



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

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

In Re: 14442636

Date: APR. 21, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker

The Petitioner, a computer hardware and software development company, seeks classification of the Beneficiary 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 while the Petitioner had established that the Beneficiary satisfied the initial evidence requirements, he did not demonstrate his eligibility for the classification. The Director determined that the record, as a whole, did not establish the Beneficiary's sustained national or international acclaim or confirm that he was among the small percentage at the very top of the field.

On appeal, the Petitioner challenges the Director's determination and maintains that the Beneficiary qualifies for the classification.

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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a beneficiary's one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

Where a beneficiary 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner, a computer hardware and software development company, seeks classification of the Beneficiary, a [redacted] engineer, as an individual of extraordinary ability. As the record does not establish that the Beneficiary has received a major, internationally recognized award, the Petitioner must demonstrate that the Beneficiary satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary 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 found that the Beneficiary met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his authorship of scholarly articles, his performance in a leading or critical role, and his receipt of a salary that is high in comparison to others in his field. We agree with the Director that the Beneficiary fulfilled those criteria.

Since the Petitioner has shown that the Beneficiary fulfills at least three criteria, we will evaluate the totality of the evidence in the context of the final merits determination.¹ On appeal, the Petitioner

¹ See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions;

asserts that the Beneficiary also meets the evidentiary criterion related to original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v). However, because the Petitioner has already established that the Beneficiary meets the requisite three evidentiary criteria, we will consider this evidence along with the totality of the record in the final merits determination below.

B. Final Merits Determination

As the Petitioner has established that the Beneficiary meets the requisite initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, that the Beneficiary has sustained national or international acclaim and 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 beneficiary's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has 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. In this matter, we determine that the Petitioner has not established the Beneficiary's eligibility.

As a preliminary matter, we will address the Petitioner's claim that the Director's decision improperly considered evidence in the record regarding the Beneficiary's accomplishments - specifically, that in the final merits analysis the Director "only considers each criteria in a vacuum, instead of a whole." The Petitioner asserts that the Director misapplied *Kazarian*, arguing that the Director erroneously "reviewed each piece of evidence in isolation and was looking for each category of evidence to demonstrate international acclaim." Within the final merits analysis, however, we note that the Director's decision discussed the evidence relating to the Beneficiary's engineering contributions, publication record, salary, and the work rendered to his current and former employers, and explained why that evidence, as part of the entirety of the record, was insufficient to demonstrate the requisite sustained acclaim at the national or international level, or that the Beneficiary has risen to be one of the few at the very top of his field. Regardless of the Petitioner's concerns, we exercise *de novo* review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). This means that we look at the record anew and are not required to defer to findings made in the initial decision. Furthermore, our decision may address new issues that were not raised or resolved in the prior decision.

The Beneficiary is a [redacted] testing engineer for the Petitioner. The record shows that he received his bachelor's degree in mechanical engineering from [redacted] University in [redacted] India in 2006, and his master's degree in mechanical engineering from the University [redacted] in 2010. As mentioned above, he meets the criteria for scholarly articles, leading or critical role, and high salary. At issue is whether the record establishes that he is one of that small percentage who has risen to the very top of his field and that he has sustained national or international acclaim under 8 C.F.R. § 204.5(h)(2)-(3).

Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 13 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

Regarding the Beneficiary's authorship of scholarly articles, the record reflects that the Beneficiary has authored six papers/articles in his area of expertise. We note, however, that publication of a beneficiary's research alone does not place one at the very top of the field. The Petitioner emphasizes that the publication of the Beneficiary's papers and articles in peer-reviewed journals have been cited 25 times, and that he has presented his findings at national conferences. The record does not show that conference presentation is a privilege reserved for those at the very top of the field. Nor has the Petitioner demonstrated that the Beneficiary's publication record is consistent with having a "career of acclaimed work." See H.R. Rep. No. at 59. As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of the Beneficiary's papers and articles can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Beneficiary may provide solid evidence that his work has been recognized and that other researchers have been influenced by it. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122.

The Petitioner submitted the Beneficiary's Google Scholar citation history, reflecting 25 cumulative citations to four publications authored by him between 2008 and 2015. Specifically, the record shows that his highest cited article, published in *Structural Dynamics*, received 16 citations, with the remaining articles receiving four, three, and two citations, respectively. The remaining two articles authored by him in 2010 and 2015 garnered no citations. The Petitioner also notes that the total citations include independent citations from ten countries, which it claims establishes the Beneficiary's international recognition in the field. While the citations show that the field has noticed his work, he did not establish that such rates of citation are sufficient to demonstrate a level of interest commensurate with sustained national or international acclaim in his field. See section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not show that the citations to the Beneficiary's research represent attention at a level consistent with being among small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2).

In addition to submitting evidence related to his publications, the Petitioner provided letters from four individuals it claims are "renowned experts" who have weighed in on the importance of the Beneficiary's research and methodologies, and asserts that the Director should have given more weight to letters from various individuals in the Petitioner's field.² U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* The Petitioner's selection of individuals who are familiar with the Beneficiary's work does not necessarily demonstrate that his work is sufficiently well known so as to be consistent with national or international acclaim.

The letters submitted appear to be from former colleagues and other engineers regarding the Beneficiary's contributions in the field. While these letters discuss his contributions to certain projects, showing how highly regarded he is among those who have worked with him, this evidence does not establish that he has national or international acclaim in the field. For example,

² Although we discuss a sampling of letters, we have reviewed and considered each one.

[redacted] Senior Technical Advisor/Director for [redacted], a client of the Beneficiary's former employer, discusses the Beneficiary's work on a project related to the development of the [redacted] of [redacted] engines. According to [redacted] the Beneficiary and his team were tasked with developing a solution to remedy [redacted] in engine test cells, noting that the Beneficiary conducted structural testing and developed a methodology that solved the "critical restraints" that were hindering its testing efforts and potentially damaging its testing facility. [redacted] concludes that without the Beneficiary's contributions, the continued development of the [redacted] engines, used in the [redacted] industry, would have been delayed and potentially catastrophic. [redacted] Director of [redacted], states that he previously supervised the Beneficiary during the Beneficiary's employment with the company in the position of [redacted] engineer.³ [redacted] states that the Beneficiary and his team conducted structural analysis for various power plants during his tenure with the company, noting that his work led to the identification of the root-cause of various [redacted] within the plants, which ensured their continued operation. [redacted] retired Space Shuttle [redacted] Systems and Safety Engineer for [redacted] notes that the Beneficiary's paper entitled [redacted] presented at the [redacted] Conference and Exhibition in 2015, addressed a critical gap in the engineering work flow, and was the first of its kind to discuss the complexities of the engine test cell. He further states that the paper is "a valuable reference," and that the Beneficiary "will undoubtedly continue to produce significant work that will influence other researchers in academia and industry." Finally, [redacted] Research Engineer (2008-2019) for [redacted] in Denmark, discusses his collaboration with the Beneficiary on various projects in the field of structural dynamics, noting that he mentored the Beneficiary during his master's level studies. According to [redacted] he co-authored three papers with the Beneficiary, which formed a major part of the Beneficiary's master's degree thesis work at the University [redacted] and "laid the foundation for his career." [redacted] concludes that these papers validated his own doctoral research work, and notes that the Beneficiary has "consistently been making groundbreaking finds in his field."

Overall, the evidence related to the Petitioner's publications and contributions to his field demonstrates that he is an accomplished mechanical engineer, specializing in the field of [redacted] engineering, who garnered a level of recognition in the private sector for implementation of appropriate solutions to remedy structural [redacted] issues for various clients. While the letters summarize and praise the Beneficiary's research and original contributions, the authors do not explain how the Beneficiary's research, contributions, and publications in this area have resulted in his being recognized as among the small percentage of similar engineers in his field who have achieved sustained national or international acclaim as evidenced through extensive documentation. While we acknowledge the Beneficiary's skillset in his industry, the record has not shown that he has received national or international acclaim for his work on these projects. The letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Beneficiary is viewed by the overall field as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

³ According to the Beneficiary's resume, he was employed by [redacted] from February 2010 to July 2012.

Further, although the Petitioner claims that the Beneficiary has made contributions of major significance in the field of engine test cells, it did not demonstrate that he has had remarkable influence in the overall field. While it appears that the Beneficiary's work in the private sector proved beneficial to the various clients for whom he rendered solutions, the record is devoid of evidence that such solutions and methodologies have been widely accepted and implemented beyond the individual client projects to which he was assigned during the course of his career. Although the recommendation letters summarize the Petitioner's research and findings, they do not sufficiently establish that his original contributions are already recognized as majorly significant, nor do they demonstrate that he is among that small percentage at the very top of his field of endeavor or that he has sustained national or international acclaim. For instance, [redacted]'s letter indicates that he co-authored three of the Beneficiary's six publications, and notes that these papers formed the basis of the Beneficiary's master's thesis while simultaneously validating [redacted]'s doctoral research findings. [redacted] does not address whether the Petitioner's findings have been utilized by other engineers or researchers in the field, and if so, the extent of their application. Further, his letter does not explain or justify how the Beneficiary's research in this area has resulted in his belonging, as he asserts, "to the special group of extraordinary researchers in the multidisciplinary field of structural dynamics."

In addition, the Petitioner has not shown that the Beneficiary's leading or critical role in its organization or for his former employer, [redacted] has resulted in sustained national or international acclaim. [redacted], a company principal and mechanical engineer specializing in [redacted] states that the Beneficiary worked as Lead [redacted] Engineer for the company from 2012 to 2015, during which time he worked on more than 20 projects at several major engine manufacturers across the United States. [redacted] states that the Beneficiary used his technical expertise "to develop a comprehensive [redacted] strategy for the company, termed as [redacted]" which was "successfully implemented in several ongoing projects." As a result of this plan, and his work on various client projects during the course of his employment, [redacted] states that the Beneficiary's efforts "resulted in reduced equipment failures at engine manufacturing facilities, thereby saving hundreds of thousands of dollars in repairs and downtime for the clients and warranty costs for [redacted]." While these are notable accomplishments, the record does not show how these successes have resulted in national or international acclaim for the Beneficiary. 8 C.F.R. § 204.5(h)(3).

Regarding his critical role with the Petitioner, the record reflects that the Beneficiary is currently employed in the position of [redacted] engineer. According to the Petitioner's U.S. Immigration Manager, [redacted] the Beneficiary applies his background in structural analysis and system integration to "complete root cause analysis of structural issues across all [Petitioner] designed hardware." [redacted] further states that the Beneficiary was one of the first hardware engineers at the company to "[redacted] and that his work has been used "year over year to improve the [redacted] performance of [redacted] devices and tune the [redacted] to provide an optimal user experience." She concludes by stating that the Beneficiary's "work on unreleased future projects and technology is critical in the development phase of these new products." Again, while the Beneficiary's contributions are noteworthy and undoubtedly are beneficial to the Petitioner's operations, the record does not show how these accomplishments have resulted in national or international acclaim. 8 C.F.R. § 204.5(h)(3).

The Petitioner further points to the Beneficiary's high salary in his field, and the signing bonus and restricted stock units it extended to him upon his hiring, noting that such compensation was awarded to him on "on the basis of his extraordinary ability and expertise." While a high salary may demonstrate some degree of recognition of his achievements in the field, the Petitioner has not submitted evidence showing that his earnings are at a level reflecting that he is one of the small percentage who has risen to the very top of the field.

In summary, the Petitioner has not shown that the significance of the Beneficiary's 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 Beneficiary has garnered national or international acclaim in the field and that 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).

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals who are 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 the Beneficiary's academic, scholarly, research, and professional accomplishments 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 Beneficiary 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; 8 C.F.R. § 204.5(h)(2).

The record does not establish that the Beneficiary qualifies for classification as an individual of extraordinary ability. The appeal will therefore be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.