



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

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

In Re: 19843251

Date: MAR. 16, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as an individual of extraordinary ability in the sound design and editing field. *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 Petitioner had not satisfied any 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

The Petitioner has been employed within the sound design and editing field by [redacted] since 2009. 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 did not fulfill any of the criteria. On appeal, the Petitioner maintains eligibility for seven criteria. After reviewing all of the presented evidence, the record does not establish that the Petitioner meets the requirements of at least three criteria.

### A. Evidentiary 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).

On appeal, the Petitioner claims eligibility for this criterion based on his receipt of a [redacted] Award and a [redacted] Award. In order to fulfill this criterion, the petitioner must demonstrate that he received prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.<sup>1</sup>

Regarding the [redacted] Award, the Petitioner references evidence from [redacted] showing that he received a [redacted] in the [redacted] for [redacted] at the second annual ceremony in 2010. In addition, the screenshots reflect that the [redacted] Awards is produced by [redacted] and [redacted] and honors the best in online video and the creators behind it.” Further, the Petitioner provided documentation indicating that some media coverage, such as usatoday.com, hollywoodreporter.com, and ew.com, reported on the background, nominees, and winners from the past ten years. Although he demonstrated his receipt of a [redacted] Award, the Petitioner did not establish the award’s national or international recognition for excellence in his field of endeavor. The Petitioner did not show that his sound design and editing field recognizes his [redacted] Award as a national or international award for excellence. The presented evidence, for

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<sup>1</sup> See 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

instance, does not discuss or acknowledge his field's view of receiving a [redacted] Award to reflect its national or international recognition for excellence.

As it relates to the [redacted] Award, the Petitioner references a screenshot from [redacted] showing that the film [redacted] received an award at the fifth annual [redacted] Awards in 2017.<sup>2</sup> The description of this type of evidence in the regulation provides that the focus should be on the individual's receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes.<sup>3</sup> Here, the record reflects that the film rather than the Petitioner received the award. Although the Petitioner submitted additional screenshots from imdb.com that lists the Petitioner as a winner at the 2017 [redacted] Awards, the evidence from [redacted] does not corroborate this claim. Moreover, as there are no assurances about the reliability of the content from this open, user-edited internet site, we will not assign weight to information from imdb.com. *Cf. Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008) (finding that another open, user-edited internet site, *Wikipedia*, lacks reliability of the content).<sup>4</sup> Without evidence from the awarding entity, such as [redacted] or other credible, independent sources, the Petitioner did not establish that he received a 2017 [redacted] Award.

Notwithstanding the above, the Petitioner did not demonstrate that the [redacted] Award is nationally or internationally recognized for excellence in his field of endeavor. Although he provided information about [redacted] and festivals, the Petitioner did not show how the evidence establishes the national or international recognition of [redacted] awards for excellence in his field of sound design and editing. Further, according to the screenshots from [redacted] submitted by the Petitioner, “[w]inners will receive our [redacted] Trophy . . . making what we are sure will soon become one of the most coveted awards on the festival circuit, and this is just the beginning,” opining on its anticipated or projected recognition in the overall festival industry rather than demonstrating its national or international recognition for excellence in his field of sound design and editing. Moreover, according to the screenshots, “[c]ategories were expanded this year to include more awards, many of which will now be awarded a high quality, brushed silver plaque while the major categories will be awarded the [redacted] Trophy” and “\* indicates awards is a plaque'd award.” The [redacted] Award claimed by the Petitioner has an asterisk next to its award indication, showing that the film did not receive an award in a major category. Even if he established that a [redacted] Trophy represents a nationally or internationally recognized award for excellence, which he did not, the Petitioner did not demonstrate that a lesser “plaque'd award” also constitutes an award “for excellence.”

For the reasons discussed above, the Petitioner did not show that he fulfills this criterion.

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<sup>2</sup> The record also contains a document listing all of the nominees under each category. The film [redacted] is listed with six other films. In fact, there is no category listing sound designers or editors.

<sup>3</sup> See 6 *USCIS Policy Manual, supra*, at F.2(B)(2).

<sup>4</sup> See also imdb.com:

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*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 contends that he meets this criterion based on his membership with the Motion Picture Sound Editors (MPSE). In order to satisfy this criterion, a 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.<sup>5</sup>

On appeal, the Petitioner references screenshots from mpse.org; a letter from [redacted] [redacted] [redacted] for MPSE; and recommendation letters.<sup>6</sup> [redacted] confirmed the Petitioner's active membership status and stated:

To gain active membership status in MPSE, an applicant must complete and submit an application to the Board of Directors. The Board of Director's discusses the applicant's qualifications, and acceptance of the applicant requires a majority vote of the Board of Directors. The minimum requirement for Active Membership is proof of three (3) consecutive years' experience as a sound editor or sound designer or music editor cutting Dialogue, ADR, Sound Effects, Foley, or Music or as a Foley Artist. Additionally, an applicant must have made, in the judgment of the Board of Directors, an outstanding contribution to his or her field of endeavor. The application must be completed in full, along with any supporting materials, and must be supported by two (2) active members. The Board of Directors determines any additional requirements.

In addition, the submitted excerpts of MPSE's "Constitution and By-Laws" posted on its website repeat [redacted] statement above. Further, a letter from [redacted] [redacted] of MPSE, indicated that "our final focus has always been on whether the applicant has made an 'outstanding contribution' to the field of sound." Although they discuss an "outstanding contribution," the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "outstanding achievements." Moreover, a "contribution" is not synonymous with an "achievement." Contribution is defined as: 1) the act of contributing, such as a) the giving or supplying of something as a part or share, or b) the giving or supplying of something that plays a significant part in making something happen; 2) something that is contributed, such as a) something that is given or supplied as a part or share, b)

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<sup>5</sup> See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (providing an example of a dmission 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).

<sup>6</sup> The Petitioner provided additional evidence on a appeal relating to his membership status. However, we will not consider this evidence for the first time on a appeal as it was not presented before the Director. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); see also *Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). Because the Petitioner had the opportunity to submit the evidence at the time he filed his petition and in response to the Director's request for evidence, we will not consider this evidence for the first time on a appeal.

something that plays a significant part in making something happen, or c) something that is supplied for a publication; or 3) a payment imposed by military, civil, or ecclesiastical authorities usually for a special or extraordinary purpose. See [www.merriam-webster.com](http://www.merriam-webster.com). An achievement, on the other hand, is defined as: 1) the act of achieving something; 2) a) a result gained by effort or b) a great or heroic deed; or 3) the quality and quantity of a student's work. *Id.* Here, the Petitioner did show that membership with MPSE requires outstanding achievements of its members.

Notwithstanding the above, the Petitioner did not establish that the outstanding contributions are judged by recognized national or international experts. Although [redacted] and MPSE's constitution and bylaws indicated that MPSE's Board of Director's determine whether an applicant has made outstanding contributions, they do not discuss the composition of the Board of Directors. The Petitioner did not show that the Board of Directors is comprised of recognized national or international experts in their disciplines or fields who judge the outstanding achievements for membership, as required under this regulatory criterion.

Accordingly, the Petitioner did not demonstrate that he satisfies 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 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.<sup>7</sup> In our evaluation, we will first determine whether his evidence reflects published material about him relating to his work in the field, which contains the required title, date, and author. If the record supports those regulatory requirements, we will then decide whether professional or major trade publications or other major media published those materials.<sup>8</sup>

The record reflects that he submitted one article from [indianexpress.com](http://indianexpress.com), one article from [newindianexpress.com](http://newindianexpress.com), one article from [firstpost.com](http://firstpost.com), one article from [rediff.com](http://rediff.com), and one article from [thehindu.com](http://thehindu.com) constituting published material about the Petitioner relating to his sound design and editing field. In addition, all of these articles contained the necessary titles, dates, and authors.<sup>9</sup>

Initially, the Petitioner provided readership and circulation data related to the printed publications of *The Indian Express*, *The New Indian Express*, and *The Hindu* rather than for the websites that posted

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<sup>7</sup> See 6 USCIS Policy Manual, *supra*, at F.2(B)(2).

<sup>8</sup> Although the Petitioner submitted additional evidence on appeal relating to a readership survey and newspaper and magazine figures, we will not consider this evidence for the first time on appeal as it was not presented before the Director. See *Soriano*, 19 I&N Dec. at 766; see also *Obaigbena*, 19 I&N Dec. at 533.

<sup>9</sup> At initial filing, the Petitioner provided additional articles from [indianexpress.com](http://indianexpress.com) (1), [firstpost.com](http://firstpost.com) (2), and [soundandpicture.com](http://soundandpicture.com) (1) and a book. However, these materials did not reflect published material about him relating to his work and/or did not contain the required title, date, and author. Further, in response to the Director's RFE, the Petitioner did not continue to claim eligibility for this criterion based on these materials. The Petitioner did maintain eligibility based on an article posted on [soundandpicture.com](http://soundandpicture.com) and an article posted on [behindwoods.com](http://behindwoods.com). However, the [soundandpicture.com](http://soundandpicture.com) article did not include the author and did not represent published material about him, and the [behindwoods.com](http://behindwoods.com) article did not contain the date. Thus, none of these materials mentioned here qualify for this criterion.

the articles. *See, e.g., Victorov v. Barr*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at \*8 (C.D.C.A. Apr. 9, 2020). In addition, the Petitioner submitted background and contact information from firstpost.com. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D.C.A. July 6, 2007), *aff'd* 2009 WL 604888 (9<sup>th</sup> Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliable evidence of a major medium). Finally, the record did not reflect that the Petitioner offered evidence relating to the status of rediff.com.

In response to the Director's RFE, the Petitioner submitted information from *The Indian Express* claiming that its website has "over 120 million page views a month" and from the *The New Indian Express* asserting that its "readers of the newspaper spread all across the world with a very high NRI traffic to the website." *See Braga*, No. CV 06 5105 SJO, *aff'd* 2009 at WL 604888. In addition, he offered readership statistics for *The Indian Express* and *The New Indian Express* from bestmediainfo.com. Again, the record does not show that the articles were printed in the respective publications but posted on their websites. *See, e.g., Victorov*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at \*8.

In addition, the Petitioner provided screenshots from themediaant.com highlighting that firstpost.com receives 50 million impressions per month and thehindu.com receives 22 million monthly active users and from mobilemerchants.com that rediff.com receives 17 million monthly unique visitors. The Petitioner, however, did not establish the significance of these statistics, showing that the websites represent professional or major trade publication or other major media.<sup>10</sup> For example, the Petitioner did not demonstrate or explain the meaning of such figures, to reflect major status in India or internationally.

For the reasons discussed above, the Petitioner did not establish that he fulfills this criterion.

*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).*

This regulatory criterion requires a petitioner to show that not only has an individual been invited to judge the work of others, but also that the individual actually participated in the judging of the work of others in the same or allied field of specialization.<sup>11</sup> The Petitioner did not initially claim eligibility for this criterion. In response to the Director's RFE, the Petitioner indicated that he met this criterion based on serving on a panel for MPSE's [redacted] Awards and referenced a recommendation letter from [redacted] who stated that he "was actually the person who invited [the Petitioner] to serve on the Awards' panel of judges" and "[the Petitioner's] evaluation of peers' work is of considerable value to the board." Although the Petitioner also pointed to the previously discussed letter from [redacted] [redacted] the letter makes no mention of the Petitioner serving on a judging panel but indicated that MPSE holds the annual [redacted] Awards. In addition, the Petitioner cited to [redacted]'s letter who stated that "[a]s an active MPSE member, [the Petitioner] is part of the distinguished body of

<sup>10</sup> *See 6 USCIS Policy Manual, supra*, at F.2(B)(2) (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>11</sup> *See 6 USCIS Policy Manual, supra*, at F.2(B)(2).

voters responsible for selecting the annual slate of nominees and winners for the highly coveted [redacted] Awards.”

The Petitioner’s evidence, however, makes broad claims without providing specific, detailed information demonstrating that he actually participated as a judge of the work of others. The evidence, for instance, does not contain probative information elaborating on whom, what, and when he judged. Instead, the letters generally assert that the Petitioner was invited to serve and was part of a panel without sufficiently describing his judging work.

On appeal, the Petitioner contends that he submitted an additional letter from [redacted] but makes no argument explaining how the letter demonstrates his eligibility for this criterion. In fact, [redacted] does not discuss the Petitioner serving as a judge for MPSE’s [redacted] Awards, let alone any mention of MPSE or the [redacted] Awards. In addition, the Petitioner references evidence relating to MPSE and the [redacted] Awards. However, none of the documents show the Petitioner’s participation as a judge. Without further information or supporting evidence, the Petitioner did not establish that he participated as a judge for MPSE’s [redacted] Awards.

The Petitioner also asserts eligibility for the first time on appeal based on his active membership status with MPSE and references MPSE’s “Constitution and By-Laws,” indicating that “[a]ctive members in good standing shall have the right to vote at membership meetings.” The Petitioner did not make this claim before the Director. *See Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec. at 533. Notwithstanding, the Petitioner did not submit evidence showing that he actually voted in his capacity as an active member, nor did any of his evidence discussed above makes such a claim. Similar to his claims regarding the [redacted] Awards, the record does not contain detailed, probative information reflecting on whom, what, and when he voted. Moreover, the Petitioner did not demonstrate that voting at MPSE membership meetings involves participating as a judge of the work of others consistent with this regulatory criterion.

Accordingly, the Petitioner did not demonstrate that he satisfies this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

In order to meet this criterion, a petitioner must demonstrate that his salary or remuneration is high relative to the compensation paid to others working in the field.<sup>12</sup> Initially, the Petitioner provided copies of his paystubs and his 2018 IRS Form W-2, Wage and Tax Statement from [redacted]. In addition, he submitted screenshots from bls.gov reflecting median pay figures for broadcast and sound engineering technicians and screenshots from SimplyHired relating to sound engineer salaries. In response to the Director’s RFE, he offered his 2019 Form W-2, annual salary information for sound designers from careersinfilmm.com, average sound designer salary data from payscale.com, and average annual salary figures for sound mixers from finance.yahoo.com.

As indicated above, the Petitioner compared his salary to that of the average or median salaries of broadcast and sound engineering technicians, sound engineers, sound designers, and sound mixers.

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<sup>12</sup> See 6 USCIS Policy Manual, *supra*, at F.2(B)(2).

However, the record does not reflect that [redacted] employs him in this capacity. Rather, the record shows that he is at a supervisory position. Although the record does not include a current job letter specifying his position, the records contains documentation referring to the Petitioner as a supervising sound designer and editor. For instance, [redacted] stated that “[a]s a sound designer and supervisor, he is tasked with managing editors on his team to complete the project per the client’s expectations and needs.” Further, an article from soundpicture.com ([redacted]) referenced the Petitioner as the “supervising sound editor.” The Petitioner did not compare his salary to other supervising sound designers and editors. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); see also *Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner did not show that the comparison of average and median salaries of lower level positions reflects his commandment of a high salary in relation to other supervisory sound designers and editors.

For these reasons, the Petitioner did not establish that he meets this criterion.

#### B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Petitioner, 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

The Petitioner did not demonstrate that he satisfies the criteria relating to awards, memberships, published material, judging, and high salary. Although the Petitioner claims eligibility for two additional criteria on appeal, relating to original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), we need not reach these additional grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three



criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.<sup>13</sup>

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 Price*, 20 I&N Dec. at 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). 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.

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<sup>13</sup> *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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on an appeal where an applicant is otherwise ineligible).