U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30586351

Date: APR. 25, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a plastic surgeon, 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 petition, concluding the Petitioner did not satisfy at least three of the initial evidentiary criteria. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying 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).

II. ANALYSIS

Because the Petitioner has not indicated or established 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). The Director concluded the Petitioner did not fulfill any of the claimed evidentiary criteria. On appeal, the Petitioner maintains his qualification for eight. Issues and prior eligibility claims not raised on appeal are waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). For the reasons discussed below, the Petitioner did not demonstrate he meets at least three categories of evidence.

A. 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).

USCIS determines if the person was the recipient of prizes or awards.[1] The description of this type of evidence in the regulation indicates that the focus should be on the person's receipt of the awards or prizes, as opposed to the employer's receipt of the awards or prizes.[2]

USCIS then determines whether the award is a lesser nationally or internationally recognized prize or award, which the person received for excellence in the field of endeavor.[3] As indicated by the plain language of the regulation, this criterion does not require an award or prize to have the same level of recognition and prestige associated with the Nobel Prize or another award that would qualify as a one-time achievement.[4]

The Petitioner references a letter from the [redacted] and claims it "confirms that in 2019 the Petitioner was awarded 'Best Plastic Surgeon.'" Neither the letter nor the record supports this

[1] *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policymanual.
[2] *Id.*
[3] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[4] *Id.*

assertion. At initial filing, the Petitioner stated that he "was nominated for this award for his significant contributions to the development of plastic surgery in Kyrgyzstan," and the "Petitioner didn't end up winning the award that year but it's noteworthy that he was nominated for a prestigious international award for the first time in his life." Moreover, the letter from A-Y-, national director of the [redacted] indicated the Petitioner's "nomination" for the award. Thus, the Petitioner did not show that he "was awarded 'Best Plastic Surgeon'"; rather, the record reflects his nomination for the award. The regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of an individual's "receipt" of prizes or awards. Because he did not receive the "Best Plastic Surgeon" award, the Petitioner did not demonstrate eligibility for this criterion. Furthermore, the Petitioner did not establish that being nominated for an award is tantamount to receipt of one, as required by this regulatory criterion. Accordingly, we need not determine whether the Petitioner meets the other elements of this criterion.

Similarly, the Petitioner indicates eligibility based on the [redacted] magazine – People's Choice Awards (2015)." At initial filing, the Petitioner stated that "[t]he award ceremony was scheduled to be held on [redacted] 2020 – but due to the pandemic, the event was postponed indefinitely," "[t]he best professionals from Kazakhstan and neighboring countries were nominated for this award," and "[i]f the applicant wins, this will be his first international award." Although the Petitioner submitted screenshots from [redacted]kz, the evidence is in a foreign language, and the Petitioner did not provide the required certified English language translations. 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 they are competent to translate from the foreign language into English. *Id.* Without properly executed English language translations, the Petitioner did not corroborate any of his assertions. Furthermore, based on his claims, the Petitioner did not establish he actually received the award but was only nominated and assumed he would win the award at some undetermined time in the future. Eligibility must be established at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). For these reasons, the Petitioner did not demonstrate he received the award, and we therefore need not determine whether he meets the other elements of this criterion.

The Petitioner also claims eligibility for this criterion based on an [redacted] magazine (2016) award." The Petitioner provided a "Certificate of Honor" as receipt of the award. However, the Petitioner did not offer any evidence establishing the national or international recognition of the award for excellence in the field. Without additional evidence and information, simply submitting evidence of receipt of an award is insufficient to satisfy this criterion unless an individual also demonstrates the award's national or international recognition for excellence in the field. We note the Petitioner asserts that "[a]ttachments 1 and 2 to the initial response to RFE [request for evidence] dated as of April 1, 2022, included copies of articles and official web pages where the information on each award was posted." Besides the "Certificate of Honor," the record does not reflect the Petitioner submitted any other documentation relating to the [redacted] award at initial filing or in response to any of the Director's RFEs, including attachments 1 and 2.

Finally, the Petitioner claims eligibility for this criterion based on "recognition from the [redacted] for an award named after I.K. Akhunbaev (2019)," and the record contains a "Certificate of Honor." The Petitioner also asserts that "[a]s submitted in the second response to RFE, a reference letter from [M-B-I-] from March 17, 2023, clearly states the petitioner's achievements before [redacted] for which he was recognized for the award." The record does not

contain a letter by M-B-I-, dated March 17, 2023. The record does include a letter by M-B-I-, dated August 15, 2022. However, page 7, which is purportedly the signature page from M-B-I-, is in a different font than the rest of the pages. Due to this inconsistency, the letter lacks probative value, and the Petitioner did not show M-B-I- authored the letter. Notwithstanding, the letter makes no mention of the "Certificate of Honor," discusses the national or international recognition for excellence of the award in the field, or the Petitioner ever receiving an award from [redacted] Again, without additional evidence and information, simply submitting evidence of receipt of an award is insufficient to satisfy this criterion unless an individual also demonstrates the award's national or international recognition for excellence in the field.

For the reasons discussed above, the Petitioner did not show he satisfies 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).

USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field. [5] The petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.[6]

On appeal, although he briefly indicates his membership with the Society of Specialists in Aesthetic Medicine of the Kyrgyz Republic (SSAMKR), the Petitioner does not contest the Director's decision or address his eligibility with SSAMKR. Rather, the Petitioner's brief only makes eligibility arguments relating to his membership with the Society of Aesthetic and Reconstructive Surgeons of Kyrgyzstan (SARSK). An issue not raised on appeal is waived. *See, e.g., O-R-E-*, 28 I&N Dec. at 336 n.5; *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support). Therefore, we will only respond to the Petitioner's membership with SARSK.

Initially, the Petitioner provided a "Reference" document from K-I-K-, chairman of SARSK, who indicated the Petitioner's membership and stated that "Criteria for acceptance into society: Passing specializations; Peer recommendations; Work in the specialty." In response to the Director's first RFE, the Petitioner submitted a letter purportedly from K-I-K, who indicated that he is the president and claimed that "a candidate must meet strict criteria in addition to passing specializations and demonstrating their current active status as plastic surgeons." In addition, the letter stated that "[t]he further criteria that grant an applicant membership in SARSK are defined in Sec. 3.2 of the Official Statute (By-Laws) of SARSK" and listed several criteria, such as being certified by the Ministry of Health of the Kyrgyz Republic; having at least five years of experience practicing in their specialty; having published scholarly articles, theses, or methodological manuals; having performed a minimum number of mammoplasties, blepharoplasties, abdominoplasties, and facial reconstructive surgeries;

[5] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[6] *Id.*

demonstrating significant contributions in professional research or showing clinical excellence in the plastic surgery specialty; and being endorsed by an existing member.

Similar to the discussion of the letter purportedly from M-B-I-, this letter consists of three pages with the last signatory page in a different font from the other two pages. In addition, the last sentence of the letter on page 2 states that "[a]n applicant's candidacy is judged by the President of [SARSK] and 3 Board Members of the Association who are all." On page 3, the letter does not continue the sentence from page 2. Instead, page 3 restarts the cited sentence from page 2 and then claims "nationally and internationally established plastic surgeons with a minimum of ten (10) years of active professional experience, and who hold a Certificate of Excellence in Healthcare of Kyrgyzstan." The Director issued another RFE and requested information on the individuals who review candidates for membership with SARSK and a copy of the section of the by-laws indicated in the letter.

In response, the Petitioner submitted a "Provision" document for SARSK. Section 3.2 states that "[t]he register is a database for recording and storing information about members of the Association and is maintained in electronic form." The Petitioner did not demonstrate that this section supports the statement from K-I-K-'s letter as it does not reflect "further criteria that grant an applicant membership in SARSK as defined in Sec. 3.2 of the Official Statute (By-Laws) of SARSK." However, section 2.3.3 states:

> Individuals admitted to the Association have merits in the field of plastic, reconstructive and aesthetic surgery; are certified by the Ministry of Health of the Kyrgyz Republic; have relevant experience of five years or more, have published scientific articles or manuals on plastic, reconstructive and aesthetic surgery; performed from 75 mammoplasty, from 60 blepharoplasty, from 90 abdominoplasty, from 25 facial reconstructive operations; and having a recommendation to acquire the status of a member of the Association from an active member of the Association Council.

Furthermore, section 2.5 states that "[t]he decision on admission to membership in the Association is made by the Association Council by a simple majority of votes." The Petitioner also submitted a screenshot from doctors.kg about K-I-K- and another letter purportedly from K-I-K-. Again, page 3 of the letter is in a different font than the first two pages and makes no mention of SARSK, let alone any discussion of the membership requirements.

Due to the inconsistencies, the letters lack probative value, and the Petitioner did not show that K-I-K- authored any of them. Moreover, the first letter repeats the regulatory language of 8 C.F.R. § 204.5(h)(3)(ii) and inserts membership requirements not indicated in the "Provision" document, such as demonstrating significant contributions in professional research or showing clinical excellence in the plastic surgery specialty versus no such requirements and being judged by the president of SARSK and three board members who have at least ten years of experience and hold a "Certificate of Excellence in Healthcare of Kyrgyzstan" versus by a simple majority of votes. 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.). Because the letters are not credible, we will not assign any weight to the content contained therein.

Based on the "Provision" document, the Petitioner did not establish that SARSK requires outstanding achievements of its members. The Petitioner did not show that being certified to perform plastic surgery, gaining years of experience, or performing a number of surgeries rises to the level of outstanding achievements. Relevant facts that may lead to a conclusion that the person's membership in the association was not based on outstanding achievements in the field include, but are not limited to, instances where the person's membership was based solely on a level of education or years of experience in a particular field.[7]

Furthermore, although the "Provision" document indicates admission is by a majority of votes, the Petitioner did not show that membership is judged by recognized national or international experts. The Petitioner did not establish that the voters are comprised of recognized national or international experts in their fields or disciplines. Specifically, the Petitioner only offered information about K-I-K- rather than about the others in SARSK who also judge the candidates for membership.

Accordingly, the Petitioner did not establish he fulfills 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).

USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.[8] USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.[9]

At the outset, the Petitioner initially claimed eligibility for this criterion based on six articles. In both of the RFEs, the Director pointed to issues involving the documentation, such as unidentified authors, untranslated material, missing publication dates or source references, and non-relatable articles. Neither of the Petitioner's responses addressed these issues or offered any new documentation. On appeal, the Petitioner submits new evidence. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

On appeal, the Petitioner claims eligibility for this criterion based on two previously submitted articles. Both articles, posted on kgma.kg, do not contain authors of the material, as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, although the first article appears to be an interview of the Petitioner, the second article reflects commentary of a trauma surgeon without any evidence that the article is about the Petitioner. In fact, the Petitioner's name is never mentioned in the article. The

[7] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[8] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[9] *Id.*

published material should be about the person, relating to the person's work in the field.[10] Finally, the Petitioner did not provide any evidence establishing that kgma.kg is a professional or major trade publication or other major medium.[11] Without additional evidence and information, simply submitting an article is insufficient to show the nature or standing of the medium.

For all these reasons, the Petitioner did not demonstrate 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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), USCIS determines whether the person has made original contributions in the field.[12] USCIS then determines whether the original contributions are of major significance to the field.[13] Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the persons original work; documentation that the person's original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.[14]

On appeal, the Petitioner points to the previously discussed letter from M-B-I-. Notwithstanding the lack of probative value, the Petitioner argues that M-B-I- discussed his work, such as conducting surgeries and procedures, at [redacted] However, the letter does not further elaborate and explain how the Petitioner's contributions have been majorly significant in the overall field rather than limited to [redacted] *See 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). Moreover, the letter does not articulate how the Petitioner's professional achievements at [redacted] somehow influenced or affected the field in a majorly significant manner.[15]

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.[16] Submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.[17] In this case, the letter lacks specific, detailed information explaining how the Petitioner has made original contributions of major significance in the field. 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).

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[10] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[11] *Id.* (in evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).
[12] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[13] *Id.*
[14] *Id.*
[15] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (analysis under this criterion focuses on whether the person's original work constitutes major, significant contributions in the field).
[16] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[17] *Id.*

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

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

First, USCIS determines whether the person has authored scholarly articles in the field.[18] As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse.[19] It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution.[20] Scholarly articles are generally peer reviewed by other experts in the field of specialization.[21] In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.[22]

In response to the first RFE, the Petitioner submitted a letter from I-O-K-, professor and provost at [redacted] who indicated that "the original findings presented in [the Petitioner's] graduation thesis are currently being implemented in the curriculum of [redacted]" In the second RFE, the Director informed the Petitioner that "[r]eview of the evidence did not confirm the [Petitioner's] authorship of scholarly articles" and the thesis was currently being implemented "was not seen in the evidence." The Petitioner did not address this issue or provide additional evidence in his second RFE response.

On appeal, the Petitioner argues that "the Director erred in not giving enough weight to [I-O-K-'s] statement, considering that she is a Professor and a Provost of the [redacted]" First, the Petitioner did not provide corroborating evidence, such as his thesis. Further, the letter lacks specific, detailed information. For instance, the letter does not indicate basic information about the thesis such as the title or date or describe the thesis' subject or findings in order to show its qualification as a scholarly article.

The second portion of the criterion determines whether the publication qualifies as a professional publication, major trade publication, or major medium.[23] Here, the Petitioner did not demonstrate the publication of his thesis, let alone in a professional or major trade publication or major medium. In addition, I-O-K-'s letter makes no mention of the thesis' publication.

For all these reasons, the Petitioner did not show he satisfies this criterion.

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[18] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (in evaluating whether a submitted publication is a professional publication or major media, relevant factors include the intended audience (for professional journals) and the circulation or readership relative to other media in the field (for major media)).

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales. 8 C.F.R. § 204.5(h)(3)(x).

The Petitioner contends that "[i]t should be noted that the decision did not acknowledge the Petitioner's claim that he could satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(x), which relates to commercial success in plastic surgery, and therefore does not include any acknowledgement or analysis of this third claimed evidentiary criterion."

First, the record does not reflect the Petitioner made any eligibility claim for this criterion at initial filing, in response to the first RFE, or in response to the second RFE. In fact, in the Director's first RFE, the Director indicated that "[c]ounsel for the [Petitioner] did not claim this criterion." In response, the Petitioner did not address this criterion, nor did he submit any relating documentation.

Second, this criterion relates to persons in the performing artists, such as actors and singers; the Petitioner is a plastic surgeon. The Petitioner does not argue on appeal how he qualifies for this criterion. Moreover, this criterion focuses on volume of sales and box office receipts as a measure of the person's commercial success in the performing arts.[24] The evidence must show that the volume of sales and box office receipts reflect the person's commercial success relative to others involved in similar pursuits in the performing arts.[25] The record contains no evidence of the Petitioner's receipts or sales to show commercial successes in the performing arts.

Accordingly, the Petitioner did not establish he meets this criterion.

B. Comparable Evidence

Although the Director indicated the Petitioner's initial claim of comparable evidence in both RFEs, the Petitioner never addressed this issue in either of his responses. On appeal, the Petitioner argues that he "submitted five (5) detailed testimonial letters in support of his extraordinary abilities from plastic surgeons, directors of medical centers, and provost of the medical academy as additional comparable evidence to establish [his] eligibility."

USCIS determines if the evidence is comparable to the evidence required in 8 C.F.R. § 204.5(h)(3).[26] This regulatory provision provides petitioners the opportunity to submit comparable evidence to establish the person's eligibility, if it is determined that the evidentiary criteria described in the regulations do not readily apply to the person's occupation.[27] When evaluating such comparable evidence, officers must consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation.[28]

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[24] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).
[25] *Id.*
[26] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).
[27] *Id.*
[28] *Id.*

A general unsupported assertion that the evidentiary criterion does not readily apply to the petitioner's occupation is not probative.[29] Similarly, general claims that USCIS should accept witness letters as comparable evidence are not persuasive.[30] Here, the Petitioner indicates his submission of letters without explaining which criterion or criteria do not apply to his occupation, and the Petitioner does not articulate how the letters are comparable in meeting the particular criterion or criteria.

For these reasons, the Petitioner did not demonstrate his testimonial letters qualify for the comparable evidence provision.

III. CONCLUSION

The Petitioner did not establish he satisfies six categories of evidence, including through comparable evidence, discussed above. Although the Petitioner also argues eligibility for the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii) and high salary under 8 C.F.R. § 204.5(h)(3)(ix), we need not reach these additional grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[31]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion 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 those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or 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 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.

[29] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).
[30] *Id.*
[31] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

§ 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field.

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

ORDER: The appeal is dismissed.