



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

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

In Re: 4998313

Date: JAN. 9, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a trek and mountaineering expedition leader, seeks classification as an individual of extraordinary ability. 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 did satisfy any of the ten initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* 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) 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).

## II. ANALYSIS

The Petitioner is a Sherpa and mountain climbing guide who has participated in a number of climbs of some of the highest mountains in the world including Mount Everest. The Petitioner indicates employment since 2004 with the [redacted] companies [redacted] and [redacted]

[redacted], and with [redacted] based in [redacted] Washington. Because he 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 determined that the Petitioner did not fulfill any of the initial evidentiary criteria. On appeal, the Petitioner argues that he meets four criteria, discussed below. We have reviewed all of the evidence in the record and we conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

### A. Comparable Evidence

The Petitioner argues that he “met his burden to show that the ten regulatory criteria do not readily apply to his occupation and that the evidence he submitted is comparable to show his national and international recognition for his work in his field.” Specifically, the Petitioner claims that he provided evidence “from multiple sources to explain the fundamental difficulties elite Sherpas encounter in being recognized nationally and internationally for their extraordinary and incredibly dangerous work.” The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation.<sup>1</sup> 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 “comparable” to that required under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

Although the Petitioner offered documentary evidence relating to the life, history, and overview of Sherpas, as well as the risks and dangers, the regulatory requirement for the submission of comparable evidence is whether the criteria “do not readily apply to the beneficiary’s occupation.” 8 C.F.R. § 204.5(h)(4). Here, the Petitioner did not demonstrate how his evidence establishes that the criteria

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<sup>1</sup> 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* 12 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

<sup>2</sup> *Id.*

do not readily apply to Sherpas and mountain guides and why he cannot offer evidence that meets at least three of the criteria. The Petitioner's claim that Sherpas face difficulties in receiving national or international recognition for their work does not necessarily show that Sherpas cannot fulfill at least three criteria. In addition, the decision that a petitioner received national or international recognition is conducted in a final merits determination after at least three criteria are satisfied. *See Kazarian* 596 F.3d at 1115.

Further, as discussed below, the Petitioner maintains that he meets four criteria without the submission of comparable evidence, including memberships under 8 C.F.R. § 204.5(h)(3)(ii), published material under 8 C.F.R. § 204.5(h)(3)(iii), original contributions under 8 C.F.R. § 204.5(h)(3)(v), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). Moreover, the Petitioner did not show that Sherpas or mountain guides cannot present evidence relating to the other criteria, such as awards under 8 C.F.R. § 204.5(h)(3)(i), judging under 8 C.F.R. § 204.5(h)(3)(iv), and high salary under 8 C.F.R. § 204.5(h)(3)(ix). The fact that the Petitioner did not provide documentation that fulfills at least three criteria is not evidence that he could not do so. For these reasons, the Petitioner did not establish that he qualifies for these criteria through the submission of comparable evidence.

Next, the Petitioner's counsel lists 11 individuals with corresponding receipt numbers and claims that "USCIS has approved extraordinary ability petitions for the following clients of our firm" and "[e]ach of these individuals relied on the use of comparable evidence to establish their eligibility for an E11 immigrant visa." However, each petition is reviewed on its own merits. Further, we are not bound by decisions of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000). Moreover, Counsel did not demonstrate that the issues in those cases were strikingly similar to the Petitioner's case, including the application of comparable evidence.

## B. Evidentiary Criteria

*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).

On appeal for the first time, the Petitioner asserts that he meets this criterion due to his membership in the [redacted] and the [redacted]. 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.<sup>3</sup>

Regarding [redacted] the Petitioner submitted a letter from [redacted] the president of that association, stating that the Petitioner has summited [redacted] nine times and that he is registered as a member of the association. On appeal, the Petitioner provides a copy of his membership card for the [redacted] showing

<sup>3</sup> *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).

he is a General Member of the organization, and screenshots from the [ ] website that state “[ ] as the name itself speaks, is an association of [ ] The Board of Committee members thus includes all the veteran Nepali climbers.” However, the Petitioner does not provide evidence establishing the membership requirements for the [ ] showing the organization requires outstanding achievements, as judged by recognized national or international experts, such as the bylaws or constitution of the [ ]

Regarding the [ ], the Petitioner submitted a letter from [ ] its chief administrative officer, stating that the Petitioner “is [a] Support Climber . . . of this association.” On appeal, the Petitioner includes screenshots from the organization’s website, indicating it operates “as a national alpine association of Nepal to promote mountain tourism, climbing sports, protect mountain environments and preserve and promote cultural heritage of mountain people.” The materials outline the following membership levels:

- **General Members:** Everest or 2 times 8000m summiteer, mountaineers and any individual Nepalese citizen interested in mountaineering;
- **Associates Members:** Trekking, travel and mountain tourism related agencies;
- **Institutional Members:** Different tourism organizations;
- **Book Holder members (Professional Members):** Sardar, senior support climbers, support climbers, cook and kitchen boys;
- **Life members:**  
Nepalese- Rs.25,000/- as approved by Executive Committee.  
Foreigners – US \$1,000.00 as approved by Executive Committee

The Petitioner did not show that the membership requirements for the [ ] require outstanding achievements, as judged by recognized national or international experts. The record reflects that the [ ] focuses on a certain level of experience and the payment of dues, rather than outstanding accomplishments and achievements in the field.<sup>4</sup> Here, the Petitioner does not demonstrate that possessing the stated summiteering or mountaineering experience is indicative of outstanding achievements consistent with this regulatory criterion. Further, the Petitioner has not establish that recognized national or international experts judge membership in the [ ]

For the reasons discussed above, the Petitioner did not establish that he satisfies 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).*

The Petitioner’s submissions contain a number of foreign language documents. While the record includes English translations, some of them do not contain a translator’s certification, or are not “full” and “complete” translations, as required by the regulatory requirements under 8 C.F.R. § 103.2(b)(3). Specifically, the translation of an article dated 2017 from the Nepali weekly newspaper *Ghatana Ra Bichar* specifies that it only translated an “extract” of the foreign language document. In addition, an

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<sup>4</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

article from the Dutch travel magazine *360°* appears to be in Dutch, however the translation of the article does not contain a certification of the translator indicating that the translation is complete and that he or she is competent to translate from the foreign language into English. Another article from the Dutch magazine *Hoogtelign* appears to be in Dutch but is not accompanied by an English language translation. In light of these deficiencies, the foreign language documents and their translations are insufficient to establish the Petitioner's eligibility.

Even if we were to consider these documents, we would not find that they satisfy this criterion. Specifically, the article from *360°* is about the author's experience on a "mini-expedition" to the [redacted] guided by the Petitioner and the Petitioner's brother, [redacted]. The article from the Dutch magazine *Hoogtelign* is about Alaska's Sherpa exchange program in which the Petitioner participated. These articles are not "about" the Petitioner as required under the regulation. In addition, the extract of an article from *Ghatana Ra Bichar* does not indicate the author of the material, as the criterion specifically requires.

The record contains several additional articles. One from *The Himalayan Database*, about a 2012 large expedition to [redacted] mentions that the Petitioner was one of 25 Sherpas who successfully summited the mountain, but is not "about" the Petitioner. An article from an unidentified source about a 2009 expedition to [redacted] that included the Petitioner, and another concerning the Petitioner published in *Nepal Saptahik*, do not include, as required, the author of the material. Finally, an article regarding the Petitioner from the website [www.thepowernews.com](http://www.thepowernews.com) discusses his climbing since 2004 with [redacted] and [redacted] his completion of basic and advanced training at [redacted] between 2005 and 2006, his summits of [redacted] between 2005 and 2009, and his rescue work and rescue training between 2014 and 2015. The Petitioner, however, has not established that this website constitutes a professional or major trade publication or other major media.

In light of the above, the Petitioner has not shown that he met 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).

The Petitioner argues that he has submitted "33 expert letters" documenting his "original contributions of major significance" in the field of mountaineering. He claims those contributions include "saving the lives of other climbers," "improving mountaineering safety," "using his search and rescue skills to teach others how to climb safely," and "contributing to the revitalization of the mountaineering industry after the devastating earthquakes in 2014 and 2015." 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.<sup>5</sup> 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.

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<sup>5</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8 (providing an example that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

The letters praise the Petitioner for his talents and experience.<sup>6</sup> For example, [redacted] mountain guide, indicated that the Petitioner’s “exceptional skills and advanced technical knowledge on the mountain make him one of the most able and talented guides available in the world.” [redacted] mountain guide, praises the Petitioner’s “physical strength and mental fortitude.” [redacted], a climbing enthusiast, described the Petitioner as being exceptional based upon “his elite level of physical fitness, strength and stamina; his knowledge of alpine conditions and risk assessment skills; and his high level of skill and technical training gained from his extensive resume of high altitude experiences.” Although the letters praise the Petitioner for his skills, they do not explain what specific contributions the Petitioner has made, or how they are “of major significance in the field.” Having a diverse skill set is not a contribution of major significance in-and-of-itself. Rather, the record must be supported by evidence that the Petitioner has already used those unique skills to impact the field at a significant level.

The letters also describe specific events and accomplishments from the Petitioner’s experience. For instance, [redacted] a recreational climber, stated that while summiting [redacted] the Petitioner “grabbed my shoulder to save me from a dangerous fall off the steep incline.” [redacted], a mountaineer and rock climber, states that the Petitioner helped him descend from the summit of [redacted] when he ran out of oxygen. In addition, in his aforementioned letter, [redacted] confirmed that the Petitioner “has summited [redacted] 9 times.” [redacted] mountain guide, provides that the Petitioner “has completed the advanced mountaineering course through [redacted] in Nepal and is now an instructor with this organization.” The letters, however, do not establish that the Petitioner’s personal accomplishments and experiences have risen to a level constituting original contributions of major significance to the overall field.<sup>7</sup>

Further, the Petitioner contends that his “[s]earch and rescue is a specialized mountaineering skill that is original because only a select, elite group of mountaineers are able to perform search and rescue” and refers to numerous recommendation letters. Almost all of his recommendation letters specified on appeal simply mention the Petitioner’s engagement in rescue missions without showing how they constitute original contributions of major significance in the field. For instance, in his above-referenced letter, [redacted] indicates that “[d]uring two difficult seasons on [redacted] (2014 avalanches and 2015 earthquake in Nepal), [the Petitioner] worked tirelessly rescuing western climbers who were stranded on the upper reaches of [redacted].” Similarly, [redacted] states that the Petitioner “participated in high altitude rescue missions and contributed to saving the lives of many Western climbers and Sherpa guides in the aftermath of the devastating 2014 avalanche in the [redacted] and the 2015 earthquake and avalanche at [redacted] Base Camp.” Although the letters indicated the Petitioner’s involvement in rescue missions, they do not contain specific, detailed information explaining how his contributions have been of major significance in the field.

Similarly, other letters discuss the Petitioner’s skills in setting ropes and routes but do not show that his contributions had a major influence on the field as a whole. For example, the record contains a letter from [redacted] a climber who has worked with the Petitioner since 2004, stating the following:

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<sup>6</sup> Although we discuss a sampling of letters, we have reviewed and considered each one.

<sup>7</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9; see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013) (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).

[The Petitioner] helped to spearhead the “rope fixing” to [redacted]’s summit in three consecutive years. It should be appreciated that only the most capable climbers could be part of this difficult, dangerous, and precise work, paving the way for guided groups and less-experienced climbers. The fixing teams are often soloing on steep and technical terrain . . . while carrying heavy loads to extreme altitude.

Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value.<sup>8</sup> 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.<sup>9</sup> 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).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

*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 contends that he performed in a leading or critical role for [redacted] 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.<sup>10</sup> If a critical role, the evidence must establish 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.<sup>11</sup>

The record contains letters from [redacted] the director of [redacted] and [redacted], the chairman of [redacted]. The Petitioner also provided two letters from [redacted], the co-owner and director of [redacted] and submits an additional letter from him on appeal. The record indicates that [redacted] is associated with the Montana-based [redacted] Foundation, and is a vocational program that offers annual classes to teach basic mountaineering and climbing skills to Nepalis and Sherpas. According to [redacted] the Petitioner has been a Lead Instructor with [redacted] for several years. [redacted] provides that he and the Petitioner have worked together at [redacted] since 2004, and that the Petitioner achieved [redacted]’s “best instructor” title in 2015. Regarding [redacted] [redacted] stated the company “has employed [the Petitioner] since 2004 as a Mountain Guide on many of our treks and expeditions in Nepal and Tibet.” Although the letters confirm the Petitioner’s employment, they do not indicate that the Petitioner ever held a leadership position within the companies. Accordingly, the Petitioner did not demonstrate that he performed in a leading role with [redacted] or [redacted].

As it relates to a critical role, the letters do not show that the Petitioner contributed to the successes or standings of [redacted] or [redacted]. While [redacted] indicates that the Petitioner “has greatly affected”

<sup>8</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.  
<sup>9</sup> *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).  
<sup>10</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.  
<sup>11</sup> *Id.*

[redacted]'s reputation as a company "with an impeccable safety record," and [redacted] provides that the Petitioner has been involved in the development and implementation of [redacted]'s class curriculum, the letters do not establish that his role as a mountain guide rose to a level consistent with a critical role. The Petitioner did not demonstrate, for example, that his mountain guide role resulted in increased revenue or participation with [redacted] or [redacted]. For these reasons, the Petitioner did not show that he performed in a critical role for [redacted] or [redacted].

For these reasons, the Petitioner did not demonstrate that he meets this criterion.

### 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 of his work 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).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility 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.

**ORDER:** The appeal is dismissed.