



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

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

In Re: 20603827

Date: JULY 11, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a computer systems analyst, 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 Nebraska 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 Director granted the Petitioner's motion to reopen and reconsider that decision, and affirmed the denial of the petition. 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 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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. The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

Where a petitioner meets the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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 employers since 2005, as a network administrator working with a platform called SAP Basis. The Petitioner has worked in the United States since 2011, sometimes as an L-1 nonimmigrant intracompany transferee, sometimes as an H-1B nonimmigrant worker in a specialty occupation. He has worked for various staffing services that provide technical services to client companies, including [redacted] in [redacted] California, and [redacted] in [redacted] Texas.

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 seven of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (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.

Beyond the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the Petitioner asserted that his experience and the complexity of his work are “comparable evidence of his extraordinary ability in the field.” The regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence when the standard criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to an individual’s occupation. The Petitioner did not claim or establish that those criteria do not readily apply to his occupation; as noted above, he claimed to satisfy seven of them.

In a denial notice dated May 2021, the Director concluded that the Petitioner had satisfied two criteria, relating to authorship of scholarly articles and high remuneration. The Petitioner filed a timely motion to reopen and reconsider that decision, asserting that he had also established that he satisfied a third criterion, at 8 C.F.R. § 204.5(h)(3)(viii), by performing in a leading or critical role for organizations or establishments that have a distinguished reputation. Specifically, the Petitioner asserted that the role of an SAP Basis administrator is inherently critical, and that he performed in that role for several distinguished clients.

In September 2021, the Director granted the Petitioner's motion to reopen and affirmed the denial of the petition, stating that the Petitioner had not overcome the grounds for denial of the petition. On appeal, the Petitioner submits a brief and two letters, one from an employer and the other from a university professor.

In his statements on motion and, later, on appeal, the Petitioner addresses one of the regulatory criteria, pertaining to leading or critical roles. One of the letters submitted on appeal briefly addresses three other criteria, pertaining to prizes, participation as a judge, and original contributions.

Upon review of the record, we will not disturb the Director's conclusions regarding authorship and remuneration. Below, we will address the criterion that the Petitioner actively discusses on appeal.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

For a leading role, we look at whether the evidence establishes that the person is, or was, a leader within the organization or establishment or a division or department thereof. For a critical role, we look at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment. *6 USCIS Policy Manual* F.2 appendix, <https://www.uscis.gov/policymanual>.

In his initial filing, the Petitioner stated that he "has played a leading and critical role as a Basis Lead for some of the world's most distinguished organizations since October 2005." The Petitioner listed and described his past projects for clients including PepsiCo, Hitachi USA, and Coca-Cola. The Petitioner does not claim to have been directly employed by any of those companies; rather, the companies were clients of his various employers. The Petitioner's work involves enterprise systems, which the Petitioner described as "large-scale application software packages that support business processes, information flows, reporting, and data analytics in complex organizations."

An information technology (IT) manager at SAFRAN Electronics & Defense Avionics USA, LLC, stated that the Petitioner's role is critical because "SAP Basis is the glue that holds IT together," and "[n]o one knows systems better than SAP Basis administrators." Beyond these general statements about the importance of SAP Basis administrators, the IT manager provides technical details about the Petitioner's work on a five-month project for the company. For instance, he states that the Petitioner "performed System sizing, hardware specification for SAP ECC, SAP PI/PO and GRC systems." The official does not explain how these actions were critical to the company or a division or department thereof.

The Petitioner's work for SAFRAN appears to amount to supporting tasks performed by a contractor, rather than the work integral to SAFRAN's own operations as an aerospace and defense company. The Petitioner was not doing the work of the company; rather, he helped to provide the tools for that work, for example working on projects in which clients migrated from one platform to another. The Petitioner's materials describe work for another client as a "printer replacement project."

Another letter submitted with the petition reinforces this conclusion. An IT official at a local office of Change HealthCare, Inc., stated that the Petitioner "handled the SAP data center migrations" and "is

proficient in performance tuning of SAP applications.” The record indicates that the Petitioner helped to facilitate the work of his employers’ various clients, but he did not participate in the client companies’ activities, and therefore he was not critical to those activities.

In the May 2021 denial notice, the Director concluded that, while many companies rely on enterprise systems, it does not follow that ES administrators perform critical roles for those companies.

On motion, the Petitioner provided further technical details and stated: “the Basis Administrator is perhaps the most important role within any organization running SAP. . . . An SAP Basis Administrator keeps the SAP environment running properly for a business. Therefore, for companies relying on SAP, the SAP Basis Administrator is an important position.” The statement ends with a list of four online references, providing information about SAP Basis administrators. Because this general information applies to *all* SAP Basis administrators, the Petitioner essentially claims that *any* given SAP Basis administrator is, by definition, performing in a critical role.¹

The Director granted the motion, but affirmed the denial of the petition, stating: “All employees provide necessary or fundamental services for a company, but to hold that all roles are critical because there is a need for a service would make this criterion meaningless.”

On appeal, the Petitioner asserts that the Director failed to consider evidence of the Petitioner’s critical roles, but the Petitioner does not address the reasoning underlying the Director’s conclusions. He maintains that he has performed in a critical role for clients such as PepsiCo, Hitachi USA, and Coca-Cola, but he has not submitted first-hand evidence from those companies to establish that they consider his work to have been critical. Rather, he relies on the assertion that the role of any given SAP Basis administrator is inherently critical. The letters he has submitted from other employers and clients either rely on general assertions about SAP Basis administrators or else focus on specific details of the Petitioner’s tasks and projects, without establishing that those tasks were of significant importance to the outcome of the activities of the organizations or divisions or departments thereof.

The Petitioner submits two further letters on appeal. One is attributed to the manager of RedRiver Systems, although parts of this letter are worded identically to passages on the websites identified in the Petitioner’s motion. Other parts of the letter identify some of the Petitioner’s projects and indicate that he “made significant contribution[s] to companies.” The letter does not identify these companies.

¹ Visits to the identified websites show that the Petitioner appears to have copied and pasted language from those sites. For example, the cited website <https://www.gemini-us.com/blog/sap-basis-role-importance-in-an-enterprise> includes the following passage:

In simple words, SAP Basis administration is a critical part of your SAP landscape, which manages essential functions like the maintenance and monitoring uptime, evaluating upgrades, planning, user and system administration along with several other tasks. Without it, an enterprise would find it difficult to manage its SAP systems.

The Petitioner’s statement on motion includes this same passage, with the word “your” removed, leaving the phrase “. . . a critical part of SAP landscape.”

The other letter, dated April 2020, is from a university professor, who asserts: “After having reviewed [the Petitioner’s] professional experience and outstanding achievements within his field, I genuinely believe that he is a leading Software Specialist.” The Petitioner had previously submitted this letter in support of an earlier petition he had filed on his own behalf. In a May 2020 denial notice, the Director explained why the letter was not persuasive evidence of eligibility. The Director noted, for example, that there was no indication that the professor was aware of the Petitioner’s work before being asked to write the letter; his comments were based on materials provided by the Petitioner. The Director also stated that individuals who did not work with the Petitioner are not in a position to provide details about the nature of the Petitioner’s role with his employers and clients. Rather than contest that May 2020 denial with an appeal or motion, the Petitioner filed the present petition – his third – in September 2020.

The Petitioner states that his satisfaction of two regulatory criteria, relating to articles and remuneration, “shows that he must perform in a leading or critical role for organizations having [a] distinguished reputation.” The ten criteria at 8 C.F.R. § 204.5(h)(3) are independent of one another; satisfying some of the criteria does not imply or create the presumption that an individual has satisfied other criteria as well.

The petitioner has submitted some information indicating that an SAP Basis administrator’s role is critical within the limited context of SAP systems management, but the Petitioner has not shown that this work is of significant importance to the outcome of the activities of a given organization or establishment.

The Petitioner has not established that he performed in a leading or critical role for organizations or establishments with a distinguished reputation.

The Petitioner’s appellate brief does not address any of the other eligibility criteria that the Petitioner had previously claimed at the time he filed the petition. Because the university professor’s April 2020 letter, submitted on appeal, addresses some of those other criteria, we briefly note the Petitioner’s original claims below, as they relate to the submitted letter. Any earlier claims not addressed in that letter, and thus not raised on appeal, are considered to be abandoned.²

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 2013, the Petitioner’s then-employer, [redacted] presented the Petitioner with a certificate “in recognition of outstanding commitment, [d]edication, and exemplary performance for [c]ontribution towards growth of the organization.” The writer of the April 2020 letter, who does not claim to have been an official or employee of [redacted], quotes the language from the certificate without further comment.

The Petitioner, on appeal, does not contest or rebut the Director’s conclusion that the Petitioner has not shown that the certificate is recognized nationally or internationally as a prize or award for excellence in the field of endeavor, and the record does not elaborate on the circumstances under which he received the certificate. It is evident that the certificate is available only to [redacted] employees. An award limited

² 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).

to individuals at a single institution may have little national or international significance. 6 *USCIS Policy Manual, supra*, at F.2 appendix.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The writer of the April 2020 letter states that the Petitioner:

participated in [redacted] SAP audit subsequent volume of technical and non-technical projects. He was frequently involved in judging the work of others and holds authoritative responsibility in his field of work. He judged, reviewed, and approved [several listed] technical materials. . . .

He has also been part of the project technical assessment panel in the United States and contributed tremendously to SAP BASIS and NetWeaver competency.

The writer claims no personal knowledge of the Petitioner's judging activity, and he does not identify any source for the information he claims in his letter. In the denial notice, the Director concluded that the Petitioner had documented his job responsibilities, but had not shown that those responsibilities involved judging the work of others. The April 2020 letter submitted on appeal predates, and therefore does not address or respond to, the Director's May 2021 denial notice.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

With respect to this criterion, the April 2020 letter incorporates quotations from earlier letters, provided by other individuals. The Director addressed those letters in the May 2020 notice denying the earlier petition, concluding that the letters described the tasks the Petitioner carried out in the routine performance of his job duties, but did not establish the major significance of those tasks. The repetition of information from those letters does not rebut the Director's conclusions.

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 shown 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 has had a long and successful career, including projects for high-profile clients, but the record does not establish that this success has risen to the level of sustained acclaim, through which the Petitioner is recognized not only by his employers and clients, but throughout his field at a national or international level.

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.