U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12685089

Date: FEB. 3, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a chief executive officer (CEO), 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 denied the petition, concluding that the Petitioner had satisfied only one 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)(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 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 serves as the CEO for [redacted], "which is a [redacted] that empowers retail and service employees [redacted]."[1] Because the Petitioner has not indicated or established that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Petitioner fulfilled only one criterion, leading or critical role at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that he meets six additional criteria. After reviewing all of the evidence, the record does not reflect that the Petitioner satisfies the requirements of at least three criteria.

A. Evidentiary 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).

In order to fulfill this criterion, the Petitioner must demonstrate that he received prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.[2] The Petitioner claims that he "has been the recipient of significant venture capital funding" from [redacted], and [redacted]. However, the Petitioner did not establish that he actually received the venture capital funding.

The record contains a letter from [redacted], managing partner at [redacted], who stated that "[w]e only invest in B2B software companies" and "[o]ur network is particularly valuable to the B2B companies in which we invest." In addition, the record includes a letter from [redacted] managing director at [redacted] who indicated that "[the Petitioner's] organization has received an award of venture capital

[1] *See* page 3 of the Petitioner's initial cover letter.

[2] *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.

from [redacted]," "[the Petitioner] was instrumental in [redacted]'s receipt of venture capital from [redacted]," and "[the Petitioner's] excellence as a technology entrepreneur is a primary reason for [redacted]'s receipt of venture capital from [redacted]." Further, the record reflects a letter from [redacted] managing director at [redacted] who stated that [redacted] provides mentorship-driven seed-stage investment services for technology-oriented companies" and [redacted] is extremely competitive, with only 9 companies selected (including [redacted] out of over 1,000 applications." The Petitioner also offered evidence of financial documentation showing [redacted]'s receipt of the venture capital from [redacted], [redacted], and [redacted] The description of this type of evidence in the regulation provides that the focus should be on the alien's receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes.[3] Although the evidence shows that [redacted] received the funding from [redacted], [redacted] and [redacted], the Petitioner did not demonstrate that he received the venture capital funding consistent with this regulatory criterion.[4]

Moreover, the Petitioner did not establish that receiving venture capital funding qualifies as a prize or award. The Petitioner provides archived screenshots from uscis.gov entitled, "Understanding the EB-1 Requirements for Extraordinary Ability," stating under the awards criterion:[5]

> **Note:** If *you* have received venture capital funding or have been awarded a grant, *you* may submit evidence of the funding or grant awarded, including the amount of the funding or grant criteria used in awarding the funding or grant. Evidence of other investments, such as those from an accredited angel investor, may also be used.

(emphasis added).

The screenshots indicate guidance on May 4, 2017; however, the Petitioner did not demonstrate that this information is binding in this proceeding, or that the guidance was in effect in any form when the Petitioner filed the petition in 2020. In addition, the prior guidance provided that the *alien* received the venture capital funding, which, as discussed above, the Petitioner did not establish his actual receipt of it.

Furthermore, assuming that venture capital could be considered a prize or award, this would not mean that any and all venture capital, from whatever source, is a nationally or internationally recognized prize or award. Although the Petitioner provided background material about the companies, such as screenshots from the companies' websites, and information regarding capital venture funding in general, the Petitioner did not explain or show how the evidence demonstrates the national or international recognition of the specific venture capital funding from [redacted], [redacted], and [redacted] as a prize or award for excellence in the field.

The Petitioner also argues that he "was awarded the 2018 [redacted] Award, [redacted] by [redacted] Business." As discussed above, the description of this type of evidence in the regulation provides that the focus should be on the alien's receipt of the awards or prizes, as opposed to his or her

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.
[4] While the letters credited the Petitioner for securing the venture capital funding on behalf of [redacted], we considered his role under the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii).
[5] The Petitioner previously provided archived screenshots from uscis.gov entitled, "Understanding O-1A Requirements."

employer's receipt of the awards or prizes.[6] Although he provided screenshots from [redacted] reporting that [redacted] received the award, the Petitioner did not establish that he received the 2018 [redacted] Award. In fact, the award category was for [redacted] rather than for individuals, indicating the Petitioner's ineligibility for the award.

Finally, the Petitioner contends for the first time on appeal that he "was also awarded as one of the [redacted] in 2018 by [redacted]," and he "regret[s] that [he] did not include evidence of this award previously." As the Petitioner did not make this claim or present supporting documentation to the Director in his initial filing or after the Director afforded him an opportunity in a request for evidence, we will not consider this additional claim and supporting evidence in our adjudication of this appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

For the reasons discussed above, the Petitioner did not show that he meets 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).

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.[7] The Petitioner argues that membership in [redacted] fulfills this criterion. The record contains a letter from [redacted] managing director at [redacted] who stated:

> I submit this statement as evidence of [the Petitioner's] membership in [redacted] as a founder in our program beginning in the Spring of 2016. [The Petitioner's] membership in [redacted] is the result of his outstanding achievements and extraordinary ability in the field of technology entrepreneurship.
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> . . . .
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> [redacted] receives thousands of applications per year, all through our standardized online application. [redacted] focuses only on the top one percent of applicants and admits less than one percent of applicants. [redacted] admits only the most outstanding founders who are proposing products that solve real problems or create meaningful innovations. The primary focus of the application process is on the skill, talent, ability,

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

[7] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (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).

> and achievements of the applicant founders. We only select those founders who have with extraordinary business and technical skills, who have proven their outstanding achievements through demonstrable progress on their businesses, products, or prototypes.
>
> As a [redacted] member, [the Petitioner] has successfully navigated our rigorous and extremely selective process that demands outstanding achievements and extraordinary ability . . . .

Although he continuously repeats regulatory language and terminology, [redacted]'s statements are not supported by the documentation contained in the record, nor do they demonstrate that the Petitioner meets the requirements of this regulatory criterion. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

In addition to press coverage of [redacted], the Petitioner also submitted screenshots from [redacted]' website promoting itself, advertising its benefits, and listing funded and participating companies.[8] However, the documentation does not show [redacted]' membership requirements or selection criteria. Associations may have multiple levels of membership, and the level of membership afforded to the alien must show that in order to obtain that level of membership, the alien was judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought.[9] Although [redacted] asserted that [redacted] "select[s] those founders who have with extraordinary business and technical skills, who have proven their outstanding achievements through demonstrable progress on their businesses, products, or prototypes," the screenshots do not reflect membership requirements as a "founder" to corroborate his claims. Further, [redacted] did not elaborate and explain how "demonstrable progress" portrays outstanding achievements consistent with this regulatory criterion.

Finally, [redacted] did not indicate whether recognized national or international experts, as required by this regulatory criterion, judge the outstanding achievements for membership. Further, although the Petitioner provided a cover page entitled, "List of [redacted] Judges," and attached screenshots entitled, [redacted]' which lists individuals' names and companies, the Petitioner did not demonstrate that the mentors participate in the judging of outstanding achievements and determine membership with [redacted]. Rather, according to the screenshots from [redacted]' website, the mentors "will help you with product development, market fit, and who will also provide valuable introductions to help grow your company – fast." The Petitioner did not show that the mentors are also responsible for judging membership with [redacted]. Even if the mentors judge membership, the Petitioner did not establish

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[8] The Petitioner also provided numerous screenshots ranging on various topics such as start-up and accelerator programs, lead investors, and venture capital financing; however, he did not demonstrate how they show the membership requirements of [redacted]. In addition, the Petitioner offered screenshots from onstartups.com entitled, [redacted]" reflecting advice from [redacted] in submitting an application. Although the screenshots reflect tips in preparing an application, they do not describe any membership requirements with [redacted].

[9] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

that they are comprised of recognized national or international experts as he only provided their names and companies without evidence of their recognition or acclaim.

Accordingly, the Petitioner did not show that he fulfills 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).

In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.[10] The Petitioner argues that he "provided examples from more than 20 publications that were about him and his company," but he only addresses two of those examples on appeal. Specifically, the Petitioner submitted an article entitled, '[redacted]' which included the date and author, posted on bloomberg.com. The article, however, does not reflect published material about the Petitioner relating to his work. Rather, the article pertains to an [redacted] developed by [redacted] in which the Petitioner comments about the app. Articles that are not about an alien do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

Furthermore, the Petitioner asserts:

> [His] interview on [redacted] Business Network, in particular, is a concerning oversight. He was personally interviewed and featured on a 4:00 minute segment on one of the network's most popular news programs, [redacted]' on [redacted] 2017. On this panel he discussed his contributions made to the drafting of worker scheduling legislation in [redacted] and his expertise on worker scheduling legislation in three municipalities including [redacted], [redacted] and [redacted]. His visual presence being interviewed on a panel of four industry experts is shown through the screenshots. . . . Video evidence of this interview segment can be found online by searching "[The Petitioner]" and [redacted], [redacted] Business." If the journalists had only wanted to share information about [redacted] the company, there would have been no need for [the Petitioner] to appear in person on the panel. Or to appear at all. His presence there was intrinsically about him. Indeed, on the program he spoke about his personal efforts advocating in front of the [redacted] City Council and other government bodies to make smart policy decisions are made about hourly workers.

The Petitioner submitted eight still shots from the interview. However, the Petitioner did not demonstrate how any of the still shots reflect published material about him relating to his work. While the still shots indicate an interview on [redacted]' they do not corroborate his claim that the interview was about him. In fact, based on the still shots, the interview appears to be about [redacted]'s

[10] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

[11] Furthermore, the burden remains with the Petitioner to provide sufficient evidence to support his claims rather than informing us to perform an Internet search. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). In addition, the Petitioner did not include the author of the material. The inclusion of the title, date, and author of the material is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii).

As it relates to other items not specifically addressed by the Petitioner, the majority of the items do not include the titles, dates, and/or authors of the material. Furthermore, with the exception of one item from f6s.com, the remaining items do not show published material about him relating to his work.[12] Although they briefly mention his name or quote him for source material, they are not about him but pertain to . For example, the techstartups.com screenshots reflect an article about receiving funding in which the Petitioner is quoted relating to the offerings of the article does not discuss him. In fact, the Petitioner is not even mentioned in some of the items. Moreover, with the exception of screenshots posted on usatoday.com and wsj.com, the Petitioner did not demonstrate that any of the websites constitute professional or major trade publications or other major.[13] While he provided statistics, such as global rankings, country rankings, category rankings, and total visits from SimilarWeb, the Petitioner did not explain or show the significance of the figures, indicating major status or standing.[14]

For these reasons, the Petitioner did not demonstrate that he satisfies 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 specification for which classification is sought.* 8 C.F.R. 204.5(h)(3)(iv).

The Petitioner argues his eligibility for this criterion based on "as a member at ." The record reflects that the Petitioner provided an email from eneral manager of to the Petitioner, relating to information about "Becoming a "; a screenshot from regarding an overview of ; an email from program manager at to the Petitioner, welcoming him to and a screenshot from listing the Petitioner as a mentor. In addition, the Petitioner submitted a letter from , CEO of who stated that he is "familiar with [the Petitioner's] work as a mentor at " and "[the Petitioner] provided guidance to web and mobile startups on business development, sharing his wisdom to other entrepreneurs."[15]

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[11] For instance, the still shots reflect ", " ," " ," and

[12] The screenshot from f62.com does not include the title and date and appears to be self-authored.

[13] The screenshots from usatoday.com lis among one of the best places to work without any mention of the Petitioner, and the screenshots from wsj.com relate to the with the Petitioner briefly quoted for the article.

[14] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in 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).

[15] The Petitioner provided additional reference letters from , CEO of and CEO of as evidence under his . However, neither letter mentions or indicates the Petitioner's participation as a mentor.

This regulatory criterion requires the petitioner to show that he has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same of allied field of specialization.[16] The Petitioner, however, did not demonstrate how the evidence shows that he participated as a judge of the work of others. He did not establish that his participation as a mentor involved judging the work of others consistent with this regulatory criterion. Moreover, the emails and screenshots from [redacted] do not contain probative information detailing whom, what, where, and when he mentored and how such mentoring corresponds to judging the work of others. Likewise, while [redacted] indicated that the Petitioner "provided guidance," he did not further elaborate and explain how guiding, assisting, or advising demonstrates participation as a judge of the work of others.

Accordingly, the Petitioner did not establish that he meets 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).

In order to meet 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.[17] For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. The Petitioner indicates that he "led the team that developed [redacted]'s source code to develop the core technology which has revolutionized the way [redacted] manage [redacted]" He does not claim, nor does the record reflect, that he developed the source code. Although the Petitioner's role in leading the team in developing the source code is more appropriate under the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner's argument must show how his leadership constitutes an original contribution of major significance in the field in order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner argues that "his original contribution has been licensed by major retailers for approximately $1.8 million" and references licensing agreements and a [redacted] 2019 Year End Report. Although the evidence shows licensing agreements with retailers, such as [redacted], [redacted], [redacted], and [redacted], the Petitioner did not establish how entering into service agreements shows that his leadership rises to an original contribution of major significance in the field. He did not demonstrate that the securing of subscription agreements with retailers significantly impacted or influenced the overall field in a major way beyond [redacted].[18] Moreover, the Petitioner did explain the importance of receiving $1.8 million for the subscription license and how that equates to being majorly significant in the field.

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[16] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

[17] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 8-9 (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).

[18] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (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).

In addition, the Petitioner contends that he submitted two testimonial letters that "describe in detail how [he] has led [redacted]" and "describe his original contributions to the field of technology entrepreneurship that resulted from him being extraordinary in this field." The letters, however, do not contain detailed, specific information explaining how the Petitioner's leadership has resulted in original contributions of major significance in the field; instead, the letters make broad statements. For instance, [redacted] co-founder of [redacted] referenced an article published in *Techcrunch* that "discuss[ed] [redacted] and [the Petitioner's] work as bringing a [redacted] experience to the front lines, with employees in need of products that solve problems." The record reflects screenshots of an article posted on techcrunch.com that reported on [redacted] indicated that [redacted] received funding, and quoted the Petitioner about the purpose of the app. The article does not mention or address the Petitioner's leadership and how it has affected the field in a significant manner. Moreover, [redacted] stated that as the founder and CEO, "[redacted] has significantly changed this business sector, and experienced remarkable success, securing business partnerships where the [redacted] is utilized by international companies including [redacted], and [redacted]." Again, [redacted] does not describe how the Petitioner has "significantly changed this business sector" through his leadership in the greater field other than securing business partnerships with [redacted].

The Petitioner also submitted a letter from [redacted] vice president at [redacted], who discussed the prospective benefits of the [redacted] such as "[redacted]" "billions of cost *can* be saved on both the corporate and employee side," and "[t]his *will* help minimum wage workers earn more income." (emphasis added). [redacted] hypothesizes on the effect of the [redacted] at some undetermined time in the future without showing how it has already significantly impacted the field in a major way. Furthermore, [redacted] does not address how the Petitioner's leadership has greatly influenced or affected the overall field outside of [redacted].

Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his leadership has had on the overall 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.[19] 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.[20] 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.

[19] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[20] *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).

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

The Petitioner did not demonstrate that he satisfies the criteria relating to awards, memberships, published material, judging, and original contributions. Although the Petitioner claims eligibility for an additional criterion on appeal, relating to high salary at 8 C.F.R. § 204.5(h)(3)(ix), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.[21] Accordingly, 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 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). Although the Petitioner serves as a CEO of a company, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

[21] *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, n.7 (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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.