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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



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



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Office: TEXAS SERVICE CENTER

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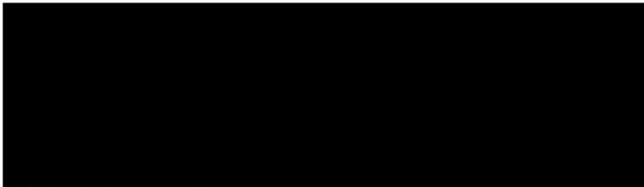
IN RE:

Petitioner:

Beneficiary:

PETITION: 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:

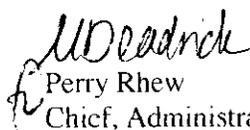


INSTRUCTIONS:

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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in business, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The petitioner proposes to work as a financial manager. According to the record of proceedings, which contains the petitioner’s Form G-325A Biographic Information signed on March 11, 2010, the petitioner has worked in the United States as a senior accountant since 2005. The entire evidence submitted to support the petition consists of four letters providing anecdotes about the petitioner’s employment in Pakistan prior to February 2000. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “*sustained* national or international acclaim” and present “*extensive documentation*” of the alien’s achievements. (Emphasis added.) 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 of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective 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 asserts that because an ability to “meet” three criteria does not automatically establish eligibility, it logically follows that an alien can demonstrate eligibility without “meeting” three criteria. What the petitioner characterizes as “alternative logic” is not persuasive. The fact that meeting the procedural documentary requirements is only the first step in establishing eligibility does not imply that this step can be skipped. The petitioner also notes that the regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of “comparable evidence.” The petitioner ignores the fact that this provision only permits the submission of comparable evidence where the standards at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the petitioner’s occupation and fails to explain how a handful of letters is comparable to the objective evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, the petitioner has not submitted the required extensive evidence of sustained acclaim, both statutory requirements.

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.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international 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. 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.* at 1121-22.

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

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).

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 1119-20.

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 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *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) (recognizing the AAO’s *de novo* authority).

Nothing in the court’s decision suggests that a petitioner who fails to produce the required initial evidence pursuant to the requirements at 8 C.F.R. § 204.5(h)(3)(i) can still establish eligibility at the final merits stage. The court stated:

Whether an applicant for an extraordinary visa presents two types of evidence or none, the proper procedure is to count the types of evidence provided (which the AAO did), and the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded). 8 C.F.R. § 204.5(h)(3).

Notably, while the court made clear that counting the evidence is only the “antecedent procedural question,” *Kazarian* 596 F. 3d at 1121, the court ultimately concluded that the alien in the matter before it only met two criteria and on that basis alone upheld USCIS’ denial of the petition. *Id.* at 1122. Nevertheless, in the interest of thoroughness, the AAO conducts a final merits determination in all cases.

II. Analysis

The petitioner submitted letters from [REDACTED]

[REDACTED] discusses the petitioner’s work as “the [REDACTED] one of the largest multi-national corporations in all of Pakistan,” where the petitioner “unearthed a fraud” amounting to \$500,000. [REDACTED] does not suggest that he ever worked for [REDACTED] and does not explain his first hand knowledge of the information he is providing.

asserts that the petitioner “is credited with and recognized for the financial genius which led to the enormous, highly complex multi-million dollar mergers of and the French-company become .” then asserts that the petitioner “was the financial mastermind of the sales of (the product of the merger) to the German chemical and pharmaceutical giant, Bayer.” provides similar information, discussing the petitioner’s role in mergers and asserts that he “participated in meetings” in different countries.

Finally, asserts that the petitioner developed a cost center-profit center methodology for developed and implemented an exchange rate fluctuation model that he proposed to and uncovered an accounting fraud. does not provide any examples of independent accountants adopting the petitioner’s methodologies or model and the record contains no evidence that the petitioner published and disseminated these innovations.

The above letters constitute the entirety of the evidence the petitioner has submitted in this matter.

A. Evidentiary Criteria

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The record contains no prizes or awards. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i).

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.

The record contains no documentation of memberships, qualifying or otherwise. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(ii).

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.

The record contains no published material about the petitioner or even about the mergers discussed in the letters. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iii).

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.

None of the letters confirm that the petitioner was selected to serve individually or on a panel as a judge of the work of others. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iv).

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

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of business, it can be expected that the results would have been demonstrably influential in the business world.

The letters do not suggest that the petitioner's exposure of a fraud or his involvement in large mergers has changed the way accountants perform audits or the way businesses conduct mergers. The record contains no evidence, such as published material about the fraud or the mergers, suggesting that they were recognized as significant by the field. As stated above, the record contains no evidence that the petitioner published or presented his methodologies and that other accountants have adopted those methodologies.

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).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.² The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 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 from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether

² *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.³ Most significantly, the petitioner failed to submit any corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

In light of the above, the letters do not constitute qualifying evidence under 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The record contains no published articles by the petitioner. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vi).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner's occupation is not within the arts. Regardless, the record lacks evidence that the petitioner has displayed his work in any forum. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vii).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The regulation at 8 C.F.R. § 204.5(g)(1) provides that letters of experience shall consist of letters from current or former employers. While ██████████ asserts that the petitioner held a "senior managerial position" with Hoechst and AgrEvo, he does not provide the petitioner's exact job title. He also does not explain how the petitioner's position fit within the general hierarchy of the company and does not provide an organizational chart.

³ *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Even assuming the petitioner's role on various mergers and uncovering fraud rose to the level of a critical role for what became Bayer, which the petitioner has not demonstrated, the petitioner would still only meet a single criterion. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(viii).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner did not submit pay statements or other evidence of his salary or remuneration to demonstrate his actual receipt of a high salary much less documentary evidence of how such salary compares to others in the petitioner's field. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(ix).

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner's occupation is not within the performing arts. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(x).

Comparable evidence

The regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence where "the above standards do not readily apply" to the petitioner's occupation. The petitioner has not explained why the above standards do not readily apply to his occupation. Moreover, he has also not explained how four letters providing anecdotal reflections on the petitioner's past achievements are comparable to the objective evidence categories described above. Significantly, we note that the regulations do not allow the submission of comparable evidence to the one-time achievement, the only evidence that can substitute for evidence that qualifies under three of the regulatory criteria. Thus, the submission of one type of evidence, anecdotal letters, cannot be considered sufficient extensive evidence to meet the initial evidentiary requirements for the classification sought.

In light of the above, we are not persuaded that the petitioner has submitted sufficient evidence that is comparable to the evidence required under 8 C.F.R. § 204.5(h)(3).

Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, we will review the evidence in the aggregate as part of our final merits determination.

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.” 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1119-20.

Ultimately, the evidence in the aggregate, four uncorroborated letters providing anecdotes about the petitioner’s past accomplishments, does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. More significantly, ██████████ asserts that the petitioner left Hoechst in February 2000, more than nine years before the petitioner filed the instant petition. The record contains no evidence of any accomplishments after that date. Thus, the evidence is not indicative of *sustained* acclaim proximate to the date the petition was filed.

III. Conclusion

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 has risen to the very top of the field of endeavor.

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

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.