



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

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

MATTER OF P-K-

DATE: APR. 6, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a nurse, seeks classification as an “alien of extraordinary ability” in the sciences. *See* Immigration and Nationality Act (the Act) § 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, Nebraska Service Center, denied the petition. The Director concluded that the Petitioner did not submit the necessary initial evidence.

The matter is now before us on appeal. In its appeal, the Petitioner discusses his nursing credentials, but does not articulate how he has satisfied the initial evidentiary requirements for the classification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

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

(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

(b)(6)

Matter of P-K-

- (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 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).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming our proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that we appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

The Petitioner did not submit evidence of a one-time achievement or documentation meeting at least three criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director analyzed the record under four of the regulatory criteria. On appeal, the Petitioner does not specifically identify which criteria he meets. We will therefore address the four criteria examined by the Director. Upon a review of the record, we conclude that the Petitioner has not met any of the regulatory criteria.

A. Evidentiary Criteria

Documentation of the individual'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 the denial, the Director found the Petitioner did not submit sufficient material to satisfy this criterion. The Director noted that the record contained evidence of the Petitioner's membership in the [REDACTED] but that the filings did not demonstrate this association required outstanding achievements of its members, or that such determinations were made by experts in the field.

(b)(6)

Matter of P-K-

On appeal, the Petitioner does not identify a particular document that satisfies this criterion, but states that he “sat in a board of [REDACTED] in [REDACTED] as a Membership Officer.” The Petitioner did not file corroborating evidence of this position in the [REDACTED], though the record does contain an undated letter confirming his renewed membership in the organization. The membership letter did not contain information regarding (1) the requirements for acceptance into the association, or (2) who made the determination regarding admission as a member. As a result, we agree with the Director that the Petitioner has not shown that his membership in the [REDACTED] meets the second or third element of this criterion identified above; therefore the Petitioner has not satisfied the plain language of this criterion.

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

Regardless of the field, the plain language of the phrase “contributions of major significance in the field” requires evidence of an impact beyond one’s employer and clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). The Director acknowledged letters of recommendation the Petitioner submitted, but found that they did not identify an original contribution he made or how his contributions had been of major significance. The authors of many of these letters discussed the Petitioner’s qualifications for certain medical positions, not his contributions in the field of nursing, or eligibility for the classification.

On appeal, the Petitioner states: “My nursing skills and background have been highly recognized by nursing professionals who mentored or worked with me.” The record contains multiple letters of recommendation from nursing professionals the Petitioner encountered through schooling or employment. Each of the letters spoke favorably of his abilities and work ethic. For example, [REDACTED] an assistant professor at the [REDACTED] characterizes the Petitioner as “a wonderful student” and an “enthusiastic, intelligent, and organized beginning practitioner” who has “a great combination of skills that will make him a very successful nurse.” None of the letters, however, specifically identified an original contribution the Petitioner made in the field of nursing, nor indicated that his contributions had been of major significance in the field as a whole. Although several of the letters praised the Petitioner’s ability to do his job well, they did not speak to the necessary elements of this criterion. Vague, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.¹ *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115 (9th Cir. 2010). On appeal, the Petitioner does not argue that any other

¹ In 2010, the *Kazarian* court reiterated that our conclusion that “letters from physics professors attesting to [the Petitioner’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

(b)(6)

Matter of P-K-

documentation shows his original contributions of major significance in the field. As a result, he has not satisfied the plain language requirements of this criterion.

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

In his denial, the Director acknowledged the Petitioner's previous positions as an engineer for [REDACTED] from 1997 to 1999 and for [REDACTED] from 2003 to 2006. The Director found, however, that the Petitioner did not establish that he played a leading or critical role for either organization, or that either company had a distinguished reputation. On appeal, the Petitioner does not raise this issue or identify a role or an organization that meets this criterion. The Petitioner has, therefore, abandoned this criterion on appeal. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's prior positions abandoned as he failed to raise them on appeal).

Nevertheless, even if the Petitioner had not abandoned this argument on appeal, we would agree with the Director's finding that neither his time with [REDACTED] satisfies this criterion. A leading role should be apparent by its position in the organizational hierarchy and the role's matching duties. A critical role is apparent by its overall impact on the organization or establishment. The evidence provided does not address the Petitioner's role within or the reputation of either organization.

The Petitioner submitted a letter dated July 10, 2000, from [REDACTED] stating that the Petitioner was an engineer in its Research and Development (R&D) department from 1997 to 1999. The letter listed the Petitioner's duties and responsibilities, which included researching and developing electronics circuits and software, as well as testing and measuring the performance of prototypes. [REDACTED] indicated that he had "an exceptionally high opinion" of the Petitioner. The letter did not, however, describe a position within the organization's hierarchy or job duties consistent with a leading role. Similarly, the letter did not suggest that the Petitioner's role in the organization had a critical overall impact on [REDACTED]. Lastly, the letter did not contain information regarding the organization's reputation. As a result, the letter from [REDACTED] Assistant Manager did not satisfy the plain language of this criterion.

The Petitioner also submitted a letter dated May 5, 2006, from [REDACTED] regarding the Petitioner's employment as an electrical engineer from 2003 to 2006. According to the letter, the Petitioner's job duties included designing and redesigning control components, as well as troubleshooting failed circuits. The letter referred to the Petitioner as "a wonderful employee," but did not indicate that he had a leading role as demonstrated by his position within the organization and his job duties. The letter also did not describe his impact on the overall organization, such that we might conclude that he played a critical role. [REDACTED] did give details about the company, such as information about its establishment and the niche market it filled. This

(b)(6)

Matter of P-K-

information did not, however, establish [REDACTED] reputation. For these reasons, the Petitioner has not met the plain language of this criterion.²

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

In the denial, the Director noted the Petitioner earned \$33.00 per hour or \$68,640 per year at [REDACTED] and that he was offered a position at [REDACTED] with a base rate of \$34.34 per hour. The Director found that the Petitioner did not meet this criterion, however, because he did not submit documentation to establish that these salaries were high relative to others in the profession. On appeal, the Petitioner does not affirm that his salary is high in relation to others in the field; rather, he maintains that his salary is sufficient to accommodate a “comfortable living” and characterizes his future ability to obtain higher positions and income as “very promising.”

We agree with the Director’s finding that the evidence in the record is insufficient. As the Director stated, the Petitioner has not provided any documentation regarding salaries or remuneration of other nurses. As a result, he has not established that the amount he received is high relative to others in the field. For these reasons, the Petitioner has not satisfied this criterion.

B. Summary

As noted above, the filings provided do not satisfy any of the regulatory criteria. As a result, 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 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

The documents submitted in support of extraordinary ability must show that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings 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 field of endeavor,” and (2) that the individual “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)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20 (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). Although we need not provide the type of final merits determination referenced in

² The Petitioner has not explained how his role as an engineer is relevant in the field of nursing, in which the Petitioner seeks the extraordinary ability classification. Had the Petitioner met at least three criteria, we would raise this concern in our final merits analysis of the evidence in the aggregate.

Matter of P-K-

Kazarian, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. § 291 of the Act. Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of P-K-*, ID# 16057 (AAO Apr. 6, 2016)