



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 23041135

Date: FEB. 16, 2023

Appeal of Texas Service Center Decision

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

The Beneficiary, a product manager, seeks classification as an individual of extraordinary ability in the sciences. 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 the record did not establish that the Beneficiary qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 international 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 the petitioner must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Beneficiary earned a doctoral degree in “real time, robotic, and automated informatics” from [redacted] of Paris and currently serves as a product manager working on artificial intelligence projects for the Petitioner. While we do not discuss each piece of evidence, we have reviewed and considered each one.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary received a major, internationally recognized award, the Beneficiary 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 the Beneficiary met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations requiring outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Performing a leading or critical role for distinguished organizations.

The Director found the Beneficiary met the criteria relating to prizes or awards and to a leading or critical role for distinguished organizations, but that the Beneficiary had not satisfied the criteria associated with membership, published material, original contributions, or authorship of scholarly articles. On appeal, the Petitioner does not assert that the Beneficiary is a member of an association

that requires outstanding achievements of its members, as judged by national or international experts.<sup>1</sup> However, the Petitioner maintains that the Beneficiary meets each of the other criteria in which the Director found in the negative. Upon review, we agree with the Director that the Beneficiary has satisfied the prizes or awards and the leading or critical role criteria. Additionally, we conclude that the Beneficiary has also satisfied the authorship of scholarly articles 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 regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the “authorship of scholarly articles in the field, in professional or major trade publications or other major media.”<sup>2</sup> In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.<sup>3</sup> For other fields, a scholarly article should be written for learned persons in the field. Learned persons include all persons having profound knowledge of a field.<sup>4</sup>

The Petitioner provided evidence of numerous conferences and symposiums in which the Beneficiary participated. The Institute of Electrical and Electronics Engineers (IEEE) hosted most of the conferences and symposiums from content published in its digital library. The IEEE website states that it publishes research and is “a professional association for electronic engineering and electrical engineering.” The Beneficiary’s subfield of artificial intelligence (AI) and robotics is within the association’s electronic and electrical engineering focus. Therefore, IEEE’s published material could be considered a professional publication. Accordingly, the record suggests that the Petitioner meets the basic parameters applicable to evidence under this criterion.

With eligibility under this additional criterion, the Beneficiary satisfied part one of this two-step adjudicative process. As the Beneficiary has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)–(x).

## B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, that the Beneficiary has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a beneficiary’s accomplishments and weigh the totality of the

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<sup>1</sup> The AAO generally does not address issues that are not raised with specificity on appeal. Issues or claims that are not raised on appeal are deemed to be waived.

<sup>2</sup> See generally 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 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

<sup>3</sup> Id at 9.

<sup>4</sup> Id.

evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor.<sup>5</sup> In this matter, we determine that the Beneficiary has not shown his eligibility.

The Beneficiary is a product manager based in [redacted], Pennsylvania. He attained a master's degree in control systems from the University of [redacted] and a doctoral degree in real time, robotic, and automated informatics from the [redacted] of Paris. He began his career working for [redacted] where he contributed to the creation of two robots, [redacted]

[redacted] acquired [redacted] and continued the commercialization of [redacted]. The record reflects that universities and other researchers in the field utilize both [redacted] to conduct further research. In addition, various retail, restaurant, airport, hospital, and hotel businesses use [redacted] robots to improve their service. The Beneficiary co-founded a company, [redacted] which develops commercial AI products that allow retail stores to automate certain service functions. Currently, the Beneficiary works for the Petitioner, a company focused on developing the AI systems used in self-driving cars. The Beneficiary garnered awards, performed in a leading critical role, and is a named inventor on at least five published patents. Media outlets have interviewed the Beneficiary about his company and the AI perception system he helped create. The record, however, does not demonstrate that the Beneficiary's personal and professional achievements rise to a level of a "career of acclaimed work in the field" as contemplated by Congress.<sup>6</sup>

The Petitioner provided evidence of two awards or prizes that satisfy criterion (i). The record reflects the Beneficiary received a 2016 [redacted] for the development of software building blocks to add smart features to connected devices. The French Ministry of [redacted] in partnership with a French public investment bank, finances [redacted] which is a competition to promote the best research and development projects for the finalization of innovative technological products. Selected laureates for this competition "must have defined the concept of their product and be about to create a company, or have just created it." The laureates' academic level is high and [redacted] estimates that over 90% of applicants studied five years or more and 40% hold a PhD. The record indicates that the winners of the competition receive a cash subsidy in furtherance of their project. In 2016, [redacted] selected 56 winners from among 347 candidates.

The Petitioner also submitted evidence that in 2016, [redacted] won a Digital Innovation competition award. The Commissariat General for Investment in conjunction with the Investment Program of the Future supervises the competition, which accepts applications continuously from companies based in France. The competition seeks to "accelerate and amplify developmental projects for innovative products or services based on digital technologies." The 2016 competition edition accepted 79

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<sup>5</sup> See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also Kazarian, 596 F.3d at 1119–20. See generally 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 6* (Dec. 22, 2010), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

<sup>6</sup> H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

proposals and awarded loans to 19 winners. The record reflects that the Beneficiary's company and two other companies received a loan in the category of [REDACTED]

While we acknowledge these awards as meeting the basic parameters applicable to evidence under this criterion, the 2016 [REDACTED] and Digital Innovations awards do not sufficiently reflect sustained national or international acclaim, that the Beneficiary is one of the small percentage at the very top of the AI and robotics field, or that his achievements have been recognized in this field. Rather, the awards appear to be for excellence in innovation and/or entrepreneurship. Although innovation and entrepreneurship may be byproducts of his work, the Beneficiary's claimed field of extraordinary ability is not innovation or entrepreneurship specifically. As such, the evidence does not sufficiently establish that he received an award commensurate with those among the top of his field. Furthermore, the record reflects that the Beneficiary won the awards in 2016 and in conjunction with founding his company. The record does not show that the Beneficiary won awards in the field of AI or robotics independent of creating a new startup, nor does the evidence sufficiently describe the specific technology or services the Beneficiary's company offers.<sup>7</sup>

The Petitioner provided documentation of the Beneficiary's receipt of other awards. However, the record lacks sufficient evidence with which to establish how the awards meet the basic parameters of the criterion. To illustrate, the Petitioner submitted evidence of a tax-free tech-startup loan, which he received from [REDACTED] for winning a contest. The record includes evidence that in 2016, [REDACTED] awarded a loan to seven startups in the month of [REDACTED] awarded the loans after contestants gave a one and half minute "pitch" of their idea. The documentation provided does not indicate how often [REDACTED] awards loans (monthly, yearly, or otherwise), how many entrants or candidates it considers, or other entry requirement details. The competition appears to be open only to those in the Paris region and therefore the record does not demonstrate that the [REDACTED] loan is a nationally or internationally recognized award or prize.

The Petitioner submitted evidence that the Beneficiary received a 2018 [REDACTED] Retail Award;" however, the record does not include sufficient details about the award to draw any conclusions concerning the national or international recognition of it. The [REDACTED] Retail Award is a free competition for the purpose of identifying companies that offer solutions to issues that e-commerce, retailers, and brands face. It is unclear who the competition is open to, but the name suggests that it is open to those in [REDACTED]. The documentation does not indicate that the Beneficiary received the award for excellence in his field.

Regarding media coverage, the Director explained that the published material must be about the Beneficiary and relate to his work in the field. Both the Director and the Petitioner acknowledged that some of the submitted articles lack dates and/or authors, which is a regulatory requirement. The Director noted that, "The articles in *L'Usine* (no author and no date of publication), 20 Minutes (no author and no date of publication), and Daily Mail (no publication date) do not meet the plain language

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<sup>7</sup> We acknowledge that one of the letters of recommendation states that [REDACTED] sells smart cameras to retailers. However, the Petitioner provided little other evidence to support this assertion.

of this criterion.” Some of the articles do not meet the evidentiary criterion for additional reasons. The Director explained:

[T]he article “[redacted]” is attributed to CNNmoney with a publication date of [redacted] 2016. However, there is no indication on the material that it was published in CNNmoney. It indicates that the article was printed from www.news.mit.edu. Also, there is no circulation data for this [(www.news.mit.edu)] news site, and no author or publication date is indicated on the material.

The article in journaldunet.com is both about the Beneficiary and related to his work, as well as has a listed author and date. The Petitioner provided readership and circulation data for journaldunet.com, which ranks the news source at 512 in France and 14,700 worldwide. The data also includes journaldunet.com website traffic statistics. However, the Petitioner has not explained how the data shows journaldunet.com is a major medium, nor has it explained the source of the data. Similarly, the Petitioner provided readership and circulation data for many of the media outlets referenced; however, it is not apparent where this data came from, as there is no website listed or other indication of the data’s source. In some cases, the data appears to be from the news source itself. However, USCIS need not rely on the self-promotional material of the publisher. See *Braga v. Poulos*, No. CV 06 5105 SJO (C.D.C.A. July 6, 2007) *aff’d* 2009 WL 604888 (9<sup>th</sup> Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine’s status is not reliable evidence of a major medium); see also, e.g., *Victorov v. Barr*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at \*8 (C.D.C.A. Apr. 9, 2020). For many other news sources referenced, mostly websites, the Petitioner did not provide any information to support a finding that the sources are major media.

Although the Petitioner provided some articles that mention the Beneficiary or his company, they do not appear to be about the Beneficiary and relating to his work in the field. For instance, the *Business Insider France* and the *L’Usine* articles appear to be about tech startups, mentioning [redacted] along with other companies. The *Economist* article [redacted] contains two short paragraphs about retailers, merely mentions the company the Beneficiary co-founded, and does not list an author.

Many articles are about the commercial usage of the [redacted] robots in various service industry contexts. For instance, the Director noted, the [redacted] 2014 Reuters article [redacted] [redacted] is about the purchase of robots by Nescafé to sell coffee makers at electronic stores in Japan, and not about the Beneficiary and/or his work.” The Petitioner acknowledges that it provided a sampling of articles related to the international and wide-ranging use of the products the Beneficiary contributed to developing. These articles are not necessarily about the Beneficiary and relating to his work in the field. Articles that are not about the beneficiary do not fulfill this regulatory criterion. See, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

*Les Echos* may be considered a major medium and the article it published has all the required regulatory elements. In addition, the content is also about the Beneficiary’s company. However, the four-paragraph article interviews the Beneficiary’s co-founder, not the Beneficiary. While the article

mentions the Beneficiary, the evidence overall is indicative neither of sustained acclaim nor of the Beneficiary's status as one of the small percentage at the very top of the field of endeavor.

The Petitioner emphasized that it submitted nearly fifty articles. While the Petitioner offered a significant volume of evidence, eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. Chawathe, 25 I&N Dec. at 376 (citing Matter of E-M-, 20 I&N Dec. 77, 80 (Comm'r 1989)). The Petitioner bears the responsibility of ensuring that the record demonstrates how the Beneficiary qualifies for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. We acknowledge the Petitioner's assertion that the Director ignored evidence. However, when USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. See *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); see also *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

As noted regarding scholarly articles, the record contains evidence of numerous conferences and symposiums in which the Beneficiary participated. IEEE hosted most of these conferences and symposiums based on content published in its digital library. The Beneficiary is a named author on the publications, most of which were published in 2008 and 2009, during which time the Beneficiary pursued his doctoral degree. The evidence does not suggest that the Beneficiary continues to publish or offer original research. Further, the Petitioner provided little information on what IEEE is and does, how it determines what it publishes, or the intended audience of the publications.

In its request for evidence (RFE) response, the Petitioner quoted the USCIS Policy Manual for the assertion that "peer-reviewed presentations at academic symposia or peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field . . . may be probative of the significance of the person's contributions to the field of endeavor."<sup>8</sup> Although the portion of the Policy Manual in which this appears relates to the criterion of original contributions of major significance, the Director nevertheless considered the Petitioner's assertion under the authorship of scholarly articles criterion.<sup>9</sup>

The Petitioner offered evidence of the Beneficiary's 128 citations in Google Scholar. However, the record does not contain sufficient comparative evidence to establish the relative significance of this number of citations. In other words, it is not apparent that the Beneficiary's work has provoked widespread commentary or received notice from others working in the field based upon 128 citations. Although articles mentioning [redacted] received considerably more citations, the Petitioner has not offered sufficient evidence to explain whether the Beneficiary authored the [redacted] articles and whether they would be considered scholarly. Therefore, we cannot confer the [redacted] citation history upon the Beneficiary in the context of the Beneficiary's authorship of scholarly articles. Regarding the Beneficiary's citation history as it pertains to the significance of his contributions to the field, the Director noted that the Petitioner did not submit sufficient "evidence to

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<sup>8</sup> See generally USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

<sup>9</sup> On appeal, the Petitioner pivots from away from its RFE position and criticizes the Director's decision for considering whether the articles provoked widespread commentary or received notice from others working in the field.

demonstrate that this number of citations is indicative of major significance in the Beneficiary's field." We similarly conclude that the Petitioner has offered insufficient comparative evidence to establish widespread commentary or notice from others in the field.

Regarding contributions to the field, the Petitioner provided evidence of the Beneficiary's patents and that other researchers have built upon the systems he created. As the Director noted, the patents and other evidence support a finding of originality, but do not necessarily support a finding that his contributions were of major significance in the field. The Director explained that "[i]nnovative contributions that lead to commercial success for the employer are commendable, but are insufficient if they do not demonstrate that the contributions made a major impact in the field of endeavor as a whole." Although the Beneficiary's former employer may have sold hundreds or thousands of [redacted] robots to various service industries internationally, such evidence demonstrates commercial success for the employer and a contribution to the service industry more than the Beneficiary's field. Even if the Petitioner had provided sufficiently detailed information regarding [redacted] sales, it would not necessarily support a finding that the patented systems within the robots are available to the field as a whole. Even if we assume the patents' publication makes the underlying perception system within the [redacted] available to the scientific community, the Petitioner has not demonstrated that the acclaim [redacted] received can be conferred upon the Beneficiary such that his specific contributions are of major significance.

The Petitioner provided various abstracts of other researchers who use the [redacted] robots to conduct research. In addition, articles and letters of recommendation support the finding that others in the scientific community have built upon the [redacted] technology. The record reflects that researchers may have purchased a [redacted] robot to use as the platform upon which they test their own systems. Although the record reflects that the Beneficiary contributed to the creation of the [redacted] robots, the evidence provided does not sufficiently connect the Beneficiary's specific contribution of the perception systems to the success of the robots. For instance, the majority if not all of media articles discussing [redacted] do not mention the Beneficiary or his perception system contribution specifically. While these articles are significant and probative, they do not sufficiently support a finding that the Beneficiary has risen to the very top of his field. Furthermore, the record does not sufficiently reflect that the Beneficiary has sustained acclaim as a result of the [redacted] robots, as opposed to achieving a level of temporary acclaim.

Similarly, although the robots may be the standard platform for an international robotics competition, the evidence suggests that the hosts selected [redacted] because they offer tracking features useful in monitoring the contestants. It is not apparent that the Beneficiary's contribution to the technology within the robots has been of major significance in the field as a result of the competition selecting [redacted] for its monitoring and tracking capabilities.

Although the Petitioner provided basic evidence to establish the Beneficiary's eligibility under the criterion related to performing a leading or critical role within distinguished organizations or establishments, the Petitioner did not provide strong evidence of the distinguished reputation of [redacted]. The Petitioner provided evidence of [redacted] size and reputation in the field, which the Director found sufficient to establish [redacted] distinguished reputation. However, the record does not clearly reflect whether the Beneficiary worked for [redacted]. Rather, it appears that he worked for [redacted] before [redacted] acquired it.



Therefore, evidence of [redacted] reputation cannot necessarily be conferred upon [redacted] [redacted]. In addition, the Beneficiary's leading or critical role at one company during a limited period of employment does not sufficiently support a finding that he has sustained acclaim.<sup>10</sup>

The Petitioner submitted evidence that the Beneficiary participated in a temporary working group which the French government initiated. Documentation about the group states that “[f]or two months, researchers, companies, start-ups and institutional players will come together to help define France’s broad guidelines for artificial intelligence.” The document reflects that the organizers of the group placed the Beneficiary as a member of a 23-person subgroup entitled the “national development of the ecosystem of French AT technologies suppliers and their use.” The evidence does not indicate that the Beneficiary leads his subgroup, how the organizers selected the Beneficiary for participation, or how the Beneficiary contributed to the group. The document does not clearly reflect the total number of participants in the working group; however, the list is ten pages long, single spaced, and contains 17 subgroups.<sup>11</sup> Although the French government’s selection of the Beneficiary for participation in the working group demonstrates his expertise in AI, it does not sufficiently demonstrate that the Beneficiary is among the small percentage at the very top of the field of endeavor.

In summary, the Beneficiary seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard.<sup>12</sup> The Petitioner’s evidence confirms the Beneficiary received attention from those in his field. However, considering the full measure of the Beneficiary’s ability and achievements, the level of his national or international acclaim, and the extent to which his achievements have been recognized in the field, we conclude that the evidence is not indicative of a record of sustained acclaim. The Petitioner has not sufficiently documented how the Beneficiary has attained a level of expertise placing him among that small percentage that has risen to the very top of the field of endeavor.

### III. CONCLUSION

For the reasons discussed, 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. In visa petition proceedings, it is a petitioner’s burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

ORDER: The appeal is dismissed.

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<sup>10</sup> While we acknowledge the Petitioner’s statement that the Beneficiary currently holds a leadership role, it is unclear when his leading or critical role began. The Petitioner must establish eligibility at the time of filing for the requested benefit. 8 C.F.R. § 103.2(b)(1).

<sup>11</sup> Some names appear more than once. Accordingly, a simple count of the names on the list does not necessarily reflect the number participants overall. In addition, although the Petitioner provided 10 pages of names, the page numbers do not appear to match. For instance, after the page “6 of 6,” the pages continue as “7 of 6,” “8 of 6,” “9 of 6,” and “10 of 6.” We cannot determine what this means or whether the evidence represents the complete list of participants.

<sup>12</sup> Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994).