



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

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

In Re: 19809940

Date: FEB. 15, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a financial management business, seeks to classify the Beneficiary, a mathematical researcher, 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 Nebraska Service Center denied the petition, concluding that although the Beneficiary satisfied at least three of the initial evidentiary criteria, as required, the Petitioner did not show the Beneficiary's sustained national or international acclaim and demonstrate that he is among that small percentage at the very top of the field of endeavor.

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 sustained acclaim and the 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 categories 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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not claimed or established that the Beneficiary has received a major, internationally recognized award, the Beneficiary must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner met four of the claimed evidentiary criteria relating to judging at 8 C.F.R. § 204.5(h)(3)(iv), scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), 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, the Director concluded that the Petitioner did not show that the Beneficiary garnered sustained national or international acclaim and that his achievements have been recognized in the field of expertise, demonstrating that he is one of that small percentage who has risen to the very top of the field. On appeal, we will review the totality of the evidence in the context of the final merits determination below.¹

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, the Beneficiary’s sustained national or

¹ *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* 13 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

international acclaim,² that he 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. In a final merits determination, we analyze a beneficiary's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.³ In this matter, we determine that the Petitioner has not shown the Beneficiary's eligibility.

The record reflects that the Beneficiary received a bachelor of science from [redacted] University [redacted] in 2011 and a doctor of philosophy from the University of [redacted] in 2016. In addition, the Beneficiary served as a research fellow and lecturer at the [redacted] the University of [redacted] from 2016 to 2018. Moreover, the Petitioner has employed the Beneficiary as a mathematical researcher since 2019. As indicated above, the Director determined that the Beneficiary reviewed a few papers, authored some scholarly material, and serves in a critical position while being compensated at a higher rate by the Petitioner. However, the record does not demonstrate that the Beneficiary enjoys a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Relating to the Beneficiary's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22.⁴ The record reflects that the Beneficiary participated in reviewing five papers for three journals and two conferences. However, the Petitioner did not establish that these instances place the Beneficiary among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner did not show, for example, how the Beneficiary's review experience compares to others at the very top of the field.

In addition, the Petitioner did not demonstrate that these five judging events, occurring approximately within four years from filing of the petition, contributes to a finding that the Beneficiary has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not establish, for instance, that the Beneficiary garnered wide attention from the field based on his work reviewing journal and conference papers. Moreover, participating in the peer review process does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field. Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of completing a substantial number of review requests relative to others, served in editorial positions for distinguished journals or publications, or

² *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

³ *Id.* at 4 (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

⁴ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

chaired technical committees for reputable conferences, the Petitioner has not shown that the Beneficiary's peer review experience places him among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Likewise, authorship and publication do not automatically place one at the top of the field.⁵ The record reflects that the Petitioner presented evidence showing that the Beneficiary authored three journal articles and four conference papers.⁶ However, the Petitioner did not demonstrate that the Beneficiary's publication record of seven documents in a six-year timeframe, with his most recent occurring approximately two years ago, is consistent with having a career of acclaimed work and sustaining national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner did not establish that the Beneficiary's authorships reflect being among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not show the significance of the Beneficiary's authorships or how his publications compare to others who are viewed to be at the very top of the field.

Moreover, the citation history or other evidence of the influence of his written work can be an indicator to determine the impact and recognition that his publications have had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Beneficiary may provide solid evidence that his work has been recognized and that other mathematical researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122.

Here, the record contains a few reference letters that briefly describe the Beneficiary's past research projects while pursuing his higher education but do not elaborate and explain any attention that he received from the field based on his written work and research. For instance, [REDACTED] discussed the Beneficiary's research project that he presented at an Artificial Intelligence in Statistics conference and described it as "insightful and unique"; however, [REDACTED] did not indicate any impact it had on the field or whether the Beneficiary garnered any significant notoriety from other mathematical researchers or statisticians. Furthermore, [REDACTED] opined that the Beneficiary's "work has generated widespread commentary, in particular for its impact on the fields of statistics, machine learning and digital humanities" and broadly claimed that his "research has been cited numerous times by other leading authors, whose works are also published [in] prestigious journals." [REDACTED] did not provide specific information, such as identifying the authors, papers, and publications that cited to the Beneficiary's research or the number of citations to each of the Beneficiary's published works, and explain how those citations sufficiently demonstrate a level of interest in the field commensurate with sustained national or international acclaim or represent attention at a level

⁵ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

⁶ The record contains three additional articles indicating the Beneficiary's authorship; however, neither the Petitioner nor the material shows any publication.

consistent with being among small percentage at the very top of his field. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

Likewise, the Petitioner did not show that the Beneficiary's written or presented material garnered him any national or international acclaim. *See* section 203(b)(1)(A) of the Act. The Petitioner did not submit corroborating citatory documentation or other evidence consistent with a very high standard requiring the petitioner to present more extensive documentation than that required for lesser classifications. *See* 56 Fed. Reg. at 30704. Further, the Petitioner did not show that the field has been influenced by the Beneficiary's work or that it has somehow impacted the field in a significant manner.

As it pertains to his roles, as mentioned above, the Beneficiary served as a research fellow and lecturer at the [redacted] the University of [redacted] for approximately two years and has been employed as a mathematical researcher by the Petitioner since 2019. However, the Petitioner did not establish whether the Beneficiary's employment resulted in attention or recognition from the field, reflecting a career of acclaimed work in the field or a very high standard to present more extensive documentation than that required. *See* H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30704.

While he submitted a 2018 reference letter from [redacted], who indicated the Beneficiary's postdoctoral researcher position within the [redacted] the University of [redacted] and a screenshot from the school's website showing that he taught a course, the evidence does not demonstrate that the received any national or international acclaim from this position. Similarly, the Petitioner provided letters describing the Beneficiary's contributions in his mathematical researcher position, such as developing and enhancing mathematical machine-learning and statistical algorithms, leading the institutional funds, and mentoring new hires.⁷ The letters, however, do not discuss whether any of the Beneficiary's professional achievements with the Petitioner garnered the Beneficiary any national or international acclaim. *See* section 203(b)(1)(A) of the Act. Further, the letters do not show the Beneficiary's recognition on a national or international scale, consistent with being among that small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2). Here, the Petitioner did not establish how the Beneficiary's roles resulted in widespread acclaim from his field, that he drew significant attention from the greater field, or that overall field considers him to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Finally, although the record reflects the Beneficiary's income with the Petitioner, the record does not establish that the Beneficiary commands earnings commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The Petitioner did not show that the Beneficiary's wages are tantamount to an individual who is among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). For example, the Petitioner did not demonstrate how the Beneficiary's salary compared to others at the very top of his field, or that he received notoriety or attention based on his earnings separating himself from others in the field or placing him in the upper echelon. In addition, the Petitioner did not document the Beneficiary's earnings from other employers, including the [redacted] the University of [redacted] showing a consistent history and recognition from the field of the Beneficiary's extraordinary ability. *See* 56 Fed. Reg. at 30704.

⁷ *See* letters from [redacted] head of equities research and institutional funds, and [redacted] chief operating officer.

The record as a whole, including the evidence discussed above, does not establish the Beneficiary's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation"); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that the Beneficiary has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

C. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary previously 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 Beneficiary, 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

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.