employment-based immigrant classification. The petition was approved shortly afterward.

*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 Petitioner initially stated:

[The Beneficiary] performs in a leading role as a Consultant in SAP PLM and a Business Intelligence Analyst for [redacted]. His duties include the design and configuration of ECM, as well as managing changes in ECO and ECR. He leads critical initiative projects and implements and innovates concepts like Big Data and Machine Learning, after conducting research.

The Petitioner submitted background information about [redacted] and a client, [redacted] the manufacturer of [redacted] equipment. The materials establish the distinguished reputation of [redacted] but not of [redacted].

A letter attributed to the vice president of [redacted] calls the Beneficiary “a crucial contributor for our success” and lists “[a] few highlights of [the Beneficiary’s] accomplishments at [redacted]”:

- [The Beneficiary] redesigned and implemented a new solution for the client’s Supplier collaboration process after identifying the gaps, which saved them \$800K in the process.
- He improved sales order processing efficiency by 60% through the effective design and received great accolades from customer service representatives.
- [The Beneficiary] designed and implemented the client’s new reporting system which improved the performance and operation efficiencies immensely. This project won the best innovation award.
- [The Beneficiary] has received best resource, team player awards and commendations from [redacted]’s clients regarding his work and solution designs.

The letter describes the Beneficiary’s technical proficiencies but does not fully explain their impact on the organization. The Petitioner also submits letters attributed to a former support lead at [redacted] and the chief executive officer of a contracting firm that worked with the Beneficiary at [redacted].

There are several reasons to infer common origin, at least in part, of the three letters. All three of these letters are unsigned, and printed in the same font on plain paper with no letterhead. There are similarities of style and wording as well, such as needless capitalization of some words and references to the Beneficiary as “the expert” rather than “an expert.”

Each letter ends with three indented words:

Address

Email

Phone

No letter includes an actual email address after “Email,” or a telephone number after “Phone.” Only one letter (attributed to the [ ] official) shows an address on the line marked “Address.” The other two letters have no contact information at all, making them difficult to verify. Letters attesting to a beneficiary’s employment experience must include the address of the writer. 8 C.F.R. § 204.5(g)(1).

The above evidence of common origin diminishes the credibility of the unsigned letters. *See Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *see also Mei Chai Ye v. U.S. Dep’t. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm’r 1989).

The Petitioner submits a 2013 article from a trade publication, indicating that [ ] would be one of the first SAP customers taking a brave step forward” by using SAP’s “celebrated HANA platform” for database management. The Petitioner asserts that the Beneficiary played a key role in this transition, despite not being an employee of SAP or [ ]. The article does not mention the Beneficiary, and the only evidence of the Beneficiary’s involvement is in the form of the unsigned letters discussed above, only one of which mentions the HANA platform. (Another letter indicates that [ ] is a [ ] partner with SAP.”)

On appeal, the Petitioner states that the Director “fails to consider other evidence that clearly establishes that the beneficiary distinguished himself quite clearly and that his distinguished achievements were lauded by others in the field.” The issue, however, is not whether “the beneficiary distinguished himself.” The regulation requires evidence that the Beneficiary performed in a leading or critical role for organizations or establishments with a distinguished reputation.

Moreover, the “other evidence” in question is a letter that the Petitioner identifies as Exhibit G(1), attributed to an official of [ ] attesting to the Beneficiary’s role “in several new project initiatives in [ ].” The record, however, contains no Exhibit G(1). Exhibit G is a copy of the Beneficiary’s IRS Form W-2, Wage and Tax Statement, for 2017, issued by [ ]. The record contains no other indication that the Beneficiary worked at [ ] either directly or as a contractor. Because the letter itself is not in the record, and the assertions quoted from that letter are not otherwise consistent with the record, we cannot grant any evidentiary weight to quotations purporting to arise from that letter.<sup>3</sup>

At best, the submitted materials indicate that the Beneficiary was involved in a high-profile project for a prominent client. The evidence is not sufficiently complete or reliable to support the conclusion that the Beneficiary performed in a leading or critical role for [ ] or [ ] or that [ ] has a distinguished reputation.

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<sup>3</sup> The Petitioner submitted lengthy statements with the initial filing of the petition and in response to a request for evidence. Neither of those statements include any mention of the letter identified as Exhibit G(1). It appears that the Petitioner may have inadvertently referred to correspondence relating to an unrelated petition. We note that the Beneficiary has co-authored scholarly articles with another individual who shares the Beneficiary’s surname, and who is identified as a manager at [ ].

The Petitioner has not shown that the Beneficiary satisfies 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)

□ paid the Beneficiary \$104,690.96 in 2017. A printout from the online version of the *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics (BLS), shows that the median annual wage for computer systems analysts was \$88,740 in 2018. But the same printout shows that “the highest [paid] 10 percent earned more than \$142,220.” A printout from *U.S. News & World Report* indicates that, in 2017, 25% of computer systems analysts earned salaries higher than \$112,540. This information indicates that the Beneficiary’s salary was above average, but not significantly high in relation to others in the field.

The Petitioner also submitted an analysis by Glassdoor for “Computer Systems Analyst Salaries in Illinois,” where the Beneficiary was employed at the time. The analysis showed “Average Base Pay” of \$70,198 per year, in a salary range from \$59,000 on the low end to \$92,000 on the high end. The same analysis, however, stated: “The national average salary for a Computer Systems Analyst is \$70,197 in the United States.” Thus, Glassdoor cited the same average figure for Illinois and the United States as a whole, and this figure is substantially lower than the national figure from the more authoritative BLS site, as well as the *U.S. News* site. The Petitioner does not explain why the figures from Glassdoor should carry more weight than two other sources that are broadly consistent with one another, but not with Glassdoor.

The Petitioner has not established that the Beneficiary has commanded significantly high remuneration in relation to others in the field.

### 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 project cited as the Beneficiary’s signature accomplishment took place in 2013, six years before the filing of the petition, and this one event would not suffice to establish the *sustained* acclaim that the statute demands.

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary’s eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.