MATTER OF E-R-K-

DATE: NOV. 29, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a legal scholar, seeks classification as an individual of extraordinary ability in education. *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 ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he meets at least three of the ten criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to 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,
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> (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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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 is a sole proprietor of [redacted] in [redacted] Washington. Because he has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner did not fulfill any of the initial evidentiary criteria.

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

[1] The Petitioner also argues that USCIS found that he met three criteria in a previous filing. However, each extraordinary ability petition is reviewed on its own merits, and we are not bound by decisions of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner provided evidence showing that, in 2010, he received an award for innovation in his field and that this award is nationally recognized. Accordingly, the Petitioner demonstrated that he fulfills this criterion.

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. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner contends that he satisfies this criterion based on his membership with the [redacted] Specifically, he references letters from [redacted] former president of [redacted], and [redacted] former president of the [redacted] of Brazil, who indicated that the Petitioner was a member of the [redacted] and was appointed as vice president of the [redacted] and later chairman of the committee. Moreover, the Petitioner argues that [redacted] "delegates to the President to choose its members," and that in this case, [redacted] accepted the nomination from [redacted] former president of the [redacted] and the recommendation by [redacted] a digital law expert, naming him to the special committee. In addition, the Petitioner provides excerpts of regulations relating to the [redacted] to show the president's delegation authority.

In order to meet this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[2] While the letters referenced above explain who selected the Petitioner, they do not demonstrate that membership with [redacted] requires outstanding achievements, as judged by recognized national or international experts. Although [redacted] regulations give the president authority to appoint members to [redacted] they do not reflect that outstanding achievements are a prerequisite to obtaining a position with [redacted] or on any of its committees. Here, the Petitioner did not demonstrate that membership with [redacted] requires outstanding achievements, as judged by recognized national or international experts consistent with the regulation at C.F.R. § 204.5(h)(3)(ii).

For these reasons, the Petitioner did not establish that he meets this criterion.

[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* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner maintains that he meets this criterion based, in part, on his "revolutionary work in digital advocacy that culminated in a pioneer and original book that was and is still a leading educational overview of a new field within the field law." In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner provided translations of the preface and afterword for his book, which were written, respectively, by president of the and Brazilian judge. These individuals described the book as a "very useful guide" and stated that it "demystifies technology, translating it to the operators of the right and placing it at the disposal of all to facilitate the day-to-day forensics." Further, he offered a translation of a book presentation by , in which it attested that the book is "recommended reading not only to those who work in the area of law, but to all citizens." Although the Petitioner established the originality of his work through authorship of a book, the evidence does not demonstrate that the overall field views his book as a contribution of major significance.[3] The aforementioned documentation reflects individuals promoting and offering praise for the book, but does not show that the general field already considered it to be majorly significant.

The record also contains letters referencing the Petitioner's book and discussing his knowledge in digital law.[4] For instance, director of the law and technology committee of claimed that the publication "is a significant book and has been extensively used by our education system at the BAR in our state." Moreover, stated that "[t]he content of this work, which is a true manual, involves a lot of expertise in Digital Law . . . and other related standards to the subject." Further, a Brazilian attorney, indicated that "[t]he great advantage of his book was that for the first time in Brazil, a digital book right on electronic process was illustrated in great detail." While the letters praise the usefulness of the Petitioner's book and his expertise on digital law, they do not offer sufficiently detailed information, nor does the record contain sufficient corroborating evidence, to show how the overall field has been impacted by his work. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[5] On the other hand, letters

[3] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[4] Although we discuss a sampling of letters, we have reviewed and considered each one.

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[6] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Further, the Petitioner argues that his work in digital law "was quickly adopted throughout the nation's judiciary, and became such a widely used instrument that a Federal law was enacted to regulate the practice throughout the country." The record contains a letter from a Brazilian lawyer, who indicated that the Petitioner participated in the development of the first software system of the In addition, the Petitioner submits Brazilian law and regulations and a translation of an article reflecting that "[m]ore than 70% of the Federal Court has already adopted the While attested to the Petitioner's participation in the development of the first software system, the evidence does not corroborate his claims that the creation of the law and regulations and adoption by more than 70% of the court were attributable to his work. The letter does not detail what contributions the Petitioner made or how he participated in the development of the software program. Moreover, the letter does not establish whether the Petitioner's involvement led to the software version now utilized by the courts. Because the Petitioner has not sufficiently supported his assertions, he has not shown that he has made an original contribution of major significance consistent with this regulatory criterion.

For these reasons, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

> *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 contends that his roles as vice president and chairman of the for the satisfy this criterion. Specifically, the Petitioner references the previously discussed letter from who described the position requirements and attested to his work on the electronic procedural practice. As it relates to a leading role, then evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[7] Regarding a critical role, the evidence must demonstrate 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 or was critical.[8]

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[6] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

[7] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

[8] *Id.*

Here, the Petitioner did not demonstrate how his roles on a specific commission constitute a leading or critical role for an organization or establishment consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(viii). discussed the Petitioner's roles for the commission without establishing how the Petitioner performed in a leading or critical role for as a whole. Further, did not show, for example, how the Petitioner's chairmanship and vice president roles were leading or critical outside of the committee. The letter does not contain detailed and probative information that specifically addressed how the Petitioner's roles were leading or critical to overall.[9] Moreover, the Petitioner did not demonstrate how his committee roles contributed in a way that is of significant importance to the outcome of the organizations or establishments' activities.[10] 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 acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r. 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).[11]

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.

Cite as *Matter of E-R-K-*, ID# 1758010 (AAO Nov. 29, 2018)

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[9] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

[10] *Id.*

[11] As the Petitioner has not demonstrated his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether he intends to continue working in the area of extraordinary ability under section 203(b)(1)(A)(ii).