



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

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

In Re: 6130989

Date: MAR. 5, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a construction manager, 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 denied the petition, concluding that the record did not establish that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner submits additional evidence and asserts that in addition to the two evidentiary criteria that the Director found he met, he meets an additional three criteria and has sustained national or international acclaim.

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 evidence indicates that the Petitioner currently serves as Vice President (Engineering) for [redacted] [redacted] in China, and has served as a construction project manager for that company and his previous employer. It further indicates that he is also a co-founder of a real estate investment company based in Southern California.

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 Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to media about him and his work and his leading or critical role for organizations with a distinguished reputation. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to lesser nationally or internally recognized awards, contributions of major significance to the field, and a high salary relative to others in his field. After reviewing all of the evidence in the record, we find that he does not meet the requisite three evidentiary criteria.

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner submitted certificates which indicate that the [redacted] [redacted] received a [redacted] prize for “National High-Quality Construction” as a participant in the construction of three projects, in 1995, 1997 and 2002. The Petitioner also submitted photographs of three trophies, including plaques with text which was not translated into English, as well as photographs of him holding the certificates and trophies.

The plain language of the regulations for this criterion require that it is the alien who must have received the award. Here, the certificates name a company as the recipient of these awards. In addition, the notice of a revised selection method for the [redacted] prize, which was issued by the China Construction Industry Association (CCIA), explains that it is “construction enterprises” who may

“voluntarily declare projects for the [redacted] Prize.” In its response to the Director’s request for evidence (RFE), the Petitioner submitted a decision issued to a different petitioner in an unrelated case, in which we considered whether that petitioner was so integral to his employer’s receipt of an award that he could be considered a *de facto* recipient. We note that this decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. In this case, the inconsistencies in the evidence relating to which entity received the award, and the Petitioner’s role in the winning construction projects, do not support a finding that he may be considered to be a recipient of any of the three [redacted] prizes.

We first note that there are discrepancies within the record regarding the Petitioner’s employment by the company named on the certificates. His own resume indicates that he was employed by the [redacted] [redacted] from October 1994 to December 2007, and this is also the company name used by [redacted] general manager of the company, in his reference letter. While a certificate entitled “job offer” was submitted which indicates that the Petitioner was hired by [redacted] in the month of October 1994, rather than a specific date in that month, an organizational chart included at Exhibit 41 of the record shows that [redacted] is one of three subsidiaries of [redacted] but that the Petitioner was employed by a different subsidiary, [redacted]. In addition, the Petitioner submitted printed webpages from a website, <http://www.smelx.com> which indicate that those same awards were granted to a third different company, the [redacted] company, in 1997 and 2000. The Petitioner has not resolved these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

More importantly, despite the evidence which clearly indicates that it is companies which receive the [redacted] prize, several reference letters submitted by the Petitioner refer to his receipt of the three [redacted] prizes noted above. [redacted], who indicates that he hired the Petitioner and worked with him, describes the Petitioner’s role in all three projects as that of “project manager” with “the leading construction management role.” He describes all three of the prize-winning construction projects, and writes that in each one, the Petitioner was the “only manager,” “organiz[ed] hundreds of workers,” “was in charge of ascertaining load, power and structural requirements,” and “was responsible for analyzing the building and system prototypes submitted by his architectural team,” among other complex tasks. However, while [redacted] does not provide the dates of the Petitioner’s employment with [redacted] the Petitioner’s resume indicates that he began employment with the company months before the 1995 [redacted] prize was awarded, and logically even fewer months before (or after) the project was completed and submitted for consideration for the award. It is therefore not credible that he could have performed the role described by [redacted] regarding the construction of the 1995 award-winning project, some of which includes design and engineering duties which would have taken place prior to construction. As with the evidence regarding the name of the company which received the [redacted] prizes, the Petitioner has not resolved these discrepancies in the record. *Ho*, 19 I&N Dec. 582, 591-2. Further, this unresolved discrepancy regarding the project in 1995 leads us to question the reliability and sufficiency of the evidence and assertions regarding the other two projects which the Petitioner claims to have managed. *Id.*

Finally, the Petitioner’s resume indicates that at the time the Petitioner joined [redacted], he had earned a high school diploma and had no experience in the management of construction projects, as an engineer or architect, or in the construction industry at all. The evidence does not establish that at the time of his

hiring in October 1994 he could have performed the complex and high-level responsibilities described in [redacted]'s letter, and others, without the education and experience those responsibilities require.¹ The record therefore does not include documentary evidence to support the claims made by the Petitioner and in the reference letters regarding his leadership of large construction projects for [redacted] or his role in his employer's or an affiliate's receipt of any awards or prizes. Accordingly, the Petitioner does not meet 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)

Based solely upon the article in the record appearing in *The China Press*, we agree with the Director that the Petitioner has 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)

In order to satisfy this criterion, 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.

On appeal, the Petitioner asserts that the Director did not provide sufficient reasoning for her decision to not grant this criterion, and reiterates his claim to have led the implementation of external wall insulation methods which were later incorporated into government regulations. The Petitioner refers to several reference letters which describe his role in increased use of this construction method in China. However, we note that depending on the specificity, detail, and credibility of a letter, we may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Given the inconsistencies between statements in reference letters in the record and other documentary evidence, as has already been noted above, we find that the reference letters do not support the Petitioner's assertion.

For example, [redacted] Deputy Director of [redacted] writes that the Petitioner's "leading role on the [redacted] wall insulation design was also well

¹ While we recognize that education and employment standards vary by country, we note that the U.S. Bureau of Labor Statistics, in the most recent edition of the *Occupational Outlook Handbook*, indicates that construction firms typically require a bachelor's degree in a related field and practical construction experience when hiring a construction manager, while some may qualify through *extensive* construction experience. <https://www.bls.gov/ooh/management/construction-managers.htm#tab-1>. The evidence does not indicate that the Petitioner had similar education and experience at the time of hiring by [redacted] or that he later continued his education or participated in internships or other training programs.

acknowledged by the Chinese government, and provided a practical basis” for the 2008 regulations concerning its installation. He states that he recommended the Petitioner’s methods to the government body which promulgated the regulations, and that they “implemented his design and method” into the regulations. Although [redacted] suggests, as do the writers of other letters in the record, that it was the Petitioner who designed this type of insulation as well as methods for its installation, other evidence does not support this assertion. Most importantly, the regulations themselves note that the 2008 revisions are based upon “extensive investigation and study, earnestly summarizing the practical experience, referring to the relevant international standards and foreign advanced standards, and based on extensive solicitation of opinions.” This statement in the foreword of the regulation text indicates that rather than adopting the Petitioner’s design and installation methods, as suggested in the reference letters, the drafting team referred to existing international standards as well as practice and experience throughout the industry. Any role the Petitioner may have had in responding to “the solicitation of opinions” aside, the direct and substantial contribution asserted in the reference letters is not supported by technical drawings, the submission of formal proposals to the drafting government body or related correspondence, patent or other intellectual property applications, or other documentation in the record to link the Petitioner to this revision to the regulations.

Further, other reference letters in the record refer to the Petitioner’s installation of [redacted] wall insulation on specific building projects, but do not support the originality of this contribution or its significance to the field of construction management. For instance, [redacted] Deputy Director [redacted] in [redacted] writes about the Petitioner’s role in one project and his recommendation regarding the installation of [redacted] wall insulation. While [redacted] expresses satisfaction with the performance of the insulation, his opinion relates to this single project involving the installation of an existing product, and does not demonstrate the originality or significance of the Petitioner’s work.

The Petitioner also asserts on appeal that the three [redacted] prizes discussed above show that those projects “set industry benchmarks across the country, which is by definition a national impact.” However, as we have determined that those awards were neither granted to the Petitioner nor can be attributed to him, we need not consider whether they demonstrate that the Petitioner had the asserted national impact upon the construction industry. Accordingly, the Petitioner has not established that he meets 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)

In his initial filing and in response to the Director’s RFE, the Petitioner asserts that he has served in a leading or critical role for [redacted] [redacted] [redacted] and [redacted]. Regarding [redacted] while the Petitioner submitted a letter from [redacted] who writes that he is the company’s general manager, the record otherwise includes only a copy of a website describing a different company named [redacted] (emphasis added.) Here as with the other, previously analyzed reference letters, [redacted]’s letter lacks specificity and is not supported by corroborative documentary evidence. This evidence is therefore insufficient to establish the existence or operational history of [redacted] its corporate ownership and organizational structure, the Petitioner’s status as a co-founder and consultant, or the nature of its reputation.

Turning to the Petitioner's role with [redacted] he relies upon the reference letter from [redacted] to establish his leadership within the company. However, as previously discussed under the criterion relating to lesser awards, [redacted]'s statements regarding his work as lead project manager for three award-winning projects contains factual inconsistencies related to the receipt of the awards, his involvement in at least one of those projects, and his qualification to perform the duties described. It is therefore insufficient to establish that the Petitioner played a leading or critical role for [redacted]

Finally, the Petitioner's role with [redacted] is evidenced by a reference letter from [redacted] general manager of the company.² [redacted] indicates that after his hiring in 2008, the Petitioner rose to the position of vice general manager of the company, and "participated in the investment and construction" of several projects. This letter, together with another letter written by [redacted] is sufficient to establish the Petitioner's leading role for this organization.

However, the evidence does not establish that the [redacted] enjoys a distinguished reputation in the construction industry. [redacted] indicates that the company has earned a AAA credit rating and is "certified through ISO9001:2000 quality system standard and ISO14001:2004 environmental management system certification." This information is repeated on the company's website. In response to the Director's request for evidence, the Petitioner submitted evidence regarding the meaning of these ratings and qualifications. Pages from the website www.investopedia.com state that a AAA credit rating "is the highest possible rating assigned to an issuer's bonds," and that "a high credit rating lowers the cost of borrowing for an issuer." Information about the referenced certifications from the International Organization for Standardization (ISO) was also submitted, with its website pages stating that the 9001:2001 certification is awarded where an organization "demonstrate[s] its ability to consistently provide product that meets customer and applicable regulatory requirements" and "aims to enhance customer satisfaction through effective implementation of the [quality management] system." Regarding the 14001:2004 certification, the evidence states that "specifies requirements ... to enable an organization to develop and implement a policy and objectives which take into account legal requirements..." This evidence indicates that a AAA credit rating indicates that the company "can easily meet its financial commitments," but it does not demonstrate that companies possessing such a rating have a distinguished reputation in their respective industries. Similarly, the ISO certifications indicate that an organization has developed and implemented internal systems to provide quality, customer satisfaction, and compliance with environmental requirements, but the evidence does not demonstrate that they do serve as an indicator of that organization's reputation. Therefore, the Petitioner has not established that [redacted] has a distinguished reputation.

For all of the reasons given above, we disagree with the Director's decision regarding this criterion and withdraw that portion of his decision.

² He refers to the name of the company as [redacted] which is referred to as a subsidiary of an unnamed company in other evidence in the record.

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)

In order to satisfy the requirements of this criterion, the Petitioner must establish that his salary, or total remuneration, is high or significantly high, respectively, based on a comparison with others in his field in similar positions and geographic locations.³ The Petitioner submitted evidence in the form of an employment verification letter stating that in his employment with [redacted] in the position of vice president, he earned an annual salary of RMB 600,000, and that in the years 2012 through 2016 he earned project bonuses of between RMB 600,000 and RMB 1,600,000.

As evidence of comparative salaries in his field, the Petitioner submitted several salary surveys as well as excerpts from the annual reports of two large construction companies in China which included the salaries of their top executives. The first such salary survey, produced by the National Bureau of Statistics (China) and reviewing a wide range of salaries for 2017, provides national average salaries for “middle-level managers and above,” among other categories of workers, for several industries, including architecture and real estate. However, the definition of this occupation type appears to include managers at organizational levels both above and below the Petitioner’s. Further, the salary figures provided are averages, and take into account the salaries of managers throughout China. This survey therefore does not provide data that is sufficiently specific to form a basis for comparison to the Petitioner’s earnings.

The remaining comparative salary evidence in the record is summarized in the table below, with all figures in RMB:

SOURCE (YEAR)	INDUSTRY	JOB TITLE	LOCAL OR NATIONAL	AVG. SALARY	MIN. SALARY	MAX. SALARY
Kelly Serv. (2017)	Real Estate	Constr. Manager	National	-----	500K	860K
Kelly Serv. (2017)	Real Estate	Engineering Director	National	-----	600K	1.1M
Michael Page (2018)*	Property & Construction Commercial	Corp. RE Senior	Beijing	1.150M	800K	1.5M
Michael Page (2018)*	Property & Construction Investment	Investment Senior	Beijing	1.275M	900K	1.65M
Michael Page (2018)*	Property & Construction Landlord	Constr. Mngmt. Senior	Beijing	650K	500K	800K
Michael Page (2018)*	Property& Construction	Project Mngmt.	Beijing	900K	600K	1.2M

³ See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14.* at 11 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>, noting that it the petitioner’s burden to provide geographical and position-appropriate evidence to establish that a salary is relatively high.

	Landlord	Senior				
Hays (2018)#	Civil Construction	Sr. Project Manager	Mainland China	-----	400K	800K
Hays (2018)#	Building Construction	Sr. Project Manager	Mainland China	-----	600K	1M
China State Constr. Engr. Corp.@	Construction	Director & Vice Presidents	National	-----	684K	1M
Shanghai Constr. Comp. (2017)@	Construction	Director & Vice Presidents	Shanghai	-----	749K	1.52M

*Notes that figures are generally total remuneration excluding bonus/incentive schemes

#Low and high figures described as “typical salary range”

@Salaries are “Total pretax rewards received from the Company during the report period,” but shares are listed separately

We note that while the Petitioner highlights job titles relating to construction management, [] []s two letters describe his position as involving administrative, operational and strategic investment duties, and he states that the Petitioner has “participated in the investment and construction” of several projects since 2008. We have therefore included data from similar positions involving those types of duties in the table above.

In reviewing the data in the chart, we first note that the data from the Michael Page report specifically indicates that the figures provided do not include bonuses and incentives of the type listed in []s employment verification letter. Two of the four minimum salaries listed from that source exceed the Petitioner’s base salary of RMB 600K, and three of the four maximum salaries at least double his base salary. In addition, we note that the excerpts included in the record from the Kelly Services and Hays reports do not provide information on the basis of the figures presented, which is most likely explained elsewhere in those reports. Since the figures from those two reports generally fall within the same range as those in the Michael Page report, they appear to provide the same type of salary-only data. Therefore, based on a comparison of the Petitioner’s base salary with those reported in these three salary surveys, the Petitioner has not established that his salary is high when compared to those of similarly-situated professionals in his field.

Regarding the executive salaries from the two Chinese construction companies, we note that while the maximum “total pretax awards” for most fall below the Petitioner’s total average earnings as reported in the letter from [] the evidence indicates that several of those executives received shares of stock in the company as part of their compensation package. Since the value of this stock would have figured in the calculation of their total annual remuneration, just as the Petitioner’s bonuses do with his, the lack of that value figure in the evidence diminishes its usefulness as a basis of comparison.

Accordingly, we agree with the Director and find that the Petitioner has not established 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 that 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.