



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

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

MATTER OF Z-C-P-

DATE: FEB. 27, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a technological entrepreneur, seeks classification as an individual of extraordinary ability in business. *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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, contending that he satisfies at least three criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified 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 two options for satisfying this classification’s initial evidence requirements. First, a petitioner can demonstrate 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 documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle 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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner currently works as a consultant for [REDACTED] in [REDACTED] California. Because he has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner had not met any of the initial evidentiary criteria.

On appeal, the Petitioner maintains that he meets three criteria, as discussed below.¹ We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

¹ While the Petitioner previously claimed eligibility for the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), he does not continue to do so on appeal, nor does the record support a finding that he meets it. Accordingly, we will not further address this criterion in our decision.

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. 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the Petitioner provides a certified translation of an article published in the Hungarian edition of [REDACTED] reflecting published material about him in a major medium. Accordingly, the Petitioner established 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. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner argues that he meets this criterion based on his roles with [REDACTED] and [REDACTED]. As support for this contention, he references recommendation letters from [REDACTED] chief Internet evangelist for [REDACTED] and [REDACTED] former country manager for [REDACTED]. In addition, the Petitioner indicates that he provided media articles and screenshots, but the Director “essentially dismissed this evidence, even though it was highly probative.” As specifically discussed by the Director, the Petitioner presented English language translations that were not properly certified. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* On appeal, the Petitioner offers certified English language translations for 11 of the previously submitted articles and screenshots, which will be considered below. With respect to the remaining evidence, because the Petitioner did not submit properly certified English language translations, we cannot meaningfully determine whether the translated material is accurate and thus supports his claims.

Regarding a leading role, the evidence must demonstrate that a petitioner is a leader. A title, with appropriate matching duties, can help to establish if a role is, in fact, leading.² Here, the Petitioner's evidence does not express how his roles were leading to the companies at large. For instance, the Petitioner provides a screenshot from [http://\[REDACTED\]](http://[REDACTED]) which announces [REDACTED] appointment of him as its Hungarian country representative. Similarly, the Petitioner submits screenshots from [http://\[REDACTED\]](http://[REDACTED]) and [http://\[REDACTED\]](http://[REDACTED]) describing his promotion to vice president of [REDACTED] classified media section responsible for Hungary from managing director of the company's website, [REDACTED]. The documentation, however, does not indicate how his roles as a country representative and vice president of the classified media section were leading to the companies in their entirety. The Petitioner did not show, for example, where he fit in the overall reporting structure of [REDACTED] or [REDACTED].

² See 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 10* (Dec. 22, 2010), <http://www.uscis.gov/laws/policy-memoranda>.

Similarly, even though [redacted] stated that the Petitioner served as the marketing, advertising sales, and public relations manager for [redacted] in Hungary and “had a leading role to the entire organization,” he did not describe how this position differentiated from the other managerial positions at the same office or compared to the leadership positions in [redacted] as a whole. Repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *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.).

As it pertains to a critical role, the evidence must establish that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. It is not the title of a petitioner’s role, but rather the performance in the role that determines whether the role is critical.³ Here, the Petitioner did not demonstrate how his contributions were significantly important to the outcome of the organizations’ activities. For instance, although [redacted] claimed that the Petitioner “has been the catalyst for accessing the platform for accessing the Internet in households and businesses in Hungary” and “[h]is tenure of [redacted] was the period of the most aggressive growth in Internet penetration in Hungary,” the letter does not explain the correlation between the Petitioner’s work at [redacted] and the growth of the Internet in Hungary.

Regarding [redacted] the Petitioner provides screenshots from [http://\[redacted\]](http://[redacted]) and [http://\[redacted\]](http://[redacted]) indicating that [redacted] “has not made any profit so far” and “is not profitable at the moment.” Further, the Petitioner submits an article from [redacted] reflecting an interview of him pertaining to [redacted] partial acquisition of [redacted] and an article from [redacted] relating to an interview about him and his opinions on various topics. The evidence, however, does not indicate that the Petitioner’s work with [redacted] earned any profits or that he was responsible for [redacted] purchase of [redacted] nor has the Petitioner established the significance of the acquisition.

Finally, the Petitioner offers four screenshots from [http://\[redacted\]](http://[redacted]) and [http://\[redacted\]](http://[redacted]) reflecting quotes from him announcing [redacted] new channel or promoting a free channel weekend. Further, [redacted] claimed that the Petitioner increased [redacted] subscriber base and revenue sales in Hungary. The evidence, however, does not demonstrate how the Petitioner’s work in Hungary was of significant importance to [redacted] For example, the letter does not provide specific data or compare the revenues or sales in Hungary to that of other countries offering [redacted] The Petitioner did not establish that his work for [redacted] in Hungary significantly impacted the company’s subscriber base and revenue sales. For these reasons, the Petitioner did not demonstrate that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner contends that “his salary was high in relation to others [and] specifically provided data for chief executive officers, which was [his] position.” In addition, the Petitioner indicates that

³ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

he submitted his 2015 Spanish “Personal Income Tax” and screenshots from the [REDACTED] website regarding salaries for chief executive officers (CEOs) in Spain.

Although the Petitioner offered his Spanish personal income tax form, he did not present documentation from [REDACTED] his claimed employer in 2015, to support his contentions regarding his earnings from the company. Moreover, he did not offer evidence explaining his income tax return. Accordingly, the record is not sufficient to demonstrate how much of the income the Petitioner reported in 2015 represented his salary or other remuneration from [REDACTED]

In addition, while the Petitioner provided information regarding the salaries of CEOs in Spain, the record does not reflect he has ever held the position of a CEO. In fact, the certified translation of his most recent media article from 2014 [REDACTED] indicates that he held a vice president position within [REDACTED] as discussed in the previous criterion. Moreover, the Petitioner offers Wikipedia screenshots regarding [REDACTED] showing that “[REDACTED] has been CEO since 1989.” The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner has not explained or resolved this inconsistency.

For the reasons discussed above, the Petitioner did not adequately document his earnings in his position at [REDACTED] and did not demonstrate that such compensation was high when compared to others in his field. See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); see also *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Accordingly, the Petitioner did not establish that he meets this criterion.

III. CONCLUSION

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. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.