U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10064748

Date: OCT. 19, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an information technology (IT) project manager, 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 initially approved the petition. However, the Director subsequently issued a notice of intent to revoke (NOIR) the approval of the petition based, in part, on questions regarding the authenticity of supporting documentation. After reviewing the Petitioner's response to the NOIR, the Director revoked the approval, concluding that the Petitioner had satisfied only one 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)(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 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). 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).

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. See 8 C.F.R. § 205.2(b) and (c).

Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing Matter of Estime, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. Id. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. Id. at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. Id.

II. ANALYSIS

The Petitioner is an IT project manager. He received his Doctor of Computer Science from [redacted] University in 2016. At the time of filing in October 2016, he was an employee of [redacted] in [redacted] Florida.

As a preliminary matter, we will address the Petitioner's claim that the NOIR offered inadequate notice of the grounds for revocation because "[a]t the time of the NOIR, the Service based the majority of its analysis and reasons of revocation on their fraud or willful misrepresentation claim . . . ." The Petitioner's contention is based upon statements in the NOIR which questioned the authenticity of the submitted recommendation letters. The Petitioner argues that since the notice of revocation (NOR) did not make any reference to fraud or material misrepresentation of a material fact "there was not sufficient evidence of record at the time of the notice that would deem the intention to revoke 'good and sufficient cause.'"

Here, the NOIR supplied the Petitioner with a statement of the grounds for revocation, thereby offering him an opportunity to respond and establish his eligibility. In addition to explaining the basis for questioning the authenticity of the submitted recommendation letters, the NOIR detailed how the documentation submitted did not meet at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In response to the NOIR, the Petitioner submitted additional documentation addressing both the issue of the authenticity of the reference letters and his claimed satisfaction of five criteria. After reviewing the Petitioner's response to the NOIR, the Director revoked the approval, concluding that the Petitioner did not satisfy at least three criteria. The Director's NOR explained the reasons for revocation, providing support for the conclusions reached regarding the Petitioner's eligibility based on the evidence of record. Therefore, the Petitioner was afforded notice of the intent to revoke the prior approval of the petition and an opportunity to submit evidence in opposition before issuance of the written notice of revocation. See 8 C.F.R. § 205.2(b) and (c).

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). In revoking the petition, the Director determined that the Petitioner fulfilled only one of the initial evidentiary criteria, membership in associations at 8 C.F.R. § 204.5(h)(3)(ii). However, for the reasons discussed below, we do not agree with the Director's finding that the Petitioner satisfied the membership criterion.

On appeal, the Petitioner maintains that he meets four additional criteria, relating to judging, original contributions, scholarly articles, and high salary. After reviewing all the evidence in the record, we conclude that the Petitioner meets only two of the ten initial evidentiary criteria. Accordingly, we find that the Director properly revoked the approval of the petition.

> 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)

As discussed earlier, the Director found that the Petitioner satisfied this criterion. The Petitioner argued that he meets this criterion as a member of the Association for Computer Machinery (ACM) and as a senior member of the Institute of Electrical and Electronics Engineers (IEEE). 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.[1] For the reasons outlined below, the record does not reflect that the Petitioner submitted documentary evidence that sufficiently demonstrates that he meets this criterion, and the Director's determination on this issue will be withdrawn.

With reference to the ACM, the Petitioner presented screenshots from campus.acm.org regarding membership qualifications, indicating that ACM requires either a bachelor's degree (in any subject area), equivalent level of education, or two full years full-time employment in the IT field. Here, the Petitioner did not establish that the requirements for membership in ACM rise to the level of "outstanding achievements" consistent with this regulatory criterion. Instead, the membership requirements show a level of education or years of experience in the IT field, which are not tantamount to outstanding achievements.[2]

Regarding the IEEE, the record shows that in 2016 the Petitioner's membership was elevated to "senior member" level, which he maintains satisfies the regulatory requirements of this criterion. The Petitioner submits a copy of the 2016 IEEE Bylaws. Relevant excerpts of section 1-104 provide as follows:

> 3. Senior Member. The grade of Senior Member is the highest for which application may be made and shall require experience reflecting professional maturity. For admission or transfer to the grade of Senior Member, a candidate shall be an engineer, scientist, educator, technical executive, or originator in IEEE-designated fields . . . . The candidate shall have been in professional practice for at least ten years and shall have shown significant performance over a period of at least five of those years . . . .

The Bylaws specify that "significant performance" can take the form of "[p]ublication of papers, books, or inventions." Here, the Petitioner did not establish that the IEEE requirements of 10 years of relevant experience in a particular field and "publication of paper, books, or inventions" rise to the

[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 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (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).

[2] See USCIS Policy Memorandum PM 602-0005.1, supra, at 7 (instructing that relevant factors that may lead a conclusion that the alien's memberships in the associations were not based on outstanding achievements in the field include, but are not limited to, instances where the alien's membership was based solely on a level of education or years of experience in a particular field).

level of "outstanding achievements" consistent with this regulatory criterion.[3] Further, the Petitioner did not establish that recognized national or international experts judge the outstanding achievements for membership with IEEE.[4]

Based on the foregoing, the Petitioner has not demonstrated that he meets this regulatory criterion. Accordingly, we withdraw the findings of the Director for this criterion.

> Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Director determined that the evidence did not sufficiently establish that the Petitioner has judged the work of others in the field.[5] The Petitioner submitted e-mails dated July 7, 2016, and August 22, 2016, respectively, from [redacted] of the International Journal of Cloud Applications and Computing, confirming that the Petitioner completed review of the manuscript [redacted]'.[6] Accordingly, the Petitioner demonstrated that he satisfies this criterion we will withdraw the Director's finding in this matter.

> 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 argues that he submitted evidence of "contributions to the computer science field in the form of his published works, which clearly are original as such." 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.[7] For example, a petitioner may show that his contributions have been widely implemented throughout the field, have remarkably impacted or

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[3] By contrast, the requirements to become a Fellow appear to be align much more closely with the regulatory language than the requirements for the Senior Member grade:

> 2. Fellow. The grade of Fellow recognizes unusual distinction in the profession and shall be conferred by the Board of Directors upon a person with an outstanding record of accomplishments in any of the IEEE fields of interest . . . . The accomplishments that are being honored shall have contributed importantly to the advancement or application of engineering, science and technology, bringing the realization of significant value to society . . . .

Significantly, one can apply for the Senior Member grade, whereas elevation to Fellow requires nomination and election at the highest levels of the organization.

[4] See USCIS Policy Memorandum PM 602-0005.1, supra, at 6.

[5] The Director also determined that there was insufficient documentation of "the level of acclaim associated" with the Petitioner's service as a judge. The nature of the Petitioner's judging duties would be a matter for discussion in the final merits determination. As discussed above, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine 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).

[6] Although the Petitioner provided evidence showing several additional requests for him to conduct manuscript reviews in 2016, he did not demonstrate that he completed the reviews.

[7] See USCIS Policy Memorandum PM 602-0005.1, supra, at 8 (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).

influenced the field, or have otherwise risen to a level of major significance in the field. The Director determined that the letters of support from experts in the field were insufficient to meet this criterion.[8] We find no error in the Director's determination. Although the Petitioner references his work relating to cybersecurity and information systems management, he did not demonstrate how his contributions are considered both original and of major significance in the field.

Likewise, he offers several recommendation letters from colleagues who commented on his skills and experience. For instance, the Petitioner provided three letters from , his dissertation chair at University. In an undated letter, states that he is preparing the Petitioner "for conducting research and applying for international grants." In a letter dated October 2016, indicates that his joint research projects with the Petitioner have included the book chapter titled ' in Developing Next-Generation Countermeasures for Homeland Security Threat Prevention, and a submission titled ' ' for the upcoming 14th International Conference on Information Technology: Next Generations (ITNG) (2017), to be published by Springer. He praises the Petitioner's "ability and tact for research." In his third letter praises the Petitioner's work ethic and professionalism.

the Petitioner's doctoral advisor at University, describes him as "a professional and competent individual in computer science and information systems" who is "on track to be one of the top researchers in the field of information technology." We note that multiple identical statements in 's letter and 's undated letter suggest that their language was not written independently. It is unclear whether the letters reflect their independent observations and thus an informed and unbiased opinion of the Petitioner's work. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010).

The record also contains a letter from a senior manager with in Minnesota, stating the Petitioner was employed between 2012 and 2014 as manager of the company's system. In addition, in two nearly identical letters and directors at .. confirm the Petitioner's employment as a project manager for the implementation of the They describe his job duties and assert that he possesses the skills and experience to excel in the position and is a great asset to the organization.

Further, Dean of University's confirms the Petitioner was employed as an associate professor of computer science. He praises the Petitioner's work in developing instructional content in cybersecurity and information management and describes him as a "great asset." also of University, describes the Petitioner as a serious-minded and diligent scholar in the field of computer science with "wide-ranging interests in the field of Cyber Security and [I]nformation Systems as well as in Project Management." However, 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

[8] While we discuss a sampling of these letters, we have reviewed and considered each one.

already used those skills and talents to impact the field at a significant level, which he has not shown. Similarly, the Petitioner has not demonstrated how his experience in the field somehow resulted in an original contribution of major significance. In addition, the letters do not establish the Petitioner's impact in the overall field beyond working for various employers.[9]

In the case here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his personal contributions have had on the general field. 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.

> 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).

The Director determined that the evidence submitted does not establish the Petitioner's articles were published in professional or major trade publications or other major media.[12] On appeal, the Petitioner claims eligibility for this criterion based on his co-authorship of the aforementioned book chapter entitled '[redacted]' in Developing Next-Generation Countermeasures for Homeland Security Threat Prevention, a collection of articles published by IGI Global in a print version and digitally on its website www.igi-global.com.[13] In addition, the record indicates the Petitioner's doctorate dissertation, '[redacted]' was published on ProQuest and in the International Journal of Strategic Information Technology and Applications (IJSITA).[14] The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires his "authorship of

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[9] See USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9; see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013) (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).

[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] The Director further emphasized that the Petitioner did not provide "extensive documentation showing that the Petitioner's work has been unusually influential or highly acclaimed by independent researchers at the national or international level . . . ." The level of recognition received by the Petitioner's articles would be more relevant to a final merits determination, as discussed previously.

[13] The IGI Global website indicates that all IGI Global publications are available through IGI Global's InfoSci®-Books and InfoSci®-Journals databases.

[14] The Petitioner also asserts that he satisfies this criterion based upon his co-authorship of the aforementioned article, [redacted] presented at the aforementioned 14th International Conference on ITNG (2017). The record reflects that the article was published by Springer in the ITNG conference proceedings in July 2017, subsequent to the filing of the petition in October 2016. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of

scholarly articles in the field, in professional or major trade publications or other major media."[15] The Petitioner maintains that his articles were published in "professional publications and/or major media."

Here, the Petitioner did not show that the book [redacted] qualifies as "scholarly" consistent with this regulatory criterion. A scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field.[16] The description of the book provided on the IGI Global website, indicating it is "[i]deal for policy makers, IT professionals, engineers, NGO operators, and graduate students," does not demonstrate that the book was written for "learned" persons in the information technology field rather than for the general public. While the book has a focus that may appeal to the interests of those in IT-related professions, its publisher confirms that its articles are intended to be accessible to the general public.

In addition, the Petitioner did not show that the book is a professional publication. The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. See section 101(a)(32) of the Act. Moreover, "profession" means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation. See 8 C.F.R. § 204.5(k)(2). The book jacket indicates it is part of IGI Global's Premier Reference Source publications. The IGI Global website provides that Premier Reference Source publications are "essential resources for libraries, academicians, researchers, professionals, practitioners, instructors, and students of both the undergraduate and graduate level." Here, the Petitioner did not demonstrate that an intended audience such as undergraduate students meets the definition of "profession" as defined in the law and regulations. Accordingly, the Petitioner did not establish that the book qualifies as a professional publication. Further, the Petitioner did not show that [redacted] represents a major trade publication or other major medium. The Petitioner, for instance, did not provide statistics or other evidence establishing the major standing of the book.[17]

Finally, as noted previously, the evidence indicates the Petitioner's dissertation was published in IJSITA.[18] Thus the Petitioner has demonstrated that he authored a scholarly article in a professional publication. Accordingly, the Petitioner has established that he meets this criterion, and we will withdraw the Director's finding in this matter.

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the filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(l); Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we need not address this eligibility claim on appeal.

[15] See USCIS Policy Memorandum PM-602-0005.1, supra, at 9.

[16] Id.

[17] See USCIS Policy Memorandum PM-602-0005.1, supra, at 9 (providing that evidence of 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 and the intended audience).

[18] The publication of the Petitioner's doctorate dissertation on ProQuest, a web site repository that has published four million theses and dissertations with no apparent selection process for publication, does not amount to the publication of a scholarly article in a professional or major trade publication or other major media.

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)

In order to fulfill this criterion, a petitioner must demonstrate that he commands a high salary or other significantly high remuneration for services in relation to others in his field.[19] The Petitioner submitted a job offer dated 2011 from [redacted] in [redacted] Minnesota, for "Systems Accounting Manager position grade 0013" at an annual salary of $100,000. The record also contains an earnings statement dated December 27, 2013, showing that he received an annual salary of $101,923 and a bonus of $13,300. According to the plain language of the regulation, the Petitioner must demonstrate that any other remuneration separately from his salary as an IT project manager is "significantly high." Although the Petitioner provides comparative salary information, discussed below, he does not argue, nor does the record include, evidence demonstrating that his additional bonus is significantly high in relation to others. Thus, we will evaluate the record to determine whether the Petitioner's annual salary of $101,923 at [redacted] is high compared to others in his field without considering his bonus as part of his salary.

The record also contains a pay slip dated September 29, 2016, from [redacted] in [redacted] Florida, showing that the Petitioner's salary as an ERP functional business manager was $115,000. The aforementioned letters from [redacted] and [redacted] indicate that the Petitioner was hired to "lead the implementation and project management efforts from the finance/accounting area of business," and that he "manages a cross functional team of over 25 personnel."

As a comparison, the Petitioner submitted screenshots from the O*Net online database, reflecting that the median wages for "Computer Systems Engineers/Architects" and "Computer Occupations, All Other" are $85,240. The Petitioner has not submitted evidence establishing that comparative wage data for Computer Systems Engineers/Architects or those performing all computer occupations constitutes an appropriate basis of comparison to the Petitioner's occupational title of IT project manager. Even if the Petitioner had done so, this comparison does not take into account local variances in salary, relying upon the less accurate national median rather than local wage data for the area in which the Petitioner is employed. Also, a comparison to the median salary alone does not provide a complete set of information to which the Petitioner's salary may be compared.

In addition, the Petitioner submitted prevailing wage data from the Foreign Labor Certification Data Center (FLCDC) for "Computer Occupations, All Other," for the [redacted] Minnesota non-metropolitan area, reflecting a prevailing wage for "Level 4" or fully competent employees of $82,264 per year.[20] The Petitioner has not established that the fully competent wage information for those performing all computer occupations constitutes an appropriate basis for comparison.

Further, although the Petitioner provided additional screenshots from the O*Net online database, providing that the "high" annual salary for "Computer Occupations – All Other in Florida" and "Computer Occupations – All Other in Minnesota" is, respectively, $116,730 and $116,890, he did not provide comparative wage data of other IT project managers, rather the general category of all

[19] See USCIS Policy Memorandum PM-602-0005.1, supra, at 11.

[20] The Level 4 Wage relates to fully competent employees. See Prevailing Wage Determination Policy Guidance, http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11 _2009.pdf at page 7, accessed on October 9, 2020, and incorporated into record of proceedings.

computer occupations. The record does not sufficiently show that the data regarding this broad category represents an appropriate comparison against individuals engaged in similar work. 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 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).

Finally, the Petitioner maintains on appeal that his current salary and eligibility for profit sharing with [redacted] satisfies this criterion. The record reflects, however, that he began this employment in July 2019, subsequent to the filing of the petition in October 2016. 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. See 8 C.F.R. § 103.2(b)(l); Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we need not address this eligibility claim on appeal.

Based on the foregoing, the Petitioner has not demonstrated that he meets this regulatory criterion.

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. 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.