



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

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

In Re: 6503114

Date: JAN. 28, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a “polygraph examiner, researcher, and instructor,” 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 Texas 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.

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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if they are 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).

II. ANALYSIS

The Petitioner seeks to “open [a] polygraph testing and consulting company in the State of Florida to assist law enforcement . . . ; research and publish on [matters concerning the] polygraph; develop special courses and practical manuals and educate future professionals in polygraph examination; and participate in the development and implementation of the newest technologies for lie detection.” The Petitioner asserts: “he is the only one professional in his field [in Russia] that assists in testing on sex crimes and allegations of sexual misconduct and harassment, and narcotics investigations.”

The Petitioner entered the United States as a B-2 nonimmigrant tourist in June 2016; at the time he filed the petition in November 2016, he was still in the United States without employment authorization. After obtaining employment authorization, the Petitioner began working for [REDACTED]

A. Evidentiary Criteria

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). The Petitioner initially claimed to meet nine of these criteria. The Director found that the Petitioner met one of the evidentiary criteria, relating to authorship of scholarly articles. On appeal, the Petitioner asserts that he also meets seven other evidentiary criteria, to be discussed below. After reviewing all of the evidence in the record, we find that the Petitioner has satisfied two criteria (pertaining to scholarly articles and judging).

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)

In 2016, the Petitioner received the [REDACTED] Award from the American Polygraph Association (APA). The award does not recognize excellence in the field of endeavor, but rather “loyalty, professionalism and dedication to the polygraph profession.” A copy of the Petitioner’s nomination form identifies various achievements, but does not show which of these factors were the most relevant in the deliberations resulting in the Petitioner’s receipt of the prize.

On appeal, the Petitioner asserts: “It is the Petitioner’s position that the [redacted] Award is nationally and internationally recognized and [the Petitioner] was selected from a large number of nominees and selected by the distinguished experts in the field of polygraphy.” However, he does not submit evidence to corroborate these claims.

In [redacted] 2015, the Council of Veterans of the Central Office of the Russian Ministry of Internal Affairs awarded the Petitioner “the order ‘For nobleness of thoughts and deeds.’” The award certificate refers to the Petitioner as a “polygraph examiner,” but does not explain the circumstances underlying the award. The Petitioner did not submit evidence to show that the award is nationally or internationally recognized, or that he received the award for excellence in his field. (There is no presumption that an award from a government entity is nationally or internationally recognized.)

On [redacted] 2016, the day after the Petitioner arrived in the United States, the [redacted] Peace Foundation presented the Petitioner with “the Order for Dedication, Courage and Humanism.” The Petitioner does not point to any evidence that awards from that “[redacted] Foundation” are nationally or internationally recognized, or that the award was for excellence in the field. The Petitioner likewise does not establish the criteria for this award, or the Foundation’s competence to recognize excellence in the field of polygraphy. The Foundation officials named on the award certificate include an artist and a cosmonaut, with no indication of their expertise in polygraphy.

The Petitioner has also supplemented the record with evidence of awards and recognitions that he received after the petition’s filing date. These awards cannot establish that the Petitioner met the eligibility requirements for this immigrant classification as of the filing date of his petition, as required by 8 C.F.R. § 103.2(b)(1). *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

Accordingly, the Petitioner has not established his receipt of nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

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 is a member of the APA and the British and European Polygraph Association (BEPA), but as noted by the Director, the membership requirements for those associations essentially amount to holding the proper occupational credentials, not outstanding achievements as required per the plain language of this criterion. The Petitioner did not further address these membership requirements on appeal.

In [redacted] 2016, the Eurasian Polygraph Association (EPA) named the Petitioner an honorary member of that association. The EPA’s charter indicates that honorary membership is available to “[p]rominent domestic and foreign scientists, designers and specialists who made a significant contribution to the science and practice of polygraphy.”

The EPA’s letter to the Petitioner reads, in part:

Our Association and the international polygraph community know you as a prominent polygraph examiner, lecturer and promoter of polygraphology, providing comprehensive methodological assistance to polygraph examiners of Kazakhstan and Russia.

....

This title is only bestowed to polygraph examiners, who have made significant contributions to the profession.

The Director acknowledged the EPA's reference to "significant contributions," but found that the organization did not identify the "significant contributions" that qualified him for honorary membership. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990)

We agree with the Director that the submitted evidence is too vague to establish that the Petitioner's honorary EPA membership constitutes membership in an association in the field which requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

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 general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media.

The Petitioner has submitted translated copies of Russian-language articles, some published after the petition's filing date. On appeal, the Petitioner maintains that four of these articles meet the requirements of the regulatory criterion. We will focus, here, on those four articles.

Two articles, published in *Komsomolskaya Pravda v Ispanii (KPI)* in 2014 and *Klerk* in 2016, quoted the Petitioner at length regarding various uses of polygraphy. The Director found that these articles are not about the Petitioner. Also, the articles lack the required author credits. *Klerk* is identified as "the largest site for accountants," indicating that it is neither a general-interest publication nor a professional or trade publication in the Petitioner's field of polygraphy. As such, the Petitioner has not shown how *Klerk* qualifies, for the purposes of this petition, as a professional or major trade publication or other major media.

The Petitioner contends that *Komsomolskaya Pravda (KP)* qualifies as major media in Russia, but the submitted article appeared in an edition published in Spain (in the Russian language), while the Petitioner was "on a working visit [to] Barcelona." Therefore, the evidence relating to *KP*'s circulation in Russia does not establish that its offshoot *KPI* qualifies as major media in Spain, where only a fraction of the population reads Russian. The article's headline indicates that the target audience is "Russian-speaking

residents of the Iberian Peninsula”. The Petitioner has not established that *KPI* qualifies as major media, or that he has been the subject of articles published in *KP* in Russia.

A [] 2016 article on the Russian [] website called the Petitioner a “famous Russian polygraph examiner” who “will tell how to use a polygraph in the fight against marital infidelity.” The Director found that this article includes “one paragraph about the petitioner,” but is deficient because it does not identify the author as required. The Director also noted that the site describes itself as open to public posts “without registration and moderation,” and therefore “cannot be viewed as an authoritative source of information.” When a website allows readers to post material anonymously, and without any evident quality control (such as editors or moderators), there are no assurances about the reliability of the content on that site. *See Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008).

In [] 2016, the online publication [] reported that the Petitioner, “one of the most famous Russian polygraph examiners . . . , was elected [] of the National Association of Polygraph examiners.” However, we note that there is no credited author, as required under this criterion. In addition, a translated 2018 printout from the home page of [] does not provide useful information about the size of its readership, or even the purpose of the publication. Categories of embedded links include “Catalog of the political system of society,” “History,” “Theory,” and “Modern Russia”; the website’s name translates as “State and Power.”

The Petitioner has not shown that he was the subject of published material in professional or major trade publications or other major media.

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)

The Director found that the Petitioner did not satisfy the requirements of this criterion, but we disagree. In [] 2015, the APA appointed the Petitioner “as a member of the 2015-2016 [] []” This letter, only two sentences long, did not explain the duties of the committee. But a subsequent letter from 2017 indicated that one of the committee’s roles is “reviewing nominations for the APA Annual Awards and choosing the best nominee for the award.” This information is sufficient to establish that committee members judge the work of others in the context of those awards.

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 this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions 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. The phrase “major significance” is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

In order to satisfy this regulation, 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.

The Petitioner states that he is the only polygraph examiner in Russia who “conduct[s] all types of polygraph testing,” and that his “other important contribution was introduction of American standards of the polygraph profession to Russian polygraph examiners.” The Petitioner does not explain how these activities are *original* contributions. The Petitioner did not create the techniques he uses; rather, he took classes at the [redacted] Polygraph Academy, where he learned the “American standards” that he later sought to transplant to Russia. Learning, teaching, and advocating existing methods do not amount to original contributions.

The Petitioner also stated that a “significant achievement was as a [redacted] of the National Polygraph Association [NPA] of Russia when [he] created the international partnership with [the] British and European Polygraph Association,” and that his “most significant contribution . . . was an affiliation of the National Polygraph Association with the American Polygraph Association.” The president of the NPA stated that, by facilitating these affiliations, the Petitioner “played a critical and fundamental role in the development of the National Polygraph Association and Russian polygraphology in general.” The importance of the Petitioner’s role within a particular organization falls under a separate criterion, discussed further below. The record does not show exactly what the Petitioner did to align the NPA with the BEPA and the APA, or explain how this development has major significance to the field as a whole, rather than to one particular organization in that field.

Cited as another example of a contribution of major significance, the Petitioner delivered a “prepared report on usage and application of polygraph” to the [redacted] in May 2016. The Petitioner does not explain how this action was significant to the field as a whole, or had a discernible impact beyond the local level.

The Petitioner wrote a series of booklets, ranging in length from 16 to 32 pages, all published in 2016, relating to polygraph history and techniques. The Petitioner refers to these publications as “scholarly level textbooks.” The Petitioner did not submit evidence to establish the major significance of these publications. For example, the Petitioner did not show that the books are widely used in training polygraph examiners. Also, the record does not contain the books themselves, only translated title pages, and therefore the record does not reveal the extent to which the booklets consist of original material rather than compilations of information already available within the field. For example, some titles refer to examination techniques, but it is not clear whether the Petitioner developed these techniques or simply described methods that were already in use.

The editor in chief of a scholarly journal stated that two of the Petitioner’s articles received “a lot of positive responses and live interest among the Journal readers.” The record does not contain objective evidence to show that the Petitioner’s published work had attracted any attention before he filed the petition in late 2016. The Petitioner stated that a small number of citations appeared in 2017 and 2018, well after the filing date. The only citing article that the Petitioner submitted to support this claim appeared in 2018 in an APA-published journal, *Polygraph & Forensic Credibility Assessment*. That article cited one of the Petitioner’s *APA Magazine* articles to support the assertion that the use of forensic

polygraph examinations in Russia has increased since 2002. This single citation, in support of a statistic drawn from historical data, is not sufficient to establish that the Petitioner's work has had major significance in the field.

In addition, the Petitioner states that his publications are available to researchers at a number of libraries. However, as noted above, the evidence does not demonstrate that this availability of his published work has led to an impact upon other polygraphers or otherwise constitutes a contribution of major significance.

The Director found that the Petitioner did not provide enough information to show how his contributions were both original and of major significance. The Director stated that the Petitioner did not establish the extent to which others in the field use the Petitioner's original work.

On appeal, the Petitioner asserts that his work would not be "posted on government sites, or in electronic libraries . . . without . . . detailed and sophisticated peer review." The Petitioner does not show that the libraries in question only accept materials that contain contributions of major significance.

The Petitioner also maintains that he is Russia's most versatile polygraph operator, with "unique expertise on polygraph testing and ability to detect and neutralize polygraph countermeasures." The Petitioner's evaluation of his skill set does not establish its major significance in the field.

The Petitioner also points to his writings and his educational efforts. These activities can provide the means to influence the field at large, but as noted above, the Petitioner has not shown that his work has actually resulted in that influence.

For all of the reasons described above, the evidence does not establish that the Petitioner 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)

The Director granted this criterion, and we concur. The Petitioner submitted copies of articles from several different publications, most of which qualify as scholarly. We note that the submitted excerpts from *APA Magazine* do not share the hallmarks of peer-reviewed scholarly journals that are evident from other articles in the record. Apart from superficial differences such as very large type, *APA Magazine* does not refer to peer review of submissions; and there are errors and anomalies of various kinds that are not consistent with professional, scholarly publications. For example, one submitted page ends with the unhyphenated word fragment "commer" (apparently the beginning of "commercial"), and the articles themselves include a number of grammatical, typographical, and formatting errors that do not reflect the strict editorial review typically seen in scholarly journals.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.
8 C.F.R. § 204.5(h)(3)(vii)

The Petitioner initially claimed to have satisfied this criterion because the EPA invited him to give the keynote speech at an [] 2017 conference in []. A scholarly conference, however, is not an artistic exhibition or showcase. Furthermore, when the Petitioner made this claim in November 2016, the

conference had not yet occurred; the expectation of future display cannot establish eligibility at the time of filing. Granting the criterion based on the invitation alone would have been premature, not least because subsequent submissions contain no evidence that the Petitioner actually gave the address or even attended the conference.

The Petitioner does not repeat or defend this claim on appeal, and has therefore abandoned the issue. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *see also, Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011).

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)

At the time of filing, the Petitioner was [redacted] of the NPA. The president of the NPA indicated the Petitioner was responsible “for the development of the [NPA’s] Standards of Practice and Code of Ethic[s],” which “became a milestone for the development of the polygraph community in Russia.”

The Petitioner states: “For additional information about the NPA, please visit its official website, <https://polygraphassociation.ru/about-us.html>.” According to that website, the NPA “was officially registered on May 26, 2016,” less than six months before the Petitioner filed the petition in early November 2016.

The Director requested evidence that the NPA has a distinguished reputation. In response, the Petitioner resubmitted a copy of a letter from the president of the NPA, and a printout from the NPA’s website. On appeal, the Petitioner submits a new letter from that official, calling the NPA “Russia’s leading polygraph association.” Evidence from the NPA and its officials is not evidence that the organization has a distinguished reputation outside the organization itself.

The Petitioner also claims to have performed in a critical role for the [redacted] [redacted] Russia’s Ministry of Education and Science. The Petitioner conducted a four-day “advanced training course for polygraph examiners” for that entity in October 2015. The Petitioner did not show that this particular office has a distinguished reputation.

Also, a letter from the agency, stating that the Petitioner “played a key role in our educational project,” is not sufficient evidence that the Petitioner performed in a leading or critical role for the entity. The Petitioner has not shown the extent, if any, to which his training class improved the office’s practices or the outcome of its endeavors.

Because of the above deficiencies, the Petitioner has not established that he performed in a leading or critical role for organizations or establishments with a distinguished reputation.

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)

The Petitioner has not submitted first-hand documentation of remuneration, such as tax documents, pay receipts or bank documents. Instead, he submitted two letters from entities that engaged his services.

An [redacted] 2016 letter from the chief accountant of a Russian company called [redacted] paid the Petitioner 265,000 rubles (apparently per month) “as an invited polygraph examiner.” The letter states that the “average monthly salary on this position in the Russian Federation makes up 70,000 Rubles.” The letter identifies two online sources for the average monthly salary figure, but the Petitioner did not submit printouts from those websites or identify the specific pages containing the numbers.

A letter attributed to an official of the Russian Ministry of Education and Science invited the Petitioner to present the training course described above, and offered him 9000 rubles per hour. The letter noted that “the regular hourly rate for the lecturers is RUR 2500.” The letter is worded as an invitation to perform the services in the future, but, as the Director noted, the letter is dated more than a month after the training session took place.

Later, the Petitioner submitted a printout from Head Hunter, a Russian website that hosts job announcements. The printout consists of two job openings for polygraph examiners, one with a starting salary of 50,000 rubles, the other showing a range of 50,000 to 100,000 rubles (the intervals are unspecified). This small sampling of certain available positions is insufficient to establish a basis to determine that the Petitioner’s asserted salary is high compared to others in the field.

The Petitioner also submitted a printout, from Trud, identified as “a search engine that searches for jobs and resumes.” The submitted translation includes several tables and charts, including one that shows 51,667 rubles as the average monthly salary for a polygraph examiner in the [redacted] area. The accompanying Russian-language printout itself, however, does not include any of the tables or figures shown in the purported translation. Instead, it includes a pie chart and a bar graph, showing figures entirely different from those in the purported translation. Thus, the figures provided in English are unsubstantiated.

The Director found that “no authoritative evidence was provided [to show] the actual wages received by the petitioner.” On appeal, the Petitioner resubmits copies of previously submitted documents, but offers no new substantive response to the Director’s findings except to state that a typographical error on the Ministry’s letter does not invalidate the information on that letter.

As noted above, the appeal does not address the Director’s most significant finding, which is that the Petitioner did not submit evidence that he actually received the payments described in the letters. The wage comparisons are also highly problematic, for reasons described above. Rather than establish his total income as a polygraph examiner, the Petitioner has relied on incomplete and questionable information relating to two specific jobs.

The submitted evidence is not sufficient, in terms of quality or quantity, to establish that the Petitioner commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(h)(4)

The Petitioner cites various letters as “comparable evidence,” but the Petitioner does not specify to what the evidence is “comparable,” nor does the Petitioner show that the standard criteria do not readily apply to his occupation. (By making claims under nine of those criteria, the Petitioner essentially claimed that they apply to his occupation.)

The letters, from individuals who have trained, worked with, or employed the Petitioner in various capacities, attest to his skills and character, but offer no relevant information beyond what the ten regulatory criteria already cover.

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. It is of some concern that much of the claimed evidence of acclaim, such as media coverage, arose in a very short period of time between the Petitioner’s departure from Russia and the preparation of the petition.

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.

ORDER: The appeal is dismissed.