



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

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

In Re: 11198684

Appeal of Texas Service Center Decision

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

The Petitioner, a professor, 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 Petitioner had satisfied only two of the ten 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) (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 indicated employment as a professor in the department of mechanical engineering at the University Nigeria since 2013.

A. Evidentiary Criteria

Because the Petitioner has not claimed 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 Director determined that the Petitioner met only two of the evidentiary criteria relating to scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). On appeal, the Petitioner demonstrates that he fulfills the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), discussed further below.

Because the Petitioner has shown that he satisfies the minimum requirement of at least three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.¹

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,²

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* 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).

² See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained 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 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 1119-20.³ In this matter, we determine that the Petitioner has not shown his eligibility.

The record reflects that the Petitioner earned a bachelor's of science degree in mechanical engineering from [redacted] University [redacted] in 1997 and a doctor of philosophy from the University of [redacted] in 2004.⁴ As indicated above, the Petitioner has been employed as a professor at the University [redacted] since 2013 and worked there as an associate professor from 2009 – 2013. Previously, the Petitioner served as a senior lecturer at [redacted] University (2008 – 2009) and research fellow at the University [redacted] (2006 – 2007) and at the University of [redacted] (2004 – 2005). The Petitioner judged others, authored scholarly articles, and performed in leading or critical roles. The record, however, does not demonstrate that his personal and professional achievements reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Relating to the Petitioner's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. See *Kazarian*, 596 F. 3d at 1121-22.⁵ The record reflects that the Petitioner participated in evaluating theses for postgraduate candidates and students for the University [redacted].⁶ However, the Petitioner's judging experience involves evaluating the work of students and aspiring professionals rather than established, recognized professionals. Cf., *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994) (USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard). Further, he did not establish that these instances place him among the small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for

providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

³ *Id.* at 4 (instructing 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 of the immigrant classification).

⁴ The Petitioner indicated on his resume that he has completed 34 credits for a master of science degree.

⁵ See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

⁶ On appeal, the Petitioner submits a letter from *Frontiers in Energy* confirming that he reviewed a paper in [redacted] 2019, after he filed his initial petition. In addition, he provides letters from two other journals (*Energy and Power Engineering* and *Experimental in Fluids*) generally indicating that he has judged papers for publication, but they do not state any dates that he performed his evaluations. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(1). The Petitioner did not demonstrate that he judged journal papers at the time he filed his petition. Further, while he presented letter requests for him evaluate staff for promotions, the Petitioner did not show that he actually completed the requests.

lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). He did not show, for example, how his experience in judging postgraduate candidates compares to others at the very top of the field.

In addition, the Petitioner did not demonstrate that his instances of judging contribute to a finding that he has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not establish, for instance, that he garnered wide attention from the field based on his work judging postgraduate students, limited to the university level. Moreover, serving on a thesis examination board does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field. Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of reviewing or judging recognized, acclaimed experts in his field, the Petitioner has not shown that his judging experience places him among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Likewise, authorship and publication do not automatically place one at the top of the field.⁷ Although he submitted 25 authored articles, the Petitioner did not demonstrate that his publication record is consistent with having a career of acclaimed work and sustaining national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. He did not submit evidence showing the significance of his authorships or how his overall publications compare to others who are viewed to be at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Moreover, the citation history or other evidence of the influence of his written work can be an indicator to determine the impact and recognition that his publications have had on the field and whether such influence has been sustained. For example, numerous independent citations for articles authored by the Petitioner may provide solid evidence that his work has been recognized and that other mechanical engineers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. Here, the Petitioner provided evidence reflecting that his published material has been cited almost 650 times, with his two highest cited articles receiving almost 150 citations. While the citation of his work shows that some in his field have referenced it, the Petitioner has not established that such citations are sufficient to demonstrate a level of interest in the field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. In addition, the Petitioner has not shown that the citations to his work represent attention at a level consistent with being among that small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

As it relates to his roles, the Petitioner served as director of special duties for the vice-chancellor at the University [redacted] as well as a member on several committees and chairman at the International Conference of Mechanical Engineering, Energy Technology, and Management. However, the Petitioner did not demonstrate that he received any national or international attention from his positions beyond the university or conference. *See* section 203(b)(1)(A) of the Act and 56 Fed. Reg. at 30704. The Petitioner did not show that his roles at the university and conference distinguished

⁷ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

him, garnering a level of attention consistent with being among that small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2). Here, the Petitioner did not establish that his professional teaching career spanning approximately 12 years represents a career of acclaimed work and sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The record does not reflect that any of his roles resulted in widespread acclaim from his field, that he drew significant attention from the greater field, or that overall field considers him to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Beyond the three criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, we find that the evidence does not establish that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of his field.

The Petitioner presented evidence reflecting that he received the [redacted] Award for an outstanding [redacted] at the International Conference on Fluid Mechanics in 2003. While the conference acknowledged the Petitioner’s poster, the Petitioner did not demonstrate that he garnered national or international acclaim based on his receipt of the conference award, or that it represents an individual who is among 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 *See* 8 C.F.R. § 204.5(h)(2).

Moreover, the Petitioner provided evidence of his membership with the American Society of Mechanical Engineers and the Nigerian Society of Engineers. The petitioner, however, did not demonstrate that his memberships with these societies are somehow remarkable or garnered sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. For instance, the Petitioner did not submit evidence showing that his memberships resulted in widespread or significant attention. *See* 56 Fed. Reg at 30704. In addition, he did not establish the prestigious nature of membership with these societies, or how his memberships reflect that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Finally, the Petitioner provided recommendation letters that summarized his written work and indicate publication in journals without demonstrating that his contributions have been of major significance in the field. Instead, the letters speculate on the potential influence and on the possibility of being majorly significant at some point in the future. For instance, “[t]he findings reported in his works on [redacted] can be applied in enhancing [redacted] design” and “[t]his has great potentials for significant improvements in [redacted] efficiency” [redacted], “the novel findings reported in [the Petitioner’s] thesis have many potential industrial applications” [redacted], “[t]his will be of great industrial benefits for [redacted] of [redacted], for enhanced [redacted] flexibility and significant reduction of [redacted]” [redacted], and “[t]he findings reported in [the Petitioner’s] Doctoral thesis on [redacted] have potential applications in [redacted]” [redacted].

The letters do not contain sufficient information and explanation, nor does the record include corroborating evidence, to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Further, the Petitioner did not establish that he has made impactful or influential contributions in the greater field reflecting a career of acclaimed work in the field, garnering the

required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The letters describe his work without showing how they rise to a level of major significance in the field and represent an individual who has garnered sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A) of the Act and 56 Fed. Reg. at 30704.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Price*, 20 I&N Dec. at 954. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

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.