



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

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

In Re: 19497914

Date: FEB. 16, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a business operations specialist, 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 Petitioner 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).

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

Because the Petitioner has not indicated or demonstrated that he 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 Petitioner fulfilled the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii) and the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix). On appeal, the Petitioner maintains eligibility for a third criterion relating to published material at 8 C.F.R. § 204.5(h)(3)(iii). After reviewing all of the presented evidence, the record does not establish that the Petitioner meets the requirements of at least three criteria.

*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).*

At initial filing, the Petitioner claimed that his “name and achievements have been featured in eighteen (18) articles of various newspapers in Korea, including “*Maeil Business Newspaper (MK News)*”, “*The Bell*”, “*Aju Economy*”, “*Asia Today*”, and “*Korea Economy Daily (Hankyung)*.” The Petitioner submitted articles and translations and a screenshot from [redacted] University highlighting that *Maeil Business Newspaper* is a “Korean-language newspaper on Korean business and economy.”

In the request for evidence (RFE), the Director stated:

The petitioner submitted 18 articles which either mentions his name or is about him and his work in the field. However, none of the articles contain an author; and not all of the articles are specifically about the petitioner and his work in the field. As noted in the regulation, the plain language of this criterion requires published material to contain a title, date, and an author; to be about the petitioner and his work in the field; and to be printed in professional or major trade publications or other major media. USCIS does not consider articles which mentions the petitioner's name in passing to

be about him and his work in the field. Furthermore, please note that for each foreign language article, the petitioner must submit an English language translation that is full and complete. Summary translations are not acceptable. Finally, with respect to whether a publication qualifies as a professional or major trade publication, or other major media, a petitioner should identify the [publication's] circulation (online or in print) and intended audience of the publication.[] This information must come from a reliable source and must reflect circulation statistics during the time period in which the published material was published.

In response, the Petitioner provided revised translations for nine previously submitted articles and offered translations for five new articles. In addition, the Petitioner presented translations for circulation statistics from the Korean Audit Bureau of Certification for various publications, such as *MK Economy*, *MK News*, *Asia Today*, *Economic Review*, *Korea Economic Daily*, and *Hankyung Business*. Further, the Petitioner claimed that certain exhibits indicated the title, date, and author and “many other pages of the attached newspaper articles stated the title, date and an author of each article in similar forms.” Moreover, the Petitioner asserted information from the World Policy Conference and Bloomberg, L.P. regarding *Maeil Business Newspaper (MK News)* and *Korea Economic Daily*.<sup>1</sup>

The Director repeated his statements in the RFE and determined that “neither the articles nor counsel’s list/RFE [] contains an author” and concluded that the Petitioner did not meet the criterion. On appeal, the Petitioner submits the same RFE documents and makes matching RFE arguments and asserts that he “provided the documentary evidence and information . . . all of them with certified English language translations” showing the “[t]itle, date and name of the author of the newspaper articles,” “[s]entences in each article indicating that the article is specifically about [him],” and “[information and documents regarding the prestige of the newspapers which featured [him] as major national media and their circulation numbers, from credible sources.”

In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material, and any necessary translation. *See* 8 C.F.R. § 204.5(h)(3)(iii).<sup>2</sup> Further, any document in a foreign language must be accompanied by a full English language translation. *See* 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* The record reflects that at initial filing the Petitioner submitted “Certificate of Accuracy” translations for each of the foreign language articles claiming “that all following translations of the entire parts or marked parts of the following documents are accurate and complete to the best of my knowledge.” However, the translations only relate to “entire parts or marked parts” rather than “full English language translation[s]” as required under 8 C.F.R. § 103.2(b)(3). Moreover, the translations appear to have added information that are not in the original documents; and therefore, they are not accurate descriptions and diminish their probative value. For instance, the translations include the media type and circulation data that are not reflected in the actual articles. Inconsistencies in the record must be

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<sup>1</sup> Although he provided footnotes of website addresses to support his claims, the Petitioner did not submit documentary evidence.

<sup>2</sup> *See also* 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 AD11-147* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because of these inconsistencies, the Petitioner did not demonstrate that the translated material is accurate and supports his claims of published material about him relating to his work in the field.

In addition, the Petitioner did not include the authors for four of the articles and did not include the authors and dates for two of the articles.<sup>3</sup> Further, while the translations claimed circulation numbers for the printed publications, the record reflects that all but three articles were posted on websites. Thus, the Petitioner must demonstrate that the websites represent major media rather than the printed publications. *See, e.g., Victorov v. Barr*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at \*8 (C.D.C.A. Apr. 9, 2020). Moreover, although two of the articles were published in *Asia Today*, the Petitioner did not submit documentary evidence to support the circulation claims in the translations and show how such data establishes professional or major trade or major media status.<sup>4</sup> The other article published in *FN Times* did not have any circulation statistic assertions, nor did the Petitioner offer any evidence of the publication's standing.

Relating to the evidence presented in the RFE response, as indicated above, the Petitioner provided revised translations for nine previously submitted articles, translations for five new articles, and translations for circulation data for various publications.<sup>5</sup> Despite being informed in the Director's RFE regarding the submission of certified translations attesting to their accuracy and the translator's competency, the Petitioner offered translations without any certifications.<sup>6</sup> Because the translations do not comply with 8 C.F.R. § 103.2(b)(3), the Petitioner did not establish that the translated material is accurate and supports his claims of eligibility for this criterion.<sup>7</sup>

On appeal, the Petitioner presents the same documentation that he submitted in response to the Director's RFE, including uncertified translations for all of the documentation. Without properly certified and full English language translations, the Petitioner has not shown that the material is about

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<sup>3</sup> Although the Director determined that the Petitioner did not include authors for any of the articles, most of the translations list the reporter's name. The translations that did not include authors were posted on mk.co.kr [redacted], 2017 [redacted] 2016, [redacted] 2015, and [redacted] 2015), and the articles that did not include the authors and dates were posted on award.koc.or.kr and sanghun.go.kr.

<sup>4</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

<sup>5</sup> The Petitioner did not provide revised translations for the six articles that did not include authors and/or dates.

<sup>6</sup> The Director's RFE stated:

If you submit a document in any language other than English, the document must be accompanied by a full and complete English translation. The translator must certify that the translation is accurate and he or she is competent to translate from that language to English. If you submit a foreign language translation in response to this request for evidence, you must also include a copy of the foreign language document.

<sup>7</sup> We note that regarding the previously submitted translated documents, the Petitioner attached a piece of paper stating that "[e]ach set of English documents in this Exhibit is a translation of its immediately following documents in Korean." However, the document does not identify the translator, certify that the translations are complete and accurate, and indicate that the translator is competent to translate from the foreign language into English consistent with 8 C.F.R. § 103.2(b)(3).

him, occurred in professional or major trade publications or other major media, and includes the title, date, and author. Accordingly, the Petitioner did not establish 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 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 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). 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 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 Director determined that the Petitioner has served in a leading or critical role and received a high salary, 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 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.