U.S. Citizenship and Immigration Services

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

In Re: 20486742

Date: AUG. 08, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and financier, seeks classification as an alien of extraordinary ability in the field of business. *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 although the record showed that the Petitioner met the initial evidentiary requirements for the requested classification, it did not establish that he had sustained national or international acclaim and is one of the small percentage of those at the top of his field.

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 served as [redacted] from May 2012 until December 2014, and is a co-founder and chairman of [redacted] a telecommunications company operating mainly in Africa. More recently, he founded [redacted] a venture capital firm, and he states that he intends to promote "smart tax" technology to provide a source of funding for various social programs.

### A. Evidentiary Criteria

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 Director found that the Petitioner met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his receipt of lesser nationally recognized awards, leading role for organizations having a distinguished reputation, and material about him in major media. On appeal, the Petitioner asserts that his achievements show sustained national or international acclaim, and refers to a nonprecedential decision by the AAO in another matter for comparison. After reviewing all the evidence in the record, we disagree with the Director's decision concerning the criterion at 8 C.F.R. § 204.5(h)(3)(i). We also conclude that even if he had met the initial evidence requirements for this classification, the Petitioner has not shown that he has sustained national or international acclaim and is one of the small percentage of entrepreneurs and financiers at the top of his field.

> *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 meet this evidentiary criterion, a petitioner must show that he is the recipient of an award, that that award was granted for excellence in his field of endeavor, and that it is nationally or internationally recognized within that field. The Petitioner submitted evidence regarding his receipt of these five awards:

- [redacted] University Distinguished Alumni Award, [redacted] 2012

- [redacted] Technology Innovation Award in Regulatory Sector [redacted] 2013
- Innovative Leader of the Year, [redacted] Business Award, [redacted] 2014
- [redacted] Chambers of Commerce [redacted] Award for Leadership in Global Trade, [redacted] 2016
- [redacted] Hall of Fame, [redacted] 2019

We first note that the Petitioner was not named as a recipient of the [redacted] award, so it does not satisfy the first element of this criterion and therefore does not qualify. Moving on to the second element of this criterion, which requires that an award be for excellence in a petitioner's field of endeavor, the record includes only a single article regarding the alumni award from [redacted] University. This article was posted on the institution's website and indicates that the award is given to recognize graduates for "professional achievements, contributions to society and support of the university." As there is no mention of the award being given for excellence in business, it also does not qualify under this criterion.

As for the other three awards, the Director initially indicated that these were not in the field of finance, and thus were not evidence of recognition for the Petitioner for excellence in his field. However, because the evidence indicates that all of them recognize achievements in the field of business, we disagree. The Director ultimately concluded that because the [redacted] award had received "some degree of media coverage in [redacted] this award was sufficient to meet this criterion. But the evidence of that media coverage consists of a single article posted on the [redacted] website which announced the Petitioner's upcoming receipt of the award. The record does not include further information about [redacted] or the award, or about viewership of the [redacted] website, or other evidence to show that the award is nationally or internationally recognized in the field of business.

The same is true about the evidence relating to the [redacted] Business Award and the [redacted] Hall of Fame. Regarding the latter award, the evidence consists only of material from the sponsoring organization, and therefore doesn't demonstrate that others in the field of business consider it to be prestigious or a recognition of excellence. Similarly, the evidence regarding the [redacted] Business Award includes a press release from [redacted] and a short article on the website of the *Miami Herald* which reports on the sale of the business responsible for producing the award. While the materials regarding both awards describe them as attracting and recognizing business leaders from across the [redacted] region, this material is not supported by documentary evidence of, for example, business media coverage of the awards themselves, or other evidence that they are recognized in the field beyond the awarding entities.

For all of the reasons discussed above, we conclude that the Petitioner has not established that he meets this criterion, and therefore withdraw that portion of the Director's decision.

B. Final Merits Determination

In a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and 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. While we have concluded that the Petitioner has not met

the initial evidentiary requirement for classification as an alien of extraordinary ability, and thus need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, we will nonetheless consider the issue of the Petitioner's qualification under that standard, as it is the focus of both the Director's decision and the appeal.

Because extraordinary ability is an elite level of accomplishment whose recognition necessarily entails a judgement call, it cannot be established through meeting at least three of the evidentiary criteria alone. See *Amin v. Mayorkas*, 24 F.4th 383, 394-395 (2022). The final merits determination is the ultimate statutory inquiry of whether the applicant has extraordinary ability as demonstrated by sustained national or international acclaim. *Id.* In this case, even if the Petitioner had met at least three of the evidentiary criteria, he has not offered sufficient evidence that he meets that standard.

The Petitioner asserts on appeal that his case is indistinguishable from that of another petitioner whose appeal we sustained.[1] This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Further, without a review of the complete record in that case, we are unable to make a direct comparison with the evidence submitted by the Petitioner. However, we note that in that case, the decision indicates that the petitioner was the CEO of two companies, one of which had received a widely-known recognition by a major business publication, and another which had garnered media coverage. Here, there is little evidence concerning specifics of the Petitioner's role as a founder and chairman of [redacted] and as noted by the Director, the recognition the company received appears to be in the form of a vanity award. And while the Petitioner mentions other companies which he has started and/or led, the record includes scant documentary evidence about these companies, their reputation in the field, or the Petitioner's role and accomplishments. We further note that much of the evidence that is in the record concerning his companies is in the form of biographies from his own website or those posted in relation to awards or speaking events.

In addition, that non-precedent decision noted that the petitioner in that case had patents which had been shown to have made contributions of major significance in his field. Here, the Petitioner claimed that the previously-discussed awards were evidence of his contributions to the field of business, as were his speaking engagements at international economic forums. But as noted by the Director, neither of these types of evidence are direct evidence of contributions to his field, since neither were shown to be contributions in themselves. While the evidence of the Petitioner's speaking engagement at the [redacted] in [redacted] Switzerland and other economic conferences implies a certain level of recognition, it is unclear from the record whether he gained that recognition through his political activities as [redacted] as opposed to his activities in the field of business. Notably, the *Forbes* article which briefly discusses his comments at the 2018 [redacted] do not mention any of his businesses but identify him only as [redacted]

Also, the non-precedent decision pointed to several reference letters as corroborating the impact of that petitioner's original contributions to his field. In this matter, the Petitioner submitted a single letter from a professor at [redacted] University who worked with him as a foreign consultant

[1] 2012 WL 9160624

following the 2010 [redacted] The writer briefly mentions [redacted] but mainly focuses on the Petitioner's goals in leading the country's reconstruction efforts, concluding that "he was unable to complete his efforts in [redacted] This letter fails to corroborate the Petitioner's claims of contributions in the field of business, and unlike the non-precedent decision, the record lacks testimony from other experts in his field.

As to other evidence of his contributions to the field of business, we acknowledge the evidence of the Petitioner's role as co-chair of [redacted] in 2013. We note that the accompanying annual report names a different individual as co-chair, while also including photographs with captions noting the Petitioner's work with the council. In any event, the record shows that he played a leading role in the economic redevelopment efforts in [redacted] through [redacted] and gained some level of recognition for those efforts. However, the record also includes derogatory evidence relating to this role, as noted by the Director in his decision, which the Petitioner does not address on appeal. The credible accusations of corruption cited in an update to another *Forbes* article dated [redacted] 2019, and the Petitioner's resignation from his post [redacted] detract from any acclaim he achieved in that role.

As stated above, section 203(b)(1) of the Act requires that a petitioner's acclaim and recognition in their field be demonstrated through extensive documentation. Here, the record falls short of providing the level of detail and supporting documentation needed to establish the Petitioner's eligibility as an alien of extraordinary ability in the field of business.

## III. CONCLUSION

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 that 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).

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.