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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

B2

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 28 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

APPLICATION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. §
1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a senior project manager. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" of his achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner claims to meet at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. Law

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate his sustained acclaim and the recognition of his achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, internationally recognized award) or through the submission of qualifying evidence under at least three of the following ten categories of evidence.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119 - 1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

¹ Specifically, the court stated that the AAO had unilaterally imposed novel, substantive, or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

This petition, filed on April 15, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a senior project manager. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

On appeal, counsel asserts that the petitioner's project management professional and six sigma black belt certification are documentation of the petitioner's membership in associations in his field. On appeal, counsel submitted a letter from [REDACTED], managing director, master black belt, Acuity Institute dated January 14, 2010. Mr. [REDACTED] states that the petitioner completed Acuity Institute's six sigma black belt program and the criteria for the program are as follows:

- Candidate should have five years of work experience and outstanding analytical skills, strong project management skills, strong leadership qualities, highly complex problem solving capabilities to apply for six sigma black belt.
- Candidate has to pass an analytical exam with 85% marks. It's an extraordinary accomplishment to qualify the exam before candidate can enroll for a 3-4 months mandatory training.
- Based on the training the candidate has to submit the assignments and his work on two real time projects.
- Once the project work gets reviewed the candidate has to appear for an entrance exam in which the candidate has to score 80% marks.

In order to apply for the training required for six sigma black belt certification, a candidate must have 5 years of work experience and once accepted into the program, the candidate must take and pass two exams. The requirements as stated by Mr. [REDACTED] do not constitute outstanding achievements as judged by recognized national or international experts in the field of management, and completion of the training does not constitute membership in an association. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires that the outstanding achievements of the prospective members of associations be judged by recognized national or international experts in their disciplines or fields. Mr. [REDACTED] does not state who judges achievements of the candidate's for six sigma training.

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Counsel also submitted a project management professional (PMP) certificate for the petitioner dated November 21, 2007. The record also contains articles about PMP certification. In an article entitled "The PMP: How Much Value Does it Really Offer?," PMP states:

The reality is that the PMP demonstrates three things: that you have had 35 hours of classroom training, have a minimum amount of experience in project management-related work, and have passed an examination based on the PMBoK.... The PMP is only an assessment of knowledge, however – and a very narrowly defined body of knowledge at that. The exam tests you on PMI's terminology, processes, and process boundaries. What the PMP does not demonstrate is our competency as project managers or our skills in applying our competencies in real-world situations.

The record of proceeding contains no evidence that PMP certification constitutes membership in an association that requires outstanding achievements as judged by recognized national or international experts in the petitioner's field. According to the article submitted by counsel, PMP certification is comprised of 35 hours of classroom training and passing an examination and as such it does not constitute a prize or award, an outstanding achievement, a contribution of major significance, or anything else relating to the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Accordingly, the petitioner failed to establish that he meets this criterion.

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.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires the petitioner to submit "[e]vidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied field of specification for which classification is sought." The record contains what appears to be an email from AIU addressed to "Student" asking that the individual "study the attached document in depth and send [them] opinions and comments" as well as what "implications, professionally, this article will have on [the individual's] field of study." There is no evidence that this email was sent to the petitioner. Also, the record does not contain the attachment to the email or the date of the email. According to the AIU email, it appears that the articles sent by the university are "interesting and actual contents of future world trends." Even if the email was sent to the petitioner, it appears that the email is for the enrichment of the student and not a request to serve as the judge of the work of others in the petitioner's field. In his letter dated December 17, 2009, Mr. [REDACTED] stated that as a successful graduate, the petitioner "continues to review articles and provide opinions." Mr. [REDACTED] does not state the subject matter of the articles reviewed by the petitioner or whether the authors of the articles are students or business professionals. As the plain language of this regulatory criterion specifically requires "[e]vidence of the alien's participation . . . as the judge of the work of others," the assertion that the petitioner "continues to review articles and provide opinions" without evidence of actually judging or reviewing the work of others is insufficient to meet the plain language of the regulation. The lack of information in the letter gives the AAO no basis to make a favorable determination on the petitioner's participation as a judge of the work of others in the same or an allied field of specification for which classification is sought.

Accordingly, the petitioner failed to establish that he meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, or business-related contributions of major significance in the field.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original scholarly or business-related contributions "of major significance in the field."

On appeal, counsel states that the petitioner meets this criterion because his thesis has been used by Atlantic International University (AIU) and he has published articles. Counsel submits articles at exhibit C of the appeal brief, but none of them show that they were written by the petitioner. In a letter dated December 7, 2009, ██████████ student services, Atlantic International University, states that the petitioner's thesis work is also "used as a source material outside of AIU for training other graduate students." ██████████ does not provide any information as to whom else uses the petitioner's thesis or if those graduate students are in the petitioner's field. In a letter dated December 17, 2009, ██████████ using the position title of academic coordinator, Atlantic International University, states that the petitioner's thesis is "unique and valuable to the field" and that the petitioner "reviewed other student's work outside [of] the university." Mr. ██████████ does not explain what makes the petitioner's thesis unique or valuable to the field, and the petitioner has not established that his thesis and articles constitute contributions of major significance to the field of project management.

Accordingly, the petitioner failed to establish that he 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.

While the petitioner never claimed eligibility for this criterion at the time of the original filing of the petition, a review of the director's decision reflects that he found that the petitioner's work "has only been distributed locally and used by the students at AIU." We note that the petitioner did not address or contest the decision of the director on appeal.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. As noted above, there is no evidence in the record of proceeding that the petitioner published any of his writings in professional or major trade publications or other major media.

Accordingly, the petitioner failed to establish 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.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. The petitioner submitted several letters praising his work as a senior project manager.

In his letter dated January 11, 2008, [REDACTED], states that the petitioner's "vital contributions consist of designing operations support models, monitoring plans, creating OLAs, defining new processes and eliminating errors utilizing six sigma methodologies." Mr. [REDACTED] does not explain the petitioner's role for his employer [REDACTED] the subcontractor [REDACTED] or the client [REDACTED].

The record contains a letter dated December 22, 2009 from [REDACTED] director of operations, [REDACTED] Mr. [REDACTED] states:

As part of [the] clinical trials drug testing process, [the petitioner] has implemented a process through which a user can be provisioned on a SharePoint portal so that they can submit their drug testing report in the automated system. While prior to this process the work was done manually which took many days to provision a user for clinical trial testing. So the unique process which he has implemented saves time and add[s] value to the business.

Moreover, he has defined many key processes from technology perspective which were required to achieve the objective of the project.

Mr. [REDACTED] also lists other processes that the petitioner implemented at [REDACTED] including the design of process flow diagrams. As noted by the director, without an explanation from those in the field, the diagrams designed by the petitioner have not been shown to be sufficient to meet this criterion. Mr. [REDACTED] states that the purpose of the diagrams is to "train global MRL teams to accomplish the main objective of the project." The letter does not provide specific information as to how the design of such a diagram constitutes performing in a leading or critical role for an organization or establishment that has a distinguished reputation.

The record contains a letter dated March 12, 2009 from [REDACTED] director of business development, [REDACTED] Mr. [REDACTED] states:

[The petitioner] contributed to designing support model and processes in the clinical projects at [REDACTED] New Jersey. He developed a unique support model, support process, monitoring plan and sustain plan to get better coordination to help achieve project objectives.

His contributions were outstanding, original, and had a business value.

Although Mr. [REDACTED] states that the petitioner's work had a business value, Mr. [REDACTED] does not provide evidence that the petitioner performed in a leading or critical role for [REDACTED] or [REDACTED].

While the letters briefly describe the petitioner's work, the documentation does not establish that his position was leading or critical to any organizations or establishments as a whole. The letters fail to establish that the petitioner's position was leading or critical; rather they describe routine job duties that one would expect from an individual in a technical position and generally assert that his work had value. While the letters mention projects in which the petitioner participated, the petitioner failed to establish, for instance, that his role directly led to the success and accomplishments at any of the companies mentioned so as to establish the petitioner's leading or critical role. Moreover, the letters of recommendation are general and broad in nature when describing the petitioner's specific roles, responsibilities, and accomplishments. In addition, the petitioner failed to submit any documentation establishing that the organizations or establishments mentioned have a distinguished reputation.

Additional evidence is needed in order to find that the petitioner meets this criterion. For example, there is no organizational chart or other evidence documenting how the petitioner's position falls within the general hierarchy of his employer, the subcontractor, or [REDACTED]. The record does not provide evidence demonstrating how the petitioner's position differs from those of other project managers employed at his company.

Accordingly, the petitioner failed to establish that he meets this criterion.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 2010 596 F.3d 1115 at 1119 - 1120. In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

While the petitioner submitted several letters of recommendation praising his work, such letters cannot form the cornerstone of a successful extraordinary ability claim. Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

Finally, we cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the beneficiary's sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide

that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The petitioner failed to submit evidence demonstrating that the beneficiary "is one of that small percentage who have risen to the very top of the field." In addition, the petitioner has not demonstrated the beneficiary's "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. While the record reflects that the petitioner possesses talent as a project manager, the record falls far short in classifying the petitioner as an alien of extraordinary ability pursuant to the requirements of the statute and regulations. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.