



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

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

MATTER OF N-K-S-

DATE: OCT. 23, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a trek and expedition guide to mountain climbers, seeks classification as an individual of extraordinary ability. *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 shown that he met any of the ten initial evidentiary criteria, of which he must meet at least three. The Petitioner filed a motion to reopen, and the Director concluded that with the additional evidence submitted, he met only one of the ten criteria.

On appeal, the Petitioner submits additional evidence and contends that he meets 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 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). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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 mountain climber who intends to work as a trek and expedition leader. As the record does not establish 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). The Director held that the evidence did not demonstrate that the Petitioner met the criteria for membership, published material, contributions of major significance, or leading or critical role under 8 C.F.R. § 204.5(h)(3)(ii), (iii), (v) and (viii), respectively.

The Petitioner then filed a motion to reopen and the Director held that the evidence established the leading or critical role criterion but not the membership or original contributions of major significance criteria under 8 C.F.R. § 204.5(h)(3)(ii) and (v), respectively. On appeal, the Petitioner asserts that he meets these criteria and that he also qualifies as an individual of extraordinary ability based on comparable evidence under 8 C.F.R. § 204.5(h)(4). For the reasons discussed below, the record does not support a finding that the Petitioner satisfies at least three criteria.

A. Evidentiary Criteria

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 asserts that he meets this criterion due to his membership in the [REDACTED]. The Director held that the record did not establish that his outstanding achievements as a climbing guide were the basis for his membership in the [REDACTED] or that recognized national or international experts in the field determined whether he qualified for membership.

The Petitioner states that the [REDACTED] only grants membership to those who have reached the summit of Mt. Everest at least once. The record contains a webpage from the [REDACTED] which states that [REDACTED] as the name itself speaks, is an association of [REDACTED]. The Board of Committee members thus includes all the veteran Nepali climbers.” In her letter, [REDACTED], the president of the [REDACTED] states that the Petitioner has summited Mt. Everest six times, in addition to other treks, and that he is registered as a member of the association. As evidence that [REDACTED] is an expert in the field, the Petitioner submitted documentation from her website, discussing her achievements in mountain climbing, which also states that she has been the president of the [REDACTED] since 2015.

On motion, the Director noted that the record did not contain the bylaws or constitution of the [REDACTED] with the details about the membership process and who is eligible for it. She also concluded that while the record shows that [REDACTED] is an experienced mountain climber, the evidence does not demonstrate that she is responsible for reviewing all applications for membership in the association. She noted that the evidence appeared to show that anyone who has climbed Mt. Everest is eligible to become a member of [REDACTED] which would include mountain guides as well as those who were mountain climbers. No new evidence of the [REDACTED] admission requirements or process was submitted on appeal.

Under this criterion, the Petitioner must establish that his membership is in the field for which classification is sought, as an expedition guide. The record does not reflect that his membership in the [REDACTED] is based on his achievements as an expedition guide nor does it establish that national or international experts judged his achievements for admission into the association. Therefore, the evidence in the record does not establish that the Petitioner meets this criterion.

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).

The Petitioner submitted an article from the publication Golden Transcript about his work in the field, but the record does not contain evidence demonstrating that this constitutes published material in a professional or major trade publication or in major media. The Golden Transcript publication appears to be based in Golden, Colorado, but the record does not demonstrate the extent of its readership. The

record also contains a blog article from alanarnette.com entitled, [REDACTED] which discusses the keynote speaker at the [REDACTED] annual dinner in 2015, which was followed by a panel discussion that included the Petitioner. Beyond identifying the Petitioner as a participant, the article does not directly reference him again and focuses on the issues discussed. Thus, the article is not about him or his work in the field. Additionally, the record does not establish that the blog publishing the article constitutes a professional or major trade publication or other major media. Therefore, the evidence in the record is insufficient to establish that he meets this criterion.

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 Director held that the letters the Petitioner submitted regarding his contributions did not establish that he met this criterion. Then on motion, the Director addressed the evidence in the record about the Petitioner's ability to set ropes and routes as well as his search and rescue efforts on Mt. Everest. The Director cited portions of letters attesting to these skills and appears to hold that the evidence in the record did not show that his contributions had a major influence on the field as a whole. No new evidence of the Petitioner's original contributions was submitted on appeal.

The record contains a letter from [REDACTED], an expedition guide who has worked with the Petitioner for more than 12 years, stating the following:

[N]ot everyone can do the dangerous and technical job of rope fixing, but I can always count on [the Petitioner]. He has the technical climbing skills, the knowledge of the mountain and the strength (both physical and mental) to be trusted with setting the ropes and routes in a sound and safe manner. The climbers tasked with setting the ropes battle steep inclines to anchor the ropes so that up to 600 climbers may use them to navigate the treacherous terrain of Mt. Everest.

We acknowledge the Petitioner's expertise, but these contributions pertain to specific expeditions on Mt. Everest, not to the field as a whole. The Petitioner has not demonstrated that his rope fixing work has had major significance in the field.

The record also contains many letters from those who have climbed Mt. Everest with the Petitioner who explain the heroic efforts he undertook during the 2014 [REDACTED] and the 2015 earthquake on Mt. Everest. While we recognize the personal impact he has had in rescuing others on Mt. Everest, the record does not demonstrate that these are original contributions of major significance throughout the field to meet 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).

For a leading role, the evidence must establish that the petitioner is or was a leader.¹ If a critical role, the evidence must establish that the petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the petitioner's performance in the role is or was important in that way. It is not the title of the petitioner's role, but rather his or her performance in the role that determines whether the role is or was critical.²

The Petitioner claims to meet this criterion by having performed a leading or critical role as a mountain guide for [REDACTED]. The Director initially determined that the evidence was insufficient to meet the requirements of this criterion because the letter submitted was written by the Managing Director of [REDACTED] not [REDACTED]. On motion, the Petitioner submitted a letter from [REDACTED], the co-owner and program director for [REDACTED], stating that the company employed the Petitioner from 2004 through 2014 as a mountain guide on treks in Nepal and Tibet and that he "has played a critical role on many [REDACTED] climbs, and has made significant contributions to the field by successfully and safely guiding many climbers on their high-altitude adventures." The Director held that this constituted a leading or critical role for [REDACTED].

Upon reviewing the evidence in the record, we find that this criterion has not been established. First, the evidence does not establish that the Petitioner performed a leading or critical role for [REDACTED] as he claims. [REDACTED] states that the Petitioner "has personally guided [REDACTED] clients to the summit of [REDACTED] on 6 expeditions," that "he is one of our top guides in Nepal[,] and has played a critical role on many [REDACTED] climbs." The record does not establish that his work on the expeditions was in a leadership role or one that is critical to the success of the organization. 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.). Second, the Petitioner has not provided sufficient evidence to establish that [REDACTED] is an organization with a distinguished reputation. While the Petitioner states that National Geographic has ranked [REDACTED] as the [REDACTED] [REDACTED] the evidence supporting this assertion is a page from [REDACTED] website. The Petitioner has not submitted evidence from National Geographic or other objective evidence to support this conclusion. Therefore, the evidence in the record does not establish that the Petitioner meets this criterion, and we withdraw the Director's conclusion in this regard.

¹ 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), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

² See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

B. Comparable evidence

The Petitioner indicates that he qualifies for this classification under 8 C.F.R. § 204.5(h)(4) which states that comparable evidence may be submitted to establish eligibility if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation.³ This regulation requires that a petitioner demonstrate why a criterion is not readily applicable to his occupation and how the submitted evidence is comparable to that criterion.⁴

The Petitioner states that the awards and judging criteria, respectively 8 C.F.R. § 204.5(h)(3)(i) and (v), do not readily apply to this case because mountaineering and mountain guiding is not a sport in which the work of others can be objectively judged and there are no prizes given for this type of work. The Petitioner has not provided any evidence to support these claims. Furthermore, even if those criteria do not readily apply to this case, eight other criteria remain.

Although the Petitioner contends that the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii) does not readily apply in this case, he then undermines his own argument by citing several articles on Sherpa mountaineers and their work, including a *New York Times* article entitled [REDACTED]. Additionally, the Petitioner also cites a film entitled [REDACTED] which won the Best Film award at the [REDACTED] in 2009. As such, the Petitioner has demonstrated that this criterion does apply in this case.

Additionally, the Petitioner states that the evidence in the record is comparable to the regulatory requirements because it demonstrates that he is part of a small percentage of individuals who have successfully climbed Mt. Everest numerous times while guiding others in that endeavor, that he has an unusual ability to function in extremely high altitude, and that he has completed advanced training at one of the premier climbing schools in the world. On appeal, counsel states that the Petitioner's mountain climbing expertise and achievements are "unique, extraordinary, and rare" and that his abilities as a mountain climber have been acknowledged nationally. While we recognize the unique skills the Petitioner has in the field of mountaineering, the record has not established that the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation or that the evidence in the record is comparable to these criteria.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying 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), or comparable evidence establishing his eligibility. Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding

³ See USCIS Policy Memorandum PM-602-0005.1 at 12.

⁴ *Id.*

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that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of N-K-S-*, ID# 1646720 (AAO Oct. 23, 2018)