



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 12091215

Date: NOV. 30, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the field of artificial intelligence technology, 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 that the Petitioner did not establish, as required, that he meets at least three of the initial evidentiary criteria for the requested classification. The matter is now before us on appeal.

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 sustain 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 international 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 criteria 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).

## II. ANALYSIS

The Petitioner is an entrepreneur in the field of artificial intelligence technology who currently serves as the founder, inventor, and CEO of

### A. Evidentiary Criteria

Because the Petitioner 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). The Petitioner claims to have met at least five criteria, summarized below:

- ∑ (i), Lesser nationally or internationally recognized awards of prizes;
- ∑ (iii), Published materials in major media;
- ∑ (v), Original contributions of major significance;
- ∑ (viii), Leading or critical roles with organizations that have a distinguished reputation; and
- ∑ (ix), High salary or other significantly high remuneration in relation to others in the field.

In addition, the Petitioner requested the consideration of comparable evidence regarding his speaking engagements and financial success under the criteria at 8 C.F.R. § 204.5(h)(3)(vii) and (x), which relate, respectively, to display of work at artistic exhibitions and showcases, and to commercial success in the performing arts.

The Director concluded that the Petitioner met two criteria relating to published materials and leading or critical roles. On appeal, the Petitioner asserts that the Director ignored probative evidence establishing that he meets the criteria related to original contributions, nationally recognized awards, and high salary or other significantly high remuneration. After reviewing all the evidence in the record, we conclude that the Petitioner has satisfied an additional criterion.

8 C.F.R. § 204.5(h)(3)(v) calls for evidence of an individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The evidence demonstrates that, as co-founder of [REDACTED], the Petitioner was listed as the inventor on at least three issued patents related to the company's proprietary [REDACTED] technology, thus establishing the originality of his contributions. The Petitioner also provided evidence of awards received by [REDACTED] for its application of the [REDACTED] technology, and several testimonial letters that discussed this proprietary technology, its commercialization, and its subsequent impact on the use of artificial intelligence and big data in the [REDACTED] industry.

[REDACTED] a senior scientist and manager at NASA's [REDACTED] [REDACTED] notes that the Petitioner's [REDACTED] technology "was the very first to allow [REDACTED] companies and markets to provide better user experiences as well as understand [REDACTED] [REDACTED] lead marketing for robotics at [REDACTED] notes that the Petitioner's technology "pushed [REDACTED] above its competitors to the point that [REDACTED] replaced [REDACTED] technology as the market standard for the U.K. [REDACTED] industry" and notes that his patents have been quoted by "other patents that belong to companies like [REDACTED] [REDACTED] Head of the Italian Trade Agency's [REDACTED] emphasizes that the Petitioner "realized [REDACTED] could also help the [REDACTED] understand what content is being watched [REDACTED] and "revolutionized the [REDACTED] industry by making data acquisition more efficient than traditional [REDACTED] [REDACTED] methods."

[REDACTED] Vice President of Engineering for [REDACTED] which acquired [REDACTED] in 2018, explains that the Petitioner's technology "was especially groundbreaking because it assessed [REDACTED] [REDACTED] exposure and consumption immediately, through [REDACTED] He also states that the technology "revolutionized the field because the technology was not tied to a single [REDACTED] manufacturer or [REDACTED] corporation" and notes that the technology is currently deployed in the United States, United Kingdom and other European markets. Finally, he explains that the Petitioner's "patented [REDACTED] tech has changed the [REDACTED] field by providing critical insight into the value of [REDACTED] on digital media platforms." Although the Petitioner ultimately made the decision to sell [REDACTED] to [REDACTED] the record also reflects that major industry players, including Apple and Amazon, had expressed interest in the acquisition of the technology.

Based on the testimonial evidence, patents, and other independent evidence regarding the industry's reception of [REDACTED]'s technology, the Petitioner has established the major significance of his original contributions and satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(v). Because the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence, including evidence relating to the remaining claimed criteria, in the context of the final merits determination below.

## B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he 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 petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have 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.<sup>1</sup> In this matter, we determine that the Petitioner has shown his eligibility.

The Petitioner's curriculum vitae reflects that since [redacted] 2019, he has served as the founder, inventor, and CEO of [redacted] which has developed a [redacted] platform able to accurately predict quarterly revenues of public companies using [redacted]. From 2012 to 2018, he served as [redacted] co-founder, CEO, inventor, and major shareholder where he was responsible for building investor relations, product invention, and patent creation, and led the company from its initial startup through its acquisition by [redacted] for more than ten million dollars.

The Director determined that the Petitioner established both his leading role with [redacted] and the company's distinguished reputation in the industry. For example, the record demonstrates that both [redacted] and the Petitioner, as its founder, received industry awards and recognition for the company's proprietary technology at the [redacted] Siemer Summit and South by Southwest [redacted] industry conferences. The record reflects that both annual events receive coverage in national media outlets including Forbes and Yahoo Finance, garnering acclaim for the Petitioner, [redacted] and the innovative technology he developed.

The record also reflects that the Petitioner and [redacted] received mainstream media coverage in response to the company's industry changing [redacted], rapid growth, high-profile partnerships with entities such as the [redacted] and [redacted] and its acquisition by [redacted]. For example, MarketWatch reported on [redacted]'s discovery that [redacted] viewers were spending significantly more time watching [redacted] than previously understood and [redacted] presented these analytics at the National Association of Broadcasters show in [redacted]. The record establishes that this discovery also prompted a White House senior technology and economic policy advisor to contact the Petitioner for guidance on determining the market share of [redacted] services [redacted] in order to analyze the risk of a monopoly.

In [redacted] [redacted] was recognized by Inc. magazine as one of the fastest growing privately held companies in the United States in its Inc. 5000 list, from a field that includes millions of companies. The Petitioner also enjoyed acclaim from Italian magazine Repubblica which published an article titled [redacted] and included [redacted] on its innovative [redacted] "companies that are changing the world." The Petitioner was also interviewed by Italian magazine Millionaire about [redacted] technology, its market opportunities, its most lucrative deals, and his opportunity to sell the company to [redacted], after [redacted] platform had been used by [redacted] in its [redacted] products.

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<sup>1</sup> See also 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 4 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

Although the Petitioner ultimately made the decision to sell [redacted] to [redacted] in 2018, the record reflects that another major industry player, Apple Inc., had expressed interest in the acquisition of the technology. Apple's [redacted] discusses the impact of [redacted] platform and Apple's interest in that technology. In his letter [redacted] states that he considers the Petitioner to be "part of a small group of entrepreneurs that have risen to the top of his field in [redacted] analytics" based on both his achievements with [redacted] and on innovative new technology he has developed for [redacted] which has "attracted very significant level of interest from the senior management of several [redacted] institutions."

Other letters from experts speak to the Petitioner's reputation and acclaim in his field and are corroborated by the independent evidence related to his awards, media coverage, and the impact and commercial success of his patented technologies. [redacted] notes that the Petitioner was invited to serve as a mentor at [redacted] University based on his reputation and acclaim in the field. He highlights "the story of [redacted] the company he founded and led for seven years and eventually sold," as "an exemplary success story that embodies the [redacted] entrepreneurial myth narrative." [redacted] further emphasizes that the Petitioner's "unique invention . . . attracted important names in the field" and states that "[t]o this day, he is the leading figure on [redacted] data consumption." [redacted] of [redacted] attests to the Petitioner's "reputation as a thought leader in the artificial intelligence entrepreneurial technology space," highlighting his mentorship of other entrepreneurs through organizations like [redacted] University. She also references the Petitioner's speaking engagements including keynote addresses at [redacted] [redacted] and [redacted] noting that such engagements speak to his "reputation as a leading entrepreneur" in his field. [redacted] describes the Petitioner as "one of the most successful examples of [redacted] entrepreneurship in the technology space."

Here, the record reflects that the Petitioner has received recognition from experts and top companies in his industry, through industry awards and media, and through prestigious speaking and mentoring opportunities in his field. Based on the evidence discussed above and our review of the record in the aggregate, we conclude that the Petitioner has demonstrated by a preponderance of the evidence, sustained national acclaim and that he is among the small percentage at the very top of his field of endeavor. See Kazarian, 596 F.3d at 1119-20; 8 C.F.R. § 204.5(h)(2)-(3).

### III. CONCLUSION

The Petitioner has established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). He has also demonstrated sustained acclaim and that his achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that he intends to continue working in his area of expertise and that he will substantially benefit prospectively the United States. He therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.