



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

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

In Re: 11244063

Date: FEB. 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a biopharmaceutical manufacturer, seeks to classify the Beneficiary 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 Beneficiary 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)(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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’s occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (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 indicates that it has employed the Beneficiary “as a Senior SAP [systems, applications, and products] Planning Specialist” since 2018.¹ Because the Petitioner has not indicated or established that the Beneficiary 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 Beneficiary satisfied only two criteria, leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high salary at 8 C.F.R. § 204.5(h)(3)(ix). However, for the reasons discussed later, we do not agree with the Director that the Beneficiary fulfilled the high salary criterion. On appeal, the Petitioner maintains the Beneficiary’s eligibility for four additional criteria. After reviewing all of the evidence, the record does not reflect that the Beneficiary meets 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).

In order to fulfill this criterion, the petitioner must demonstrate that the alien received prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.² The Petitioner references a letter from [REDACTED] general manager at [REDACTED], who stated:

With the contribution of his efforts, the [REDACTED] received national level highest fuel efficiency award from ASRTU (Member of International Association APTA-American Public Transport Association). Furthermore, [the Beneficiary] received the highest kilometer per litre in fuel efficiency achievement award from the Transport

¹ See 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>.

Minister (US Secretary equivalent at the state level) at the Government of [redacted] [The Beneficiary] also received a national level high mileage award for excellent maintenance and operation of vehicles by [redacted], an international corporation acclaimed as one of the largest vehicle manufacturers in the world.

The record contains “About Us” screenshots from [redacted] including a section entitled, “The Details of AWARDS Received by this Corporation are Given Below,” listing awards received by [redacted] from “ASRTU” during 1991-2015. The screenshots, however, do not credit or mention the Beneficiary receiving any awards, as claimed by [redacted]. The evidence submitted by the Petitioner does not show that the Beneficiary received the “national level highest fuel efficiency award from ASRTU” or the “the highest kilometer per litre in fuel efficiency achievement award from the Transport Minister.” In fact, as indicated, it appears that [redacted] received various vehicle performance awards rather than the Beneficiary. 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 Moreover, the Petitioner did not provide any corroborating evidence from “ASRTU” or “Transport Minister” evidencing the Beneficiary’s receipt. Furthermore, the Petitioner did not demonstrate how the [redacted] screenshots establish the national or international recognition for excellence in the field for either of these awards. Here, the Petitioner did not establish the national or international significance of the awards in the field.

In addition, the record contains an ALL “High Mileage Award” certificate “for excellent maintenance and operation of [ALL] vehicle” awarded to the Beneficiary. Further, the record reflects screenshots from [redacted] entitled, “Latest [ALL] News,” highlighting various news events of the company. Although the certificate indicates that the Beneficiary received the award, the Petitioner did not demonstrate the national or international recognition of the award for excellence in the field. The Petitioner did not establish how the screenshots, which make no mention of the “High Mileage Award,” shows that it is nationally or internationally recognized for excellence in the field consistent with this regulatory criterion. Moreover, the Petitioner did not provide any independent, objective evidence showing the significance of the award in the field beyond ALL.

For the reasons discussed above, the Petitioner did not establish that the Beneficiary 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).

The Petitioner argues eligibility this criterion based on the Beneficiary’s membership with the American Society of Mechanical Engineers (ASME). In order to satisfy this criterion, the petitioner must show that membership in the association is based on being judged by recognized national or

³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.

international experts as having outstanding achievements in the field for which classification is sought.⁴

The Petitioner submitted screenshots from asme.org indicating promotional material for ASME. Further, the Petitioner presented ASME's "Constitution and By-Laws," showing various degrees of membership, such as corporate membership, honorary member, fellow, member, affiliate, and student member. 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.⁵ The record reflects that the Petitioner submitted a certificate reflecting the Beneficiary's "Member" status with ASME. According to the bylaws, "[a] member, at the time of admission or advancement to that grade, shall have attainments amounting to the equivalent of at least eight years of engineering experience." However, the Petitioner did not demonstrate that attaining a certain level of experience is tantamount to outstanding achievements as required by this regulatory criterion. Relevant factors that may lead to a conclusion that the alien's membership in the associations was not based on outstanding achievements in the field include, but are not limited to, instances where the alien's membership was based solely on a level of education or years of experience in a particular field.⁶ Here, the Petitioner did not establish that ASME's member requirement of professional experience rises to the level of outstanding achievements consistent with this regulatory criterion.

In addition, the Petitioner did not demonstrate that recognized national or international experts judge outstanding achievements, as applicants are eligible for membership as long as they meet the minimum requirements of experience. Moreover, although the bylaws state that "[a]ll procedures relating to admissions to and promotions in membership . . . shall be administered by the Membership staff in accordance with the policy set by the Board of Governors," the Petitioner did not establish that the "Membership staff" is comprised of recognized national or international experts.

Accordingly, the Petitioner did not demonstrate that the Beneficiary fulfills 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 contends that the Beneficiary meets this regulatory criterion because:

[The Beneficiary] participated in the [redacted] Forum- knowledge session on SAP [redacted] is a publically [sic] traded multinational organization with distinguished reputation in the field. [The Beneficiary] is regularly responsible for reviewing and assessing the work of others. He reviewed and assessed SAP PM

⁴ 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).

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

⁶ *Id.*

Interface framework to deliver enterprise information and Business Process Configuration manual.

The record contains a “Certificate of Participation” from [redacted] indicating that the Beneficiary “has participated in the 2006 [redacted] Forum – knowledge sessions on SAP.” In addition, the Petitioner provided screenshots regarding “SAP Application Interface Framework” and a “User Manual for SAP Returns and Repair Process Using Return Material Authorization (RMA).” This regulatory criterion requires the petitioner to show that alien 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.⁷ The Petitioner, however, did not demonstrate how the evidence shows that the Beneficiary participated as a judge of the work of others. The certificate only indicates that the Beneficiary participated in a forum without any indication of judging experience. Moreover, the screenshots and user manual do not make any mention of the Beneficiary’s involvement in judging the work of others, as required by this regulatory criterion. Here, the presented evidence does not support the Petitioner’s assertions relating to the Beneficiary’s judging experience with SAP materials, nor did the Petitioner establish that the Beneficiary’s “review[ing] and assess[ing]” involved judging the work of others consistent with this regulatory criterion.

In addition, the Petitioner cites to a portion of letter from one of its managers, [redacted] who stated:

During [the Beneficiary’s] time at [redacted] the company acquired several large companies further expanding its worldwide presence. [The Beneficiary] in 2005, started implementing SAP solution for entire organizations across 14 countries. Since then he has been leading and engaged in various initiatives similar to that used [by the Petitioner].

The Petitioner, however, did not explain how the letter shows the Beneficiary’s participation of the work of others. Moreover, the Petitioner did not demonstrate how implementing a solution, framework, or procedure for an organization involves judging the work of others. Here, the Petitioner did not establish that the Beneficiary served, either individually or on a panel, as a judge.

Accordingly, the Petitioner did not establish that the Beneficiary meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

In order to meet this criterion, a petitioner must demonstrate that the alien’s salary or remuneration is high relative to the compensation paid to others working in the field.⁸ Because the record does not reflect that the Petitioner established the Beneficiary’s eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(ix), we will withdraw the Director’s decision for this criterion.

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

⁸ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

At initial filing, the Petitioner claimed:

As one of the leading experts in Business Operations Plant Maintenance, [the Beneficiary] has commanded a high salary for his extraordinary expertise and leading role. For the fiscal year of 2018, [the Beneficiary] earned around \$81,494.40. In 2019, [the Beneficiary] anticipates earning over \$81,494.40 in salaries and bonus. [The Beneficiary] significantly high remuneration for his services, in relation to others in the field further confirms his extraordinary ability and level of expertise in the field.

However, the Petitioner did not provide any evidence of the Beneficiary's earnings in 2018, to support its assertions. Instead, the record reflects that the Petitioner submitted a copy of the Beneficiary's 2017 IRS Form W-2, Wage and Tax Statement, issued by a previous employer, [redacted] in [redacted] Illinois and screenshots from careeronestop.org for "Wages for Installation, Maintenance, and Repair Workers, All Other in [redacted] TX." The Petitioner, however, did not identify the Beneficiary's position that he performed for [redacted] in 2017. As such, the Petitioner did not demonstrate that the Beneficiary commanded a high salary or other significantly high remuneration for services in relation to others in the Beneficiary's field.

In fact, the record reflects that [redacted] filed a petition for the Beneficiary seeking to employ the Beneficiary as an "SAP Consultant."⁹ Thus, the Petitioner compares the Beneficiary's salary as an SAP consultant to that of salaries of installation, maintenance, and repair workers. The Petitioner did not establish that the Beneficiary commanded a high salary in relation to other SAP consultants. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). We note that in response to the Director's request for evidence, the Petitioner provided a copy of the Beneficiary's IRS Form W-2. However, the Petitioner did not offer evidence demonstrating that the Beneficiary commands a high salary in relation to other senior SAP specialists.

For these reasons discussed above, the Petitioner did not establish that the Beneficiary fulfills this criterion, and we withdraw the Director's decision for this criterion.

III. CONCLUSION

The Petitioner did not demonstrate that the Beneficiary satisfies the criteria relating to awards, memberships, judging, and high salary. Although the Petitioner claims the Beneficiary's eligibility for an additional criterion on appeal, relating to original contributions at 8 C.F.R. § 204.5(h)(3)(v), we need not reach this additional ground. As the Beneficiary cannot fulfill the initial evidentiary

⁹ See [redacted] filed on March 26, 2014.

requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.¹⁰ 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 Beneficiary's acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, 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. *Price*, 20 I&N Dec. at 954. Here, 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 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 Beneficiary has SAP experience, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's 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.

¹⁰ *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).