



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

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

In Re: 19408161

Date: MAR. 07, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive officer, 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 did not satisfy any of the ten initial evidentiary criteria for this classification, 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.¹

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.

¹ We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

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).

II. ANALYSIS

The record shows that the Petitioner has been employed since 2015 as the chief executive officer and owner of a commercial and residential cleaning service, [REDACTED] in [REDACTED] Louisiana. The Petitioner received a bachelor’s degree in management from [REDACTED] University [REDACTED] in 2018. 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).

In denying the petition, the Director determined that the Petitioner did not fulfill any of the initial evidentiary criteria. On appeal, the Petitioner submits a brief claiming to meet five criteria, relating to lesser nationally or internationally recognized awards, membership in associations, published materials in major media, judging the work of others, and leading or critical role. After reviewing all the evidence, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

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).

The Petitioner argues that he meets this criterion based upon his receipt of the [REDACTED] Entrepreneurial Spirit Award at the 2014 [REDACTED] Championship at [REDACTED]. In order to fulfill this criterion, the Petitioner must demonstrate that he received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.² Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.³

² See 6 *USCIS Policy Manual* F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing guidance on the review of evidence submitted to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)).

³ *Id.*

The Petitioner provided a photograph showing the Petitioner's receipt of the [redacted] Entrepreneurial Spirit Award's \$2,000 prize for his proposed business model, the International Academic and Professional Network, an enterprise to promote U.S. higher education "in African developing countries by connecting prospective international students to universities in the United States." The press release advertising the 2014 [redacted] Championship indicates that six teams competed in the championship, "presenting their ideas to fellow students as well as faculty, staff, and judges," and that the Petitioner was the sole team member for his proposed business model. In addition to the \$2,000 prize of the [redacted] Entrepreneurial Spirit Award, funded by the [redacted] the championship also awarded a total of \$6,000, funded by [redacted] to the first, second, and third place teams of the [redacted] Championship competition. The press release indicates that the teams were judged "on written decks, oral presentation, and business feasibility," and that the judges for the 2014 championship included a visiting associate professor in [redacted] business school, the president of the [redacted] a partner at [redacted] and an executive for the [redacted] Economic Partnership.

In two letters, [redacted] coordinator of entrepreneurial studies at [redacted] and director of the [redacted] Championship, confirms that the Petitioner won the 2014 [redacted] Entrepreneurial Spirit Award, and states that the [redacted] "serves local, regional, national and international business interests in a wide range of markets and industries." She also indicates that the criteria for the award are that "the competitor must exhibit evidence during their oral presentation that they are the most likely competitor to follow through with their planning for building a startup team and meeting milestones for beginning a new venture and has excellence in their field." She further provides the names of several other [redacted] past winners of the award and a brief description of their winning startups. In two letters, [redacted] director [redacted] Technology Business Development Center, also confirms that the Petitioner won the 2014 [redacted] Entrepreneurial Spirit Award and corresponding cash prize presented by [redacted] which she describes as "one of the largest and most respected [redacted] in the United States."

We agree with the Director's conclusion that the Petitioner did not establish that the 2014 [redacted] Entrepreneurial Spirit Award is a nationally or internationally recognized prize or award for excellence. Although the [redacted] Spirit Award may be recognized at [redacted] the Petitioner did not demonstrate that the [redacted] award, which serves "to recognize the team with the most entrepreneurial spirit" and has a relatively small number of entrants, qualifies as a prize or award for excellence in the field. While the award materials indicate that [redacted] is a large [redacted] the record does not contain evidence establishing that the award is recognized nationally or internationally for excellence in the field beyond the awarding entity. Such an honor given to students inherently excludes established experts and professionals from consideration and appears to be further restricted to [redacted] of one institution [redacted]. The Petitioner, therefore, has not established that his prize in a [redacted] contest limited to one [redacted] was a nationally or internationally recognized award. In addition, an award limited to participants with [redacted] may be a relevant factor in determining whether the overall field acknowledges it for excellence. Accordingly, we agree with the Director's determination that the Petitioner did not establish that he meets this criterion.

Further, we note that the record contains evidence that in January 2020 the Petitioner received the Young Business Leader of the year award from the [redacted] Chamber of Commerce. Moreover, on appeal the Petitioner submits a copy of a certificate of [redacted]

Recognition he received in June 2021 from [redacted] “in recognition of outstanding and invaluable service to the community.” This evidence, however, occurred after the initial filing of the petition on May 21, 2019. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Therefore, he cannot establish his eligibility under this criterion based on additional awards he received in 2020 and 2021, even if we were to determine that they otherwise satisfy all elements of this evidentiary criterion. Accordingly, we will not consider this evidence.

In light of the above, the Petitioner has not satisfied the requirements of this criterion.

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).

The Petitioner asserts eligibility for this criterion based on membership with the [redacted] Chamber of Commerce [redacted]. In order to satisfy this criterion, the 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.⁴ In denying the petition, the Director found that the Petitioner did not submit evidence that the association requires outstanding achievements of its members, as judged by recognized national or international experts.

The Petitioner indicated membership with [redacted] and provided two letters from [redacted] President and CEO of [redacted] confirming the Petitioner’s membership in the organization since 2017 as a business owner. According to the provided bylaws of the organization dated August 2019, the [redacted] is organized for the purpose of “advancing the economic, industrial professional, cultural, and civic welfare of [redacted] and its trade area.” The bylaws also provide that members may hold both Individual and Business membership and that Individual membership may be accepted with a referral from another member in good standing. The [redacted] bylaws further state, in pertinent part, as follows:

Any reputable person, firm, corporation, partnership, or estate, in sympathy with the purpose of the organization, shall be able to apply for active membership. All applications for membership shall be in writing and submitted on the form provided by the Chamber. Applications for membership shall be submitted to the President and Board of Directors for approval. The Board of Directors shall have the right to accept or reject any application for membership for any reason whatsoever. . . . An affirmative vote of the majority of the Board of Directors shall be required to approve any application for membership presented to the committee. . . .

⁴ *See* 6 USCIS Policy Manual, *supra*, at F.2 appendix (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).

Here, the Petitioner did not establish that the [redacted] requirements rise to the level of “outstanding achievements” consistent with this regulatory criterion. Instead, based on the presented documentation, any individual or business “in sympathy with the purpose of the organization” may apply for and be granted membership in [redacted] which criterion, in-and-of-itself, the Petitioner did not show is tantamount to an outstanding achievement. In addition, the Petitioner did not demonstrate that [redacted] requires that an applicant has made outstanding achievements in the field. Furthermore, the Petitioner did not establish that recognized national or international experts judge the outstanding achievements for membership with [redacted].⁵

[redacted] also indicates that the Petitioner has served as a Chamber Ambassador with [redacted] since 2017, which she describes as “a prestigious group of chamber members who volunteer their time to actively serve the [redacted] Chamber of Commerce as well as the [redacted] business community.” She states that to become an ambassador each member is required to apply, and “[o]nce the selection criteria are met, the candidate is placed on a 60-day probation period before his admission to the ambassadors group.” [redacted] does not detail or explain the required selection criteria for a Chamber Ambassador, nor does the record, including the [redacted] bylaws, otherwise contain any information about such criteria. Therefore, the Petitioner has not established that the [redacted] requirements for Chamber Ambassador rise to the level of outstanding achievements, as judged by recognized national or international experts, consistent with this regulatory criterion.

Moreover, [redacted] states that the Petitioner was appointed to the [redacted] board of directors in October 2019 and indicates the requirements to qualify for board membership. As noted, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). As he filed his petition in May 2019, the Petitioner did not demonstrate that his board membership with [redacted] occurred prior to or at the time of his initial filing. Accordingly, we will not consider this evidence.

For these reasons, the Petitioner did not demonstrate that he fulfills this criterion.

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).

In order to satisfy 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.⁶ The record contains several articles pertaining to the Petitioner. An article from lastartupprize.com dated 2014 mentions that the Petitioner was one of several [redacted] who gave short investor pitches at the qualifying round of the inaugural [redacted] Startup Prize competition. The Petitioner also provided an item dated 2016 from the [redacted] newspaper *The Tech Talk* titled [redacted]. Further, a listing in the print publication *Chamber Connection* dated March 2019 with an accompanying photograph relate the ribbon-cutting ceremony

⁵ *See* 6 USCIS Policy Manual, *supra*, at F.2 appendix (stating that the level of membership afforded to the alien must show that in order to obtain that level of membership, the alien was judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought).

⁶ *See* 6 USCIS Policy Manual, *supra*, at F.2 appendix.

for the downtown [redacted] location of the Petitioner's cleaning business, and mention him by name as the owner.

The Petitioner did not demonstrate, however, that the aforementioned articles from laststartupperize.com, *The Tech Talk*, and *Chamber Connection* reflect published material about him relating to his work. Specifically, the laststartupperize.com article is about the qualifying round of the inaugural [redacted] Startup Prize competition with the Petitioner mentioned as a participant. The *The Tech Talk* article provides the Petitioner's description of [redacted] [redacted] rather than material about him. The *Chamber Connection* article briefly mentions the opening of the [redacted] location of the Petitioner's cleaning business. Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Moreover, the *Chamber Connection* article did not demonstrate the author of the article. The inclusion of the author is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner did submit two articles that are about him relating to his work in the field. An article dated March 2019 from the print publication [redacted] *Daily Leader* titled [redacted] [redacted] is about the Petitioner's background as an [redacted] and his work as the owner of a cleaning services business. An interview of the Petitioner dated February 2018 from the print publication *Chamber Connection* is about him, relating to his "personal philosophy" and background and how he benefits from his membership in the [redacted]. The Petitioner, however, did not submit comparative circulation or distribution data for the [redacted] *Daily Leader* or *Chamber Connection* to support his claim that he and his work have been featured in major media and/or major trade publications.⁷ The Petitioner also did not demonstrate the author of the *Chamber Connection* article. As noted, the inclusion of the author is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii).

In addition, the record contains an article authored by the Petitioner and dated August 2018 titled [redacted]. As noted by the Director, as the article does not contain any proof of publication, it does not meet the plain language of this criterion, which requires published materials about the Petitioner and his work in the field published in professional or other major trade publications or other major media.

Further, we note that the record contains an article dated 2020 published in [redacted] *Life Magazine* that quotes the Petitioner and a screenshot of a video posted on myarklamiss.com by [redacted] in February 2020 from the [redacted]' which the Petitioner claimed reflected an interview of him. Moreover, on appeal the Petitioner provided an advertisement for his company dated 2021 from [redacted] *Life Magazine*. As noted, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). As he filed his petition in May 2019, the Petitioner

⁷ *See* 6 USCIS Policy Manual, *supra*, at F.2 appendix (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).

did not demonstrate that this evidence occurred prior to or at the time of his initial filing. Accordingly, we will not consider this evidence.

Based on the above, the Petitioner did not establish that he meets this criterion.

III. CONCLUSION

We find that the Petitioner does not satisfy the criteria relating to awards, memberships, and published material. Although he submits evidence for two additional criteria on appeal, relating to judging at 8 C.F.R. § 204.5(h)(3)(iv) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.⁸ Accordingly, 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 finding 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. 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 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.

⁸ *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).