



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

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

In Re: 15775769

Date: MAY 6, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a business executive, seeks classification 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals 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 international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner has worked for various [redacted] companies since 1996, starting as an engineer and rising to executive positions. After serving as the chief executive officer (CEO) of [redacted] in Saudi Arabia, in [redacted] 2020 the Petitioner became the CEO of [redacted] which provides services to clients in the oil and gas industry. The Petitioner asserts that he “ranks among the top corporate executives in the world and is an internationally acclaimed expert in the field of managing international engineering and manufacturing enterprises in the energy industry.”

Because the Petitioner has not indicated or shown that he 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 Petitioner initially claimed to have satisfied six of these criteria, summarized below:

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

The Director concluded that the Petitioner met one of the criteria, relating to a leading or critical role for organizations or establishments that have a distinguished reputation. On appeal, the Petitioner asserts that he also meets the other five claimed criteria.

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(viii). We will discuss the other claimed criteria below.

*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 has served on the board of trustees of Saudi Arabia's National Power Academy (NPA), and as [redacted] representative at the American Petroleum Institute (API). The Director concluded that neither of these positions constitutes a qualifying membership. On appeal, the Petitioner only discusses his role at the NPA, and therefore we consider him to have waived his claim regarding the API.<sup>1</sup> We note that materials in the record indicate that the API's members are companies rather than individuals.

The Petitioner has not established that the NPA's board of trustees is an association in the field. Rather, according to its charter, the NPA exists to provide vocational training for the energy industry, and its board of trustees is its governing authority. The NPA's [redacted] asserts that the Petitioner "was elected to the position of Board Member . . . based on his extraordinary achievements in the field and his reputation as a leading expert," but the record does not support this assertion. The NPA's charter does not indicate that recognized national or international experts elect board members based on their outstanding achievements. Rather, the NPA's stakeholders, including [redacted] appoint the board members who represent them, and the charter does not indicate how the stakeholders choose whom to appoint. The Petitioner's letter of appointment from [redacted] likewise does not say that the Petitioner's achievements were the basis for his appointment. This letter also shows that the decision to name the Petitioner to the board lay with his employer, rather than with the NPA. Given the responsibilities and authorities of board members, the Petitioner's position may qualify as a leading or critical role for an organization with a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(viii), but the Director already concluded that the Petitioner has satisfied that criterion.

The Petitioner has not established his membership in associations that meet the specified requirements.

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

The Petitioner submits numerous exhibits intended to satisfy this criterion, but he does not submit evidence to establish that any of the materials appeared in professional or major trade publications or other major media. Because the burden of proof is on the Petitioner, we do not begin with the assumption that the publications meet that requirement. On appeal, the Petitioner cites a previously-submitted letter from an executive of "[redacted] multinational investment bank and financial services holding company, [who] confirms the publication of major media and trade articles regarding" the Petitioner. The bank executive states that "major media from around the world has reported on [the Petitioner's] accomplishments," but he does not establish how his background in finance gives him knowledge of trade publications in the oil and gas industry.

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

Many of the materials are deficient for other reasons as well. Several publications, such as *Asian Oil & Gas, Diesel & Gas Turbine Worldwide*, and *Oil & Gas News*, announced the Petitioner's appointment as CEO of [redacted]. These articles include brief biographical sketches of the Petitioner, and we conclude that the articles are about him, relating to his work in the field. Nevertheless, these articles do not otherwise meet the regulatory requirements. They lack the required author credit, and the articles are either paraphrased or copied from a [redacted] press release in the record. The record does not show that the Petitioner's appointment attracted media notice apart from the publication of materials copied or adapted from [redacted] own promotional press release (which is not a professional or major trade publication or other major media). Promotional and marketing materials are not generally considered to be published materials about the individual.<sup>2</sup>

On appeal, the Petitioner states that his "appointment as CEO of [redacted] was a direct result of his outstanding achievement . . . and therefore, announcement of [his] appointment to this executive position is absolutely publi[shed material] about [the Petitioner] and his achievements." We acknowledge that the Petitioner's appointment as CEO of [redacted] is a significant achievement, however, the significance of such an appointment does not overcome basic deficiencies in the submitted evidence. As noted above, the regulation requires the published materials to identify their author. In this instance, the author of the [redacted] press release appears to be an unnamed publicist working at, or for, [redacted]

Many other articles, as noted by the Director, mention the Petitioner in passing but the articles are not about him, relating to his work. On appeal, the Petitioner contends: "Though these articles do not mention [the Petitioner] by name, they are written about contracts and projects successfully executed by [redacted] under his direction, and thus his business achievements." The regulation requires the published material to be "about" the Petitioner; references to his company and its projects do not meet this requirement.

Some of the other submitted articles focus significantly on the Petitioner and his work, but, for the reasons discussed above, the Petitioner has not shown that these articles appeared in qualifying publications.

The Petitioner has not established that any published materials about him, relating to his work in the field, appeared in professional or major trade publications or other major media.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)*

In a statement submitted with the initial filing of the petition, the Petitioner stated that he "authored and delivered scholarly presentations at leading international conferences in the field," which deviates from the wording of the regulation. In response to a request for evidence, the Petitioner further deviated from the regulatory language, stating that he "delivered executive presentations." The submitted evidence confirms that the Petitioner spoke at two conferences in 2019 and participated in a panel discussion at a conference in 2020, but the Petitioner has not shown that his participation resulted in the publication of any scholarly articles in professional or trade publications or other major media.

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<sup>2</sup> See *Adjudicator's Field Manual 22.2(i)(1)(A)* as revised by 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 7* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

On appeal, the Petitioner again describes his three conference appearances, and states that “the aforementioned publications and presentations” satisfy the regulatory requirements, but the Petitioner submits no evidence that his conference presentations exist in published form, disseminated through “media,” as the regulations require. Furthermore, because the record does not document the content of his presentations in any detail, the Petitioner has not established that his unpublished remarks would qualify as scholarly articles if they were published.

The Petitioner has not met the requirements of 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)*

The Petitioner’s base salary in his current position is \$514,000 per year. To provide a basis for comparison to others in the field, the Petitioner submits printouts from the Glassdoor website, indicating that the average base pay for CEOs in the [redacted] area is \$162,645 per year, and the average base pay for CEOs at “Natural Power and Energy” is \$282,237 per year. The Glassdoor printouts expressed “Low Confidence” in the latter figure, derived from only three samples.

In the denial notice, the Director stated that the data presented “an average wage of CEOs in the natural energy sector rather than with similarly situated workers in the oil and gas sector.” On appeal, the Petitioner asserts that the comparison was apt because “oil and gas are considered natural sources of energy.” The Glassdoor data, however, concerned not “the natural energy sector,” but rather the CEO position at a company named “Natural Power and Energy.” The Petitioner has not established that Natural Power and Energy engages in similar business activity to [redacted] or that its CEO’s salary is sufficiently representative of the field as a whole to serve as a broader basis for comparison.

The other submitted CEO salary data is organized geographically. The regulation requires evidence that the Petitioner’s salary is high in relation to others in the *field*, rather than others in the *geographic area*. While locality can affect pay scales, the Petitioner did not show that the surveyed CEO positions were at companies providing services to the oil and gas industry. Also, the Glassdoor printout indicated that, with only 17 survey respondents, there were “[n]ot enough reports to show salary distribution” in the [redacted] area.

For the above reasons, the submitted data is not sufficient to show that the Petitioner commands a high salary in relation to others in the field.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criterion — relating to original contributions of major significance in the field, 8 C.F.R. § 204.5(h)(3)(v) — cannot change the outcome of this appeal. Therefore, we reserve this issue.<sup>3</sup>

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<sup>3</sup> See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten lesser criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services 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 submitted evidence establishing that the recognition of his work is indicative of the required sustained national or international acclaim or demonstrates a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The Petitioner’s status as the CEO of [redacted] corporation carries with it a certain inherent degree of authority and prestige. The record, however, does not rise to the level required for the classification sought, and does not support the Petitioner’s claim to be “among the top corporate executives in the world.” Acknowledgment of expertise is not synonymous with sustained national or international acclaim among the small percentage at the very top of the field.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.