



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

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

In Re: 20489784

Date: APR. 29, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a general manager in the field of 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 record did not establish that the Petitioner met the initial evidence requirements for this classification through evidence of a major, internationally recognized award or by meeting three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3).

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

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 is a manager of a [redacted] company in China who has over ten years of experience in the field. The Petitioner intends to continue working as a company manager in the field of [redacted] in the United States.

Because the Petitioner has not indicated 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 Petitioner claimed to meet four of the ten criteria, namely: membership in associations in the field which require outstanding achievements of their members under 8 C.F.R. § 204.5(h)(3)(ii); published material in major trade publications or other major media under 8 C.F.R. § 204.5(h)(3)(iii); leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii); and high salary under 8 C.F.R. § 204.5(h)(3)(ix).

The Director determined that the Petitioner met the published material and leading or critical role criteria 8 C.F.R. § 204.5(h)(3)(iii) and (viii), and we agree with that determination. On appeal, the Petitioner maintains that he meets three of the initial evidentiary criteria and is otherwise eligible for the classification sought. Specifically, the Petitioner asserts that the Director erroneously found that he did not satisfy the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii). The Petitioner has not pursued his initial claim that he meets the criterion related to high salary under 8 C.F.R. § 204.5(h)(3)(ix). Therefore, we deem this issue to be waived and will not address this criterion in our decision. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

After reviewing all of the evidence in the record, we find that the Petitioner does not meet three of the criteria, and therefore does not satisfy the initial evidence requirement for the requested classification.

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, a 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.¹ The Petitioner contends that he meets this criterion based on his memberships in the China Fisheries Association and the [redacted] Aquafarming Association.

In denying the petition, the Director determined that the associations did not require outstanding achievements of their members, and therefore the Petitioner's memberships in these associations did not satisfy the plain language of this criterion. On appeal, the Petitioner argues that the Director's determination was erroneous, noting that the Director ignored relevant evidence, such as a letter from the president of the [redacted] Aquafarming Association, submitted in response to the request for evidence.

Regarding his membership in the China Fisheries Association, the Petitioner submitted a Letter of Certification from the association's [redacted] [redacted] as well as a list of the association's members for 2019. According to [redacted] China Fisheries Association's members "are composed of Chinese fishery company leaders, influential and representative people, and persons who have made outstanding contributions to China's fishery." He further states that "members need to submit a membership application, and they can join the association after being reviewed by the directors or the executive directors' review." [redacted] further confirms that the Petitioner joined the China Fisheries Association in February 2019.

The Petitioner, however, failed to submit evidence of the membership requirements for this association. As the record does not contain the bylaws or other official documentation of the association's membership criteria, we cannot evaluate whether the Petitioner's membership in this association is qualifying. Although [redacted] described the personal accomplishments of the Petitioner, and provided profile summaries for several individuals he claims review membership applications for the association, he did not provide any evidence of the membership requirements of the China Fisheries Association, and whether membership is judged by recognized national or international experts in their disciplines or fields pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner also claims that his membership in the [redacted] Aquafarming Association satisfies the requirements of this criterion. The Petitioner submitted a Letter of Certification from the association's president, along with the section of the association's bylaws that pertain to membership criteria and excerpts from the association's website.

Article 8 of the Bylaws for the [redacted] Aquafarming Association states as follows:

Individuals who apply to join the Association must meet the following requirements:

- (1) Support the Association's constitution;
- (2) Have the willingness to join the Association;

¹ See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (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).

- (3) Made outstanding influence or outstanding talents in [] and trading industry;
- (4) Be able to fulfill the association's membership obligations;
- (5) Willing to make greater contributions to the [] aquaculture industry with all members of this association.

The bylaws reflect that outstanding influence or outstanding talents in the [] and trading industry are prerequisites for membership into the association. Influence and talent in the field, however, are not outstanding achievements, and we therefore agree with the Director's determination that the bylaws do not establish that the Petitioner meets this criterion.

On appeal, the Petitioner asserts that the Director erred by ignoring the information provided in the letter from the association's []. Upon review, we note that in a Letter of Certification, [] provides an overview of the Petitioner's career in the [] field, noting that he "has been deeply involved in the [] field for more than 10 years and is an authoritative expert in the [] field in China." He further confirms that the Petitioner has been a member of the [] Aquafarming Association since 2013.

While we acknowledge [] statements regarding the Petitioner and his accomplishments, the personal achievements of the Petitioner are not relevant to this criterion. Instead, the Petitioner must show that he is a member of associations that require outstanding achievements of their members, as judged by recognized national or international experts. In his letter, [] did not establish that the [] Aquafarming Association requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

For the reasons outlined above, the Petitioner did not demonstrate that he satisfies this criterion.

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. Here, the Petitioner has established that he is a skilled manager in the field of [] and that he has gained recognition for his abilities in the field. But he has not shown that this recognition rises to the required level of 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 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).

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.

ORDER: The appeal is dismissed.