



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

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

MATTER OF A-P-S-

DATE: JUNE 25, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a trek and mountain expedition leader, seeks classification as an individual of extraordinary ability. 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 satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three. In addition, the Director found that the Petitioner did not establish that he will continue to work in his area of extraordinary ability and that his entry will substantially benefit prospectively the United States.

On appeal, the Petitioner presents additional documentation and a brief, arguing that he satisfies at least three of the ten criteria, that he will continue to work in his area of expertise, and that he will substantially benefit the United States.

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). 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 Sherpa and mountain guide who has climbed Mt. Everest and performed a role in a movie. 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 met only one of the initial evidentiary criteria, leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). The record contains evidence that the Petitioner served as a managing director for a leading trekking and mountaineering agency in Nepal. Accordingly, we agree with the Director that the Petitioner fulfilled the leading or critical role criterion.

On appeal, the Petitioner maintains that he meets three additional 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.

A. Comparable Evidence

The Petitioner argues that he “met his burden to show that the ten regulatory criteria do not readily apply to his occupation and that the evidence he submitted is comparable to show his national and international recognition for his work in his field.” Specifically, the Petitioner claims that he provided evidence “from multiple sources to explain the difficulties elite Sherpas encounter in being recognized nationally and internationally for their extraordinary and incredibly dangerous work.” The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation.¹ A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence he has included is “comparable” to that required under 8 C.F.R. § 204.5(h)(3).²

Although the Petitioner offered documentary evidence relating to the life, history, and overview of Sherpas, as well as the risks and dangers, the regulatory requirement for the submission of comparable evidence is whether the criteria “do not readily apply to the beneficiary’s occupation.” 8 C.F.R. § 204.5(h)(4). Here, the Petitioner did not demonstrate how his evidence establishes that the criteria do not readily apply to Sherpas and mountain guides and why he cannot offer evidence that meets at least three of the criteria. In addition, the Petitioner’s claim that Sherpas face difficulties in receiving national or international recognition for their work does not necessarily show that Sherpas cannot fulfill at least three criteria. Moreover, the decision that a petitioner received national or international recognition is conducted in a final merits determination after at least three criteria are satisfied. *See Kazarian* 596 F.3d at 1115.

Furthermore, as discussed later, the Petitioner claimed to meet three criteria without the submission of comparable evidence, including published material under 8 C.F.R. § 204.5(h)(3)(iii), original contributions under 8 C.F.R. § 204.5(h)(3)(v), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). In fact, the Petitioner asserts to only satisfying the awards criterion under 8 C.F.R. § 204.5(h)(3)(i) through comparable evidence, discussed below. Moreover, the Petitioner did not show that Sherpas or mountain guides cannot present evidence relating to the other criteria, such as memberships under 8 C.F.R. § 204.5(h)(3)(ii), judging under 8 C.F.R. § 204.5(h)(3)(iv), and high salary under 8 C.F.R. § 204.5(h)(3)(ix). The fact that the Petitioner did not provide documentation that fulfills at least three is not evidence that he could not do so. For these reasons, the Petitioner did not establish that he qualifies for an additional criterion, as well as other criteria, through the submission of comparable evidence.

In addition, the Petitioner’s counsel lists 12 individuals with corresponding receipt numbers and claims that “USCIS has approved extraordinary petitions for the following clients of our firm” and “[e]ach of these individuals relied on the use of comparable evidence to establish their eligibility for an E11 immigrant visa.” However, each petition is reviewed on its own merits. Further, 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). Moreover, Counsel did not demonstrate that the issues in

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* 12 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

² *Id.*

those cases were strikingly similar to the Petitioner's case, including the application of comparable evidence.

B. Evidentiary Criteria

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 a letter of appreciation from [redacted] reflecting that he received the 2015 [redacted] award for his "outstanding work in being able to portray Nepal in the international scene" for demonstrating "a great valor in the recently film [redacted] produced by Hollywood wherein, your co-stars role as an accomplished climber is absolutely awesome." In addition, the Petitioner references a letter from [redacted] chairman of [redacted] [redacted], who indicated that the award is granted "every two years to exceptional individuals who have made major contributions to tourism in the country" and "[s]uch individuals should have done highly recognized work on a national level for more than 5 (Five) years." On appeal, the Petitioner offers previously submitted letters who confirmed his receipt of the award and claimed that "such prestigious award which is granted for renowned person on tourism sector though there were many summiteers" and "regarded as one of the most prestigious awards in this sector."

This regulatory criterion requires the prizes or awards to be nationally or internationally recognized for excellence in the field of endeavor.³ Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field including, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.⁴ Although the letters refer to the award as "prestigious," they do not show that the field recognizes the [redacted] award as a national or international award for excellence. Moreover, the Petitioner did not offer supporting evidence, such as widespread media coverage of the award in major newspapers or other evidence showing the award's recognition for excellence in the field.⁵

In addition, the Petitioner contends that "the national prominence of the award is self-evident from the fact that it was awarded to [him] by Nepal's Ministry of Tourism, a national government position" (emphasis in original). Further, [redacted] indicated that "[t]he selection committee is coordinated by the secretary of ministry of the Nepal Government and is awarded in [the] presence of the Minister of Tourism." Government-based prizes and awards, however, do not automatically demonstrate national recognition of them for excellence in the field. Again, the issue for this criterion is whether the Petitioner received nationally or internationally recognized prizes or awards for excellence in the field. Here, while the Minister of Tourism in Nepal coordinates and presents the [redacted] [redacted]" the Petitioner did not establish his overall field's recognition of the award.

³ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 6.

⁴ *Id* (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance).

⁵ We note that even though the Petitioner submitted over 25 articles as eligibility for the published material criterion, none of the articles mentioned him receiving the award.

Accordingly the Petitioner did not establish that he satisfies 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 record contains properly certified translations of two articles, including the title, date, and author, reflecting published material about the Petitioner in major Nepali publications. As such, the Petitioner demonstrated that he fulfills 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).

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.⁶ 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. Here, we will address the Petitioner's arguments on appeal and determine whether he has shown original contributions of major significance in the field consistent with this regulatory criterion.

The Petitioner contends that he "has influenced the field of mountaineering by applying his highly technical mountaineering skills in the context of climate change research, thereby improving overall the body of scientific knowledge for other climbers." He references a letter from [redacted] founder and president of [redacted] who stated that the Petitioner "has made major contributions and changes to the field of mountaineering by using his extraordinary skills in a unique way to improve and augment the world's knowledge of climate change" and his "influence on mountaineering and glacier research via the application of his expert technical skills on Mount Everest goes well beyond service to any client or single expedition." However, [redacted] did not provide specific, detailed information explaining how the Petitioner has made original contributions and how they are considered by the field to be of major significance. Instead, [redacted] made broad, general statements without identifying the Petitioner's "extraordinary skills" and how they have influenced mountaineering and glacier research. Moreover, having a diverse, extraordinary, or unique skill set is not a contribution of major significance in-and-of-itself. Rather, the record must be supported by evidence that the Petitioner has already used those skills and abilities to impact the field at a significant level.

Furthermore, the Petitioner argues that as a technical advisor on the film, [redacted] he developed processes that will continue to be used in filmmaking at high altitude for many years to come. Specifically, [redacted] indicated that the Petitioner represented all Sherpa mountaineers and was a script and climbing advisor to the film's production team and "[t]he processes [the Petitioner] developed during the making of this film will forever influence future filmmaking on [redacted]" Again,

⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (providing an example that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[redacted] did not identify the Petitioner’s “processes” and describe how they are already considered majorly significant in the field. Instead, [redacted] speculates on the prospective and possible significance in future filmmaking rather than how the Petitioner’s contributions already qualify in the field of expertise of mountaineering.

Similarly, the Petitioner argues that “his social justice initiatives” in “building the first water supply in his natal village, [redacted] where water was previously carried by children on foot” meets this criterion. Although [redacted] indicated that the Petitioner assisted in the “development and construction of a gravity-fed water supply system that supplies running water to every home in [redacted]” he did not explain how working on a water supply system represents an original contribution in the field of mountaineering, nor did he show the major significance of the contribution.

Moreover, the Petitioner claims that he “has made further original contributions to mountaineering in the context of climate change research through his position as the [redacted] Sherpa-Scientist Initiative (SSI) trainee” and references screenshots from [redacted] and [redacted]. Although the screenshot from [redacted] briefly mentions the Petitioner as the [redacted] SSI trainee, it does not discuss what the Petitioner contributed to SSI and how it is viewed by the field as being majorly significant. Similarly, the screenshot from [redacted] credits the Petitioner for the photographs but makes no mention of his contributions and how they have influenced the field.

In addition, the Petitioner maintains that his assistance to [redacted] the [redacted] amputee and the [redacted] amputee from any country to summit Mr. Everest, qualifies for this criterion. He submits a letter from [redacted] who praised the Petitioner as “an extraordinary mountain guide” and “has [] patience when climbing with people who has [a] lack of physical abilities and skills.” The Petitioner, however, did not demonstrate how his work with [redacted] constitutes an original contribution of major significance in the field. While honorable, the Petitioner did not show, for example, how his work impacted the overall field rather than an individual.⁸

Finally, the Petitioner contends that his “[s]earch and rescue is a specialized mountaineering skill that is original because only a select, elite group of mountaineers are able to perform search and rescue” and refers to numerous recommendation letters. However, almost all of his recommendation letters specified on appeal simply mention the Petitioner’s engagement in rescue missions without showing how they constitute original contributions of major significance in the field. For instance, the letters briefly stated that the Petitioner “is active in mountain rescue missions around the Himalayas” [redacted], [redacted], “played huge vital roles in mountain rescue missions around the Himalayas” [redacted], [redacted], “has been involved in several rescue missions around the Himalayas” [redacted], [redacted], “played [a] huge roll [sic] in mountain rescue mission around the [H]imalayas” [redacted], [redacted], and “is playing vital role to rescue on natural disasters at Himalayan region” [redacted].

⁷ According to [redacted] SSI “was launched in the Nepalese Himalaya to understand glacial lake growth and potential flooding hazards” to “train Sherpas in local communities about hazard mitigation and how to conduct in-situ research in the Nepalese Himalaya.”

⁸ 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).

Although the letters indicated the Petitioner's involvement in rescue missions, they do not contain specific, detailed information explaining how his contributions have been of major significance in the field.⁹ Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.¹⁰ On the other hand, letters 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.¹¹ 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).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

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).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.¹² The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, the petitioner bears the 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.

⁹ While the Petitioner also submitted a letter from [REDACTED], who provided details regarding two rescue missions, he did not explain how they represent contributions of major significance in the field.

¹⁰ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

¹¹ *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).

¹² 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 seeks to enter the United States to continue work in his area of extraordinary ability under section 203(b)(1)(A)(ii) of the Act, and whether his entrance will substantially benefit prospectively the United States under section 203(b)(1)(A)(iii) of the Act.

Matter of A-P-S-

ORDER: The appeal is dismissed.

Cite as *Matter of A-P-S-*, ID# 3625747 (AAO June 25, 2019)