



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

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

MATTER OF D-S-J-

DATE: MAR. 25, 2016

CERTIFICATION OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a mathematician who proposes to found a company and serve as its chief executive officer, 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 classification makes visas available to foreign nationals 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 Petitioner appealed the matter to us. We withdrew the Director’s decision and remanded the matter for further consideration and entry of a new decision. The matter is now before us on certification.

On certification, the Petitioner submits a statement concerning the benefit of his research, and correspondence pertaining to a separate matter before the Board of Immigration Appeals.

Upon *de novo* review, the petition will be denied.

I. LAW

By statute, the extraordinary ability immigrant visa classification requires that foreign nationals demonstrate sustained national or international acclaim and present extensive documentation of their achievements.

Specifically, section 203(b)(1)(A) of the Act explains that a foreign national is described as an individual 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

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(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The implementing regulation defines the term "extraordinary ability" as referring only to those individuals in that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). To meet this definition, 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 recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this documentation, then he/she must provide sufficient qualifying evidence that meets at least three of the ten criteria 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 documentation is first counted and then, if fulfilling 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 U.S. Citizenship and Immigration Services' (USCIS) 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 USCIS 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 USCIS examines "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").

In addition, the statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. *Id.*

## II. ANALYSIS

### A. Evidentiary Criteria<sup>1</sup>

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

The Petitioner submitted a paper describing his invention entitled [REDACTED]

[REDACTED] The record also includes documentation indicating that the Petitioner authored

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<sup>1</sup> We have reviewed all of the evidence the Petitioner has submitted and will address those criteria the Petitioner asserts that he meets or for which the Petitioner has submitted relevant and probative evidence.

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a book entitled [REDACTED]. There is no documentary evidence showing, however, that the Petitioner's book and invention have affected the field in a major way, have been frequently cited by independent researchers, or have otherwise risen to the level of original contributions of major significance in the field.

In addition, the Petitioner provided a December 2015 letter from [REDACTED] stating:

[The Petitioner's] research in STEM (Science, Technology, Engineering, Math) is zeitgeist for cyber security and the entire STEM field itself. The unprecience from the research institutions, government agencies, [S]ilicon [V]alley, private equity and the venture capital first is procrastinating this endeavor . . . .

[REDACTED] mentioned the Petitioner's STEM research, but did not provide any specific examples of how his work was of major significance in the field. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id.* *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").

On certification, the Petitioner submits a personal statement asserting that his "research is the zeitgeist for curbing the global terrorism and is beyond the unicorn tech. bubble." The plain language of the regulatory criterion 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" that are "of major significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original scientific contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). Without additional, specific evidence showing that the Petitioner's work has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, the Petitioner has not established that he meets this regulatory criterion.

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

As previously mentioned, the record reflects that the Petitioner authored a book entitled [REDACTED]. The Director noted that the book appears to "have been published by the Petitioner himself" and that there was no evidence showing "the number of books sold." In addition, the submitted documentation does not indicate that the Petitioner's book is a professional or major trade publication or other type of major media. Accordingly, the Petitioner has not established that he meets this regulatory criterion.

#### B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3).

#### C. Continuing Work in the Area of Expertise

The Petitioner submitted a July 2013 letter stating: "The petitioner is proposing the Institutional Investors and Venture Capitalists for partnering the endeavor in achieving the trillion dollars milestone with the following start-up companies: [REDACTED] and [REDACTED]."

The Director indicated that while the Petitioner offered an "idea" for his employment, there was "no evidence submitted establishing the existence, viability, and profitability of the proposed business." Furthermore, the record does not include any letters from prospective employers, evidence of prearranged commitments such as contracts, or a statement from the Petitioner providing sufficiently detailed plans on how he intends to continue his work in the United States. Therefore, we uphold the Director's determination that the Petitioner did not satisfy the regulation at 8 C.F.R. § 204.5(h)(5).

### III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate 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 submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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 field of endeavor," 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)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done so, the proper conclusion is that he has failed to meet the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4).

*Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the Petitioner has not demonstrated the level of expertise required for the classification sought.<sup>2</sup> Furthermore, the Petitioner has not established that he will continue to work in his area of expertise in the United States.

The Director's decision will be affirmed for the above stated reasons, with each considered as an independent and alternate basis for denial. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

**ORDER:** The certified decision of the Director, Nebraska Service Center, is affirmed, and the petition is denied.

Cite as *Matter of D-S-J-*, ID# 16980 (AAO Mar. 25, 2016)

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<sup>2</sup> We maintain *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); see also INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).