



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

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

In Re: 19999659

Date: MAY 19, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a professional auto racing team, seeks to classify the Beneficiary 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 Beneficiary 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) 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 the beneficiary's sustained acclaim and the recognition of his 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 it must provide sufficient qualifying documentation that the beneficiary 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 beneficiary 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 the beneficiary’s sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The Beneficiary has worked for the Petitioner as a  engineer since 2016.

### A. Evidentiary Criteria

Because the Petitioner has not claimed or established that the Beneficiary 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). The Director determined that the Beneficiary met only two of the evidentiary criteria relating to judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner demonstrates that the Beneficiary fulfills the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), discussed further below.

Because the Petitioner has shown that the Beneficiary satisfies the minimum requirement of at least three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.<sup>1</sup>

### B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether the Beneficiary has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim,<sup>2</sup>

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<sup>1</sup> *See 6 USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that objectively meeting the regulatory criteria in the first step alone does not establish that the person in fact meets the requirements for classification as a person with extraordinary ability under section 203(b)(1)(A) of the Act).

<sup>2</sup> *See 6 USCIS Policy Manual* F.2(B)(1), *supra* (stating that such acclaim must be maintained and providing *Black’s Law Dictionary’s* definition of “sustain” as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a beneficiary's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.<sup>3</sup> In this matter, we determine that the Petitioner has not shown the Beneficiary's eligibility.

The record reflects that the Beneficiary earned a Bachelor of Science degree (2012) in mechanical engineering from [redacted] University of Engineering and Science, and both a Master of Science degree (2015) and a Doctor of Philosophy degree (2018) in mechanical engineering from the University [redacted]. As indicated above, the Beneficiary has been employed as a [redacted] engineer for the Petitioner since 2016. He has also served as an associate graduate faculty member at [redacted] beginning in 2020. The Beneficiary has judged the work of others, authored scholarly articles, and performed in a critical role. The record, however, does not demonstrate that his personal and professional achievements reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Relating to the Beneficiary's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22.<sup>4</sup> The record reflects that the Beneficiary had participated in evaluating three technical papers for Society of Automotive Engineers (SAE) meetings at the time of filing.<sup>5</sup> The Petitioner, however, did not establish that the level and frequency of the Beneficiary's peer review service reflects the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. In many scientific and academic fields, peer review is a routine element of the process by which articles are selected for publication or for presentation at conferences. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Without evidence that sets the Beneficiary apart from others in his field, such as evidence that he has a consistent history of completing a substantial number of review requests for distinguished journals or conferences relative to others in his field, served in editorial positions for highly regarded journals or publications,<sup>6</sup> or chaired prominent evaluation committees for reputable conferences, the Petitioner has not established that the Beneficiary's peer review experience for SAE

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<sup>3</sup> *See 6 USCIS Policy Manual F.2(B)(2), supra* (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if a petitioner has established the beneficiary's required high level of expertise of the immigrant classification).

<sup>4</sup> *See 6 USCIS Policy Manual F.2(B)(2), supra* (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

<sup>5</sup> In response to the Director's request for evidence (RFE), the Petitioner presented a February 2021 letter from SAE indicating that the Beneficiary reviewed three additional technical papers in 2021 after the petition was filed. The Petitioner, however, must establish the Beneficiary's eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

<sup>6</sup> In response to the RFE, the Petitioner submitted a September 16, 2020 email from an "assistant from Editorial Office of *American Journal of Traffic and Transportation Engineering*" asking the Beneficiary to consider joining as an editorial board member/reviewer. The Beneficiary received this invitation after the petition was filed. Again, eligibility must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Nevertheless, the Petitioner has not shown that the Beneficiary has judged the work of others for the *American Journal of Traffic and Transportation Engineering* or that serving on its editorial board is indicative of national or international acclaim.

places him among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

In addition, the Beneficiary was appointed to a doctoral dissertation committee for a mechanical engineering student at [redacted] in August 2020, but the appointment form does not indicate the dates that he performed an evaluation of the student's work.<sup>7</sup> Nevertheless, the Beneficiary's judging experience for [redacted] involves evaluating the work of a graduate students rather than established, recognized professionals. *Cf., Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994) (USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The Petitioner did not show, for example, how the Beneficiary's experience in judging graduate students compares to others at the very top of his field.

In addition, the Petitioner did not demonstrate that the Beneficiary's instances of judging contribute to a finding that he has a career of acclaimed work in the field or the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not establish, for instance, that the Beneficiary garnered wide attention from the field based on his work judging graduate students at his alma mater or reviewing several technical papers for SAE. Moreover, serving on a thesis or dissertation committee, or as a peer reviewer, does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field. The Petitioner has not shown that the Beneficiary's judging experience places him among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Likewise, authorship and publication do not automatically place one at the top of the field.<sup>8</sup> Although the Petitioner submitted information from Google Scholar indicating that the Beneficiary has authored 11 articles since 2016, the Petitioner did not demonstrate that the Beneficiary's publication record is consistent with having a career of acclaimed work and sustaining national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. Nor did the Petitioner submit evidence showing the significance of the Beneficiary's authorships or how his overall publications compare to others who are viewed to be at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Moreover, the citation history or other evidence of the influence of the Beneficiary's published and presented work can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for articles authored by the Beneficiary may provide solid evidence that his work has been recognized

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<sup>7</sup> The RFE response included documentation indicating that the Beneficiary was also appointed to a master's thesis committee for a mechanical engineering student at [redacted] in October 2020, but this appointment post-dates the filing of the petition. Eligibility, however, must be demonstrated at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

<sup>8</sup> 6 *USCIS Policy Manual* F.2(B)(2), *supra* (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

and that other mechanical engineers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. Here, the Petitioner provided evidence from Google Scholar reflecting that the Beneficiary's published material has been cited 74 times, with his two highest cited articles receiving 25 and 16 citations, respectively. While the citation of his work shows that some in his field have referenced it, the Petitioner has not established that such citations are sufficient to demonstrate a level of interest in the field commensurate with sustained national or international acclaim.<sup>9</sup> See section 203(b)(1)(A) of the Act. In addition, the Petitioner has not shown that the citations to the Beneficiary's work represent attention at a level consistent with being among that small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Furthermore, the Petitioner's response to the Director's RFE included invitations from various journals and conferences asking the Beneficiary to submit papers for publication or presentation, or to review manuscript submissions. The majority of these invitations post-date the filing of the petition. Eligibility, however, must be demonstrated at the time of filing. See 8 C.F.R. § 103.2(b)(1). Nonetheless, the Petitioner did not establish their requirements for selecting authors or reviewers, and therefore we are unable to evaluate the Beneficiary's invitations in light of those requirements. Moreover, receiving invitations to review manuscripts, or to submit articles for publication or presentation based on subject matter expertise, would not provide strong support for the petition, because possessing expertise in a given field is a considerably lower threshold than being nationally or internationally recognized, or an individual who is among 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 See 8 C.F.R. § 204.5(h)(2).

As it relates to his roles, the Beneficiary has performed in a critical role as a [ ] engineer for the Petitioner, as well as served as an associate graduate faculty member at [ ] after his graduation. However, the Petitioner did not demonstrate that the Beneficiary received any national or international attention from his positions beyond his employer or alma mater. See section 203(b)(1)(A) of the Act and 56 Fed. Reg. at 30704. The Petitioner did not show that the Beneficiary's roles with the Petitioner and [ ] have earned distinction, garnering a level of attention consistent with being among that small percentage at the very top of the field. See 8 C.F.R. § 204.5(h)(2). Here, the Petitioner did not establish that the Beneficiary's professional career spanning approximately six years represents a career of acclaimed work and sustained national or international acclaim. See H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The record does not reflect that any of his roles resulted in widespread acclaim from his field, that he drew significant attention from the greater field, or that the overall field considers him to be at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Beyond the three criteria that the Beneficiary satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. For the reasons discussed below, we conclude that the evidence does not establish that the Beneficiary has sustained national or international acclaim and is among the small percentage of the top of his field.

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<sup>9</sup> Nor has the Petitioner demonstrated how citation to the Beneficiary's articles, individually or collectively, compares to those who are nationally or internationally recognized in his field.

The Petitioner presented documentation reflecting that the Beneficiary received a Certificate of Recognition from the Center for Graduate Life at [redacted] (2015) for “outstanding contributions to graduate student life,” but the evidence does not show that this certificate is indicative of national or international acclaim in the field of mechanical engineering. In addition, the Petitioner provided two Certificates of Appreciation awarded to the Beneficiary by SAE “in recognition of outstanding service” as a presenter in 2018 and 2019. While the 2018 and 2019 SAE conferences acknowledged the Beneficiary’s participation as a presenter, the Petitioner did not demonstrate that the Beneficiary garnered national or international acclaim based on his receipt of these two appreciation certificates, or that they signify an individual who is among 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 See 8 C.F.R. § 204.5(h)(2).

Moreover, the Petitioner provided evidence of the Beneficiary’s membership with the SAE [redacted] [redacted] the SAE [redacted] [redacted]; and the SAE [redacted] [redacted]. While the record includes a letter from SAE stating that those considered for membership in technical committees and tasks forces “must be competent and authoritative in the field(s) outlined by the committee scope/charter,” the Petitioner did not demonstrate that the Beneficiary’s memberships required outstanding achievements, are somehow remarkable, or otherwise garnered sustained national or international acclaim. See section 203(b)(1)(A) of the Act. For instance, the Petitioner did not submit evidence showing that the Beneficiary’s memberships resulted in widespread or significant attention. See 56 Fed. Reg at 30704. In addition, the Petitioner did not establish the prestigious nature of the Beneficiary’s SAE committee and task force memberships, or how his memberships reflect being among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).

Additionally, the record includes a video screenshot from the Petitioner’s Facebook page [redacted] [redacted]), an article posted on the Petitioner’s website [redacted], and an article from the [redacted] College of Engineering website ([redacted]). However, the Petitioner has not demonstrated that this coverage of the Beneficiary’s work limited to the media of his employer and alma mater signifies national or international acclaim in the field.

In response to the Director’s RFE, the Petitioner provided documentation of a *Top Gear* episode [redacted] 2016), a *Chris Harris Drives* web video review [redacted] 2016), and a YouTube video [redacted] 2015) featuring the [redacted] but there is no indication that this material is about the Beneficiary or that it specifically identifies him. While the RFE response includes a [redacted] 2013 article from *www.drivesrt.com* discussing [redacted]’ involvement with the [redacted] racing program, the Beneficiary is only briefly mentioned in the article along with two other [redacted] participants. The Petitioner has not demonstrated that the aforementioned coverage, without any further material since 2016, is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. See section 203(b)(1)(A) of the Act. Further, the Petitioner did not show how the Beneficiary’s overall media coverage is indicative of a level of success consistent with being among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). Thus, the Petitioner did not establish that the limited media reporting on the Beneficiary and his specific activities reflects a career of acclaimed work in the field. See H.R. Rep. No. 101-723 at 59. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the “intent of Congress that

a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Beneficiary’s minimal media exposure does not meet this very high standard.

Finally, the record includes recommendation letters discussing the Beneficiary’s work for the Petitioner and his graduate research projects at [redacted]<sup>10</sup> For example, regarding the Beneficiary’s contributions toward the development of [redacted]’s 2022 [redacted] race car, [redacted] indicated that the Beneficiary performed “[redacted] [redacted] Likewise, [redacted] asserted that the Beneficiary provided [redacted] Similarly, [redacted] [redacted] stated that the Beneficiary’s [redacted] [redacted]

With respect to the Beneficiary’s graduate research projects at [redacted], [redacted] asserted that the Beneficiary and two other students supported “the [redacted] activities for the design of 2016 [redacted] and developed “an innovative approach for the [redacted] design, using different [redacted] to achieve the optimal [redacted] performance.” In addition, [redacted] stated that he met the Beneficiary while “conducting research related to [redacted] vehicle safety at [redacted] I noticed the contributions [the Beneficiary] was making to both [redacted] and the field of [redacted] at that time.”

The recommendation letters offered by the Petitioner, however, do not contain sufficient information and explanation, nor does the record include corroborating evidence, to show that the Beneficiary is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Further, the Petitioner did not establish that the Beneficiary has made impactful or influential contributions in the greater field reflecting a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The letters describe the Beneficiary’s work without showing how it rises to a level of major significance in the field and represents an individual who has garnered sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A) of the Act and 56 Fed. Reg. at 30704.

The record as a whole, including the evidence discussed above, does not establish the Beneficiary’s eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Price*, 20 I&N Dec. at 954. Here, we conclude that the evidence is insufficient to demonstrate that the Beneficiary has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

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<sup>10</sup> While we discuss a sampling of the letters of support, we have reviewed and considered each one.

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.