



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

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

In Re: 6501485

Date: APR. 28, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a chef, seeks classification as an alien 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, and subsequently affirmed his decision on motion, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

### I. LAW

Section 203(b)(1) 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 a multi-part analysis. First, a petitioner can demonstrate sustained

acclaim and the recognition of his or her achievements in the field through 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 sufficient 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).

## II. ANALYSIS

The Petitioner indicates current employment as a chef for [redacted] Hospital in [redacted] California. Because the Petitioner has not 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 determined that the Petitioner did not fulfill any of the initial evidentiary criteria. On appeal, the Petitioner asserts that he meets seven criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that he satisfies the requirements of at least three 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 indicates that he initially met this criterion based on an “Award for Excellence” from [redacted] Restaurant, a “Certificate of Award” from [redacted], a “Certificate of Participation” from [redacted], and a “Certificate of Appreciation” from [redacted] Restaurant. On appeal, the Petitioner also claims eligibility based on a “Certificate of Appreciation” from [redacted] Restaurant and a “Certificate of Participation” from [redacted]

In order to fulfill this criterion, the Petitioner must demonstrate that he received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.<sup>1</sup> Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, 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.<sup>2</sup>

As it relates to his initial claims, although the Petitioner provided certificates, he did not submit supporting evidence demonstrating their national or international recognition for excellence in the

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<sup>1</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

<sup>2</sup> *Id.*

field. Here, the petitioner did not establish the significance of the certificates in the overall field beyond the restaurants and establishments that issued them.

Similarly, regarding his “Certificate of Appreciation” from [redacted] Restaurant, he provides screenshots from [redacted]restaurant.com promoting itself. However, none of the screenshots mention the “Certificate of Appreciation,” nor do they demonstrate that the restaurant’s certificate is nationally or internationally recognized as a prize or award for excellence in the field. Moreover, although the Petitioner submits his own statement asserting to eligibility and criteria, he did not present independent, objective evidence to corroborate his claims. Further, while the Petitioner asserts that the “Excellence Award winners are brands that meet high benchmark standards within their respective product categories,” the record does not reflect he received an “Excellence Award” rather than a “Certificate of Appreciation.” Regardless, the Petitioner did not show that either the “Certificate of Appreciation” or “Excellence Award” is nationally or internationally for excellence in the field outside of [redacted] Restaurant.

In addition, as it pertains to the “Certificate of Participation” from [redacted] the record reflects that the Petitioner received the certificate in December 2019, approximately a year after he filed his petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Accordingly, the Petitioner did not demonstrate that this certificate qualifies for eligibility at initial filing of the petition. Nonetheless, while the Petitioner submits screenshots from Wikipedia regarding [redacted] they make no mention of the “Certificate of Participation,” nor do they show that the participation certificate is nationally or internationally recognized for excellence in the field consistent with this regulatory criterion.

Because the Petitioner did not demonstrate that he received nationally or internationally recognized prizes or awards for excellence in the field, he did not establish that he meets this criterion.

*Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).*

The Petitioner argues that he “submitted several documentary evidences that indicates [sic] his membership and involvement in the numerous organization/associations [sic].” Moreover, the Petitioner claims that “[t]he Director erred in stating that there is no evidence that show [sic] that association requires outstanding achievements of its members as judged by recognized national or international experts in the field.” However, the Petitioner does not indicate the documentation, nor does he specifically identify how the Director erroneously interpreted law or statement of fact. Instead, the Petitioner makes a broad, unsupported assertion.

Notwithstanding the above, the record reflects that the Petitioner submitted a “Certificate of Training” from [redacted] in the Philippines; a letter from [redacted] restaurant administrator, who verified the Petitioner’s employment with [redacted], [redacted], and [redacted]; and a recommendation letter from [redacted]. In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or

international experts as having outstanding achievements in the field for which classification is sought.<sup>3</sup> Here, the evidence relates to the Petitioner's employment with various restaurants rather than memberships with associations. Moreover, the Petitioner did not demonstrate that outstanding achievements are an essential condition for membership, nor did he provide supporting documentation, such as the bylaws or other membership requirements. Furthermore, the Petitioner did not establish that recognized national or international experts judge the outstanding achievements for membership.<sup>4</sup>

For these reasons, the Petitioner did not demonstrate that 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).*

The Petitioner claims eligibility for this criterion for the first time on appeal. He submits an article from the *University of Urdaneta City Journal* and a letter from [redacted] author of the article. In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.<sup>5</sup>

At the outset, the Petitioner did not include the date of the article. The inclusion of the title, date, and author of the material is not optional but a regulatory requirement. See 8 C.F.R. § 204.5(h)(3)(iii). Furthermore, although [redacted] indicated that the *University of Urdaneta City Journal* is a publication of the university, she did not provide information regarding the status of the journal. Moreover, the Petitioner did not present documentation establishing the professional or major trade or major medium standing of the publication.<sup>6</sup>

Accordingly, the Petitioner did not show 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 Petitioner contends that his recognition certificates and recommendation letters reflect his eligibility for this criterion. In order to meet 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

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<sup>3</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

<sup>4</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6-7.

<sup>5</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

<sup>6</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

significance in the field.<sup>7</sup> For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The record reflects that the Petitioner provided a “Certificate of Recognition” from [redacted] Restaurant for “serving scrumptious foods and rendering exemplary Culinary Services to [redacted].” In addition, he submitted a “Certificate of Recognition” from [redacted] for “giving his excellent performance and in sharing his invaluable insights and expertise in Culinary Industry in the conduct of National Nutrition Month.” On appeal, he presents a “Certificate of Recognition” from [redacted] for “his exemplary performance as Resource Speaker on ‘Quantitative & Qualitative [R]esearch in Case Restaurant,’” and a “Certificate of Attendance” for [redacted] Association for his “active participation in celebrating International Chefs Day.” Although the certificates show that the entities recognized his service, the Petitioner did not demonstrate how he made original contributions of major significance in the overall field.<sup>8</sup> While the establishments acknowledged the Petitioner’s participation, he did not establish how his involvement constituted contributions in the field in a significant, major manner.

Furthermore, the record contains recommendation letters praising the Petitioner for his talents and abilities. For instance, the Petitioner’s “excellent skills and strategies and excellent menu are still being followed today [at [redacted]]” [redacted], and the Petitioner “is a wonderful chef providing us with meals that are delicious and creative, along with being healthy” [redacted].<sup>9</sup> However, the letters do not establish how the Petitioner’s skills, strategies, and menus are viewed by the field as original contributions of major significance in the field. The letters, for instance, do not explain how the Petitioner has significantly impacted the field in a major way consistent with this regulatory criterion. Moreover, having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. Further, the record must be supported by evidence that the Petitioner has already used those skills and talents to influence the field at a significant level, which he has not shown. In addition, the letters do not demonstrate how the Petitioner’s talents and skills have been a major influence in the overall field beyond the restaurants in which he worked or the people he encountered.

Here, the Petitioner’s letters do not contain specific, detailed information identifying his original contributions and explaining the unusual influence his culinary work has had on the overall field. Letters that specifically articulate how a petitioner’s contributions are of major significance in the field and its impact on subsequent work add value.<sup>10</sup> 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

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<sup>7</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (finding that although funded and published work may be “original,” this fact alone is not sufficient to establish that the work is of major significance).

<sup>8</sup> 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).

<sup>9</sup> Although we discuss a sampling of letters, we have reviewed and considered each one.

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

the basis for meeting this criterion.<sup>11</sup> 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.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner submits a letter from [redacted] claiming that he earned 1,600 Euros per month in 2007 at [redacted] Restaurant in Spain, and the Petitioner earned 1,800 Euros per month in 2007 at the same restaurant.<sup>12</sup> In addition, he offers a screenshot from averagesalariesurvey.com reflecting that the average gross yearly salary in Spain for a cook in 2019 is 24,950 Euros. In order to meet this criterion, a petitioner must demonstrate that his salary or remuneration is high relative to the compensation paid to others working in the field.<sup>13</sup>

Although he submitted a letter from [redacted] “to the best of [his] recollection,” the Petitioner did not provide any supporting data regarding his earnings, such as paystubs, income tax returns, or other income documentation. Moreover, while [redacted] refers to 2007 earnings, the Petitioner provides 2019 wage data. Regardless, based on the Petitioner’s comparative information, his earnings were lower than the average wages of cooks in Spain. Furthermore, the comparison of average wages does not demonstrate that the Petitioner commanded a high salary in relation to other chefs. The Petitioner, for example, did not compare his salary to the high wages of chefs. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

Accordingly, the Petitioner did not show that he meets this criterion.

### III. CONCLUSION

We find that the Petitioner does not satisfy the criteria relating to awards, memberships, published material, original contributions, and high salary. Although he claims eligibility for two additional criteria, relating to judging at 8 C.F.R. § 204.5(h)(3)(iv) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), we need not reach these additional grounds. As the Petitioner cannot fulfill the

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<sup>11</sup> *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).

<sup>12</sup> In his previous motion before the Director, the Petitioner submitted paystubs reflecting earnings after he filed his petition. However, eligibility must be established at the time of the filing of the petition. *See* 8 C.F.R. § 103.2(b)(1).

<sup>13</sup> *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.<sup>14</sup> Accordingly, 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). Although the Petitioner has cooked in various restaurants, the record does not contain sufficient evidence establishing that he is 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.

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<sup>14</sup> *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).