



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

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

MATTER OF S-, INC.

DATE: APR. 30, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an architecture and engineering firm, seeks classification of the Beneficiary, a senior electrical engineer and project manager, 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 only established that the Beneficiary met one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that the Beneficiary 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 beneficiary’s 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 beneficiary 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, an architecture and engineering firm, seeks classification of the Beneficiary, a senior electrical engineer and project manager, as an individual of extraordinary ability. As the record does not establish that the Beneficiary has received a major, internationally recognized award, the Petitioner must demonstrate that the Beneficiary satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

The Director held that the Petitioner had only established that the Beneficiary met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner asserts that the Beneficiary also meets the criteria for awards, membership, original contributions of major significance, scholarly articles, leading or critical role, and high salary at 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), (vi), (viii), and (ix). Here, we conclude that the Petitioner has established that the Beneficiary meets the criteria for judging, scholarly articles, and high salary.

Specifically, the record reflects that the Beneficiary has judged the work of others in having conducted reviews of professional engineering continuing education courses. He has published scholarly articles in the *Electrical Construction & Maintenance Journal* and in the *PE Magazine*, a publication of the National Society of Professional Engineers. And the record contains sufficient documentation from the U.S. Bureau of Labor Statistics to establish that he commands a high salary in relation to others in

the field. Accordingly, we will evaluate the totality of the evidence in the context of the final merits determination below.¹

B. Final Merits Determination

As the Petitioner has established that the Beneficiary meets the requisite initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, that the Beneficiary has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a beneficiary's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not established the Beneficiary's eligibility.

The Beneficiary is a senior engineer and project manager for the Petitioner. The record shows that he received his bachelor's degree in electronics and telecommunications from the University of [REDACTED] in India in 2005. He received his master's degree in electrical engineering from [REDACTED] in 2007. As mentioned above, he meets the criteria for judging, scholarly articles, and high salary. At issue is whether the record establishes that he is one of that small percentage who has risen to the very top of his field and that he has sustained national or international acclaim under 8 C.F.R. § 204.5(h)(2)-(3).

The Director noted that the Beneficiary has won several awards, concluding that they did not satisfy the criterion because they were limited to students and early career professionals and did not receive national or international recognition. On appeal, the Petitioner has not challenged this conclusion. Instead, the Petitioner asserts that the Director did not address two awards called the Young Engineer of the Year Award in the response to the Director's request for evidence. One of these awards was given by the [REDACTED] and the other was given by the [REDACTED].

Here, we conclude that the Petitioner has not established that these awards resulted in national or international acclaim to the Beneficiary. The award issued by the [REDACTED] is a state-specific award, and the record does not contain additional evidence establishing that the Beneficiary received national or international acclaim for receiving it. While the [REDACTED] Young Engineer Award is awarded by a national society, the record does not show that this fact alone establishes national or international acclaim. The record contains an announcement about this award in the Albany Business Review and on the [REDACTED] College of Engineering and Computer Science website, but these do not appear to be publications that are indicative of national or international acclaim. The Petitioner has not submitted sufficient evidence of the acclaim connected to this award to meet the requirements of this classification, such as press coverage of a national or international level or other documentation.

¹ On appeal, the Petitioner references the criteria relating to the Beneficiary's awards, membership, contributions of major significance, and leading or critical role at 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), and (viii). We will consider the evidence relating to these criteria in our final merits determination as we assess whether the Beneficiary has sustained national or international acclaim and has risen to the very top of his field.

The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

On appeal, the Petitioner highlights the Beneficiary’s membership in [REDACTED] but it has not been established how this membership has resulted in his national or international acclaim. The record contains a letter from [REDACTED] Ph.D., the executive director of [REDACTED] welcoming the Beneficiary to [REDACTED] which he identifies as “[t]he Scientific Research Society.” He indicates that throughout the organization’s more than 120 years of history, “scientists and engineers from a wide range of disciplines—including over 200 Nobel Laureates—have united . . . as companions in zealous research.” Therefore, he states, “[REDACTED] membership connects [a member] to both a global scientific network and a venerable scientific legacy.” While the Beneficiary’s membership in [REDACTED] is notable, the Petitioner has not demonstrated how it is indicative of one of the small percentage who has risen to the top of the field.

The Petitioner references letters from colleagues and other engineers in the record regarding the Beneficiary’s contributions in the field.² While these letters discuss the Beneficiary’s contributions in certain projects, showing how highly regarded he is among those who have worked with him, this evidence does not establish that he has national or international acclaim in the field. For example, [REDACTED] senior electrical engineer at [REDACTED], discusses the Beneficiary’s work on a railway freight line, stating, “[i]n the nation, there are not many electrical engineers who can design a railway electrical system network.” [REDACTED] further highlights the Beneficiary’s design of solar-powered hazard beacons for the aviation industry in Vermont, indicating that it was “a significant improvement over existing designs” that “greatly reduced maintenance costs.” While we note the Beneficiary’s successes in these fields, the Petitioner has not shown that this resulted in national or international acclaim to the Beneficiary.

Similarly, [REDACTED] regional office manager for [REDACTED] Inc., discusses several projects that the Beneficiary has been involved in, specifically noting his expertise in designing electrical systems for hazardous fuel line environments. We acknowledge the Beneficiary’s skillset in his industry, but the record has not shown that he has received national or international acclaim for his work on these projects.

With respect to the Beneficiary’s contributions as a member of the [REDACTED] the record contains a letter from [REDACTED] a member of the [REDACTED] discussing the Beneficiary’s work in improving [REDACTED] standards. He states that he recruited the Beneficiary to take part in developing the [REDACTED] a standard for estimating costs which “is used by power-oriented engineers, particularly by those who design large, complicated systems.” The letter further indicates that the Beneficiary is now the co-chair of the group working on the prospective standard, but the record lacks evidence explaining the significance of his role and how it shows sustained national or international acclaim or recognition of his achievements that place him at the very top of the field of endeavor.

² Although we discuss a sampling of letters, we have reviewed and considered each one.

We note that the record reflects that the Beneficiary has published scholarly material, but the Petitioner has not shown that two articles published approximately 10 years prior to the filing of the petition is consistent with the sustained national or international acclaim necessary for this highly restrictive classification.

The Petitioner has not shown that the Beneficiary's leading or critical role in its organization has resulted in sustained national or international acclaim. [REDACTED] the Petitioner's senior principal and owner, states that the Beneficiary has been "instrumental in [the Petitioner's] ability to grow its [REDACTED] office, increase profits and create employment opportunities for American workers." Mr. [REDACTED] states that the Beneficiary designed and managed projects exceeding \$4 million, which accounted for 15 percent of the Petitioner's total billings for fiscal year 2015. The Petitioner also asserts that due to the Beneficiary's work, the company has grown its [REDACTED] office from 7 to 14 full-time employees. While these are notable accomplishments, the record does not show how these successes have resulted in national or international acclaim. 8 C.F.R. § 204.5(h)(3).

Finally, although the Petitioner demonstrated that the Beneficiary earns a high salary in relation to others in the field. While this may demonstrate some degree of recognition of his achievements in the field, he has not submitted evidence showing his earnings are at a level reflecting that he is one of the small percentage who has risen to the top of the field.

In summary, the Petitioner has not shown that the significance of the Beneficiary's 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 Beneficiary has garnered national or international acclaim in the field and that 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).

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals who are 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 academic, scholarly, research, and professional accomplishments 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; 8 C.F.R. § 204.5(h)(2).

The record does not establish that the Petitioner qualifies for classification as an individual of extraordinary ability. The appeal will therefore 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

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the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-, Inc.*, ID# 2149550 (AAO Apr. 30, 2019)