



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

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

In Re: 10962752

Date: OCT. 20, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a master mariner and specialist surveyor, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner: (1) had satisfied at least three of ten initial evidentiary criteria; (2) seeks to continue working in the area of claimed extraordinary ability; and (3) would substantially benefit prospectively the United States, as required. The Petitioner filed two combined motions to reopen and reconsider. On both occasions, the Director granted the motions, withdrew the prior decision, and issued a new denial notice. The matter is now before us on appeal.¹

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 immigrant visas available to aliens 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.

¹ Because the Director withdrew the first two denial decisions, only the most recent decision is before us on appeal.

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).

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 asserts that a master mariner is, essentially, a ship captain, qualified to command vessels of any size. The Petitioner also states that a specialist surveyor may inspect vessels, provide technical advice, and provide arbitration and expert testimony. The Petitioner also “holds a Law degree” and is “certified as [a] casualty investigator and Lead Auditor,” authorizing him to conduct “ship verifications, and certification.” The Petitioner intends to run a marine surveying and consulting company in the United States.

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). At various times in this proceeding, the Petitioner claims to have met seven of the criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met only one of the evidentiary criteria, numbered (viii), relating to a leading or critical role. We will not disturb that conclusion. On appeal, the Petitioner asserts that he also meets the evidentiary criteria numbered (i), (ii), (iii), (v), and (ix). The Petitioner

does not contest the Director's conclusions regarding criterion (vi), and therefore we consider that issue to be abandoned.²

We reviewed all of the evidence in the record, and conclude, as discussed below, that it does not show that the Petitioner 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)

At various times in this proceeding, the Petitioner claimed several awards, which the Director considered to be deficient for various reasons. On appeal, the Petitioner abandons most of these claims and discusses only one of these awards. The [redacted] in [redacted] presented the Petitioner with an "Honorary Helmsman Award for his dedicated efforts towards academic development, forming future generations of seafarers."

The Director determined that this award appears to be limited to the staff and faculty of one university, and that the Petitioner had not established the national or international recognition of the award. We need not explore these questions, because there is a more fundamental issue.

The Petitioner must meet all eligibility requirements at the time of filing the petition. See 8 C.F.R. § 103.2(b)(1). When the Petitioner filed the petition in October 2018, he did not mention the Honorary Helmsman Award. Subsequent submissions show that he did not receive the award until December 2018, nearly two months after he filed the petition. Therefore, the award cannot show eligibility at the time of filing, and therefore we will not discuss the separate issue of whether the award is nationally or internationally recognized.

The Petitioner has not satisfied 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)

After initially claiming various memberships, the Petitioner limits his arguments on appeal to his full membership in the International Institute of Marine Surveying (IIMS). The Petitioner quotes a submitted printout from the IIMS's website, which states: "IIMS membership is open to professional marine surveyors . . . who have sufficient and relevant experience and who meet the Institute's joining criteria." Full membership in the IIMS is available to:

² See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

- Anyone who can prove that they have practised on a full-time basis for a minimum of five years as a consultant or marine surveyor.
- Individuals who, by producing written reports can demonstrate that they have practised marine surveying or consultancy for at least five years.
- Individuals whose qualifications or experience shall be considered appropriate by the Professional Assessment Committee.

The IIMS’s own website, quoted above, does not describe the restrictive membership requirements that the regulation demands. Five years’ experience is not an outstanding achievement, and the Petitioner has not shown that the Professional Assessment Committee consists of recognized national or international experts.

The Petitioner has not satisfied this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The record contains five articles from 2015-16 about efforts to revitalize [redacted], a fishing company in [redacted]. The articles identify the Petitioner as the president of the company, and many of them quote him talking about the company. The articles focus on the company, rather than on the Petitioner and his work there.

Also, the Petitioner claims extraordinary ability as a master mariner and specialist surveyor. These fields certainly have some relevance to the fishing industry, but the articles do not appear to relate to his work as a master mariner or specialist surveyor. The introductory letter that accompanied the filing of the petition discussed the Petitioner’s “deep experience at sea as a deck officer,” his accreditation as a “Surveyor and Auditor,” his educational work as a college lecturer, and his work as a “casualty investigator . . . when a marine casualty occurs or a claim has arisen.” The 13-page letter contains no mention of [redacted], and the articles about [redacted] do not discuss any of those listed facets of the Petitioner’s career and credentials. As such, the submitted articles are, at best, tangential to the areas in which the Petitioner specifically claims extraordinary ability.

The Petitioner has not satisfied 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)

Initially, the Petitioner claimed two specific contributions: speaking at a conference on [redacted] maritime law, and teaching courses at the [redacted]. The Petitioner does not pursue these claims on appeal.

In response to a request for evidence, the Petitioner stated that he “was appointed as the president of [redacted] by an official resolution of [redacted] because he was “the most qualified

person to handle the financial crisis of the [redacted] fishing company [redacted]. The Petitioner asserted that he “was able to recover the company, paid the debts of all the employees, recover[ed] vessels and paid outstanding debts with creditors.”

The Director stated that the Petitioner did not establish how his work for [redacted] relates to the field of marine surveying and consulting, which is the area in which he claims extraordinary ability. On appeal, the Petitioner discusses the economic importance of [redacted] as a major employer and food source but does not address this fundamental point. Because the Petitioner has not shown that his work for [redacted] was a contribution in the field of maritime surveying and consulting, discussion of the significance of the contribution cannot establish eligibility.

The Petitioner has not satisfied this criterion.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criterion (concerning high salary or significantly high remuneration for services) cannot change the outcome of this appeal as the Petitioner has only satisfied one of the criteria discussed above. Therefore, we reserve that issue.³ For the same reason, we also reserve the issues of the Petitioner’s intention to continue working in the field of claimed extraordinary ability and prospective benefit to the United States.

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 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 at the top of their respective fields. Possession of a variety of credentials does not meet this high threshold. The Petitioner has sought to establish eligibility with piecemeal evidence pertaining to somewhat related, but nevertheless separate and distinct, fields (maritime surveying and executive leadership of a fishery) within the much broader category of maritime endeavors. The Petitioner asserts that his “area of expertise is the maritime field,” but this is a broad umbrella term rather than a single, coherent field of endeavor. 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 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).

³ *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, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.

ORDER: The appeal is dismissed.