



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

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

In Re: 20181351

Date: MAY 19, 2022

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an individual of extraordinary ability in sustainable development and sustainable design solutions. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had 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

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 five criteria. After reviewing all of the presented evidence, the record does not establish that the Petitioner meets 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 claims eligibility for this criterion based on awards received by [redacted] (Asia Pacific Leadership in Green Building Awards 2018 from the World Green Building Council), [redacted] (Platinum Certification from the Indian Green Building Council), [redacted] (2018 Architectural Design Award from the Architecture Masterprize), [redacted] (2nd Award at the International Architecture Awards 2015 from Architecture Podium), [redacted] (Certificate of Honorable Mention at the Re-Thinking the Future – Sustainability Awards 2014), and [redacted] (Jury Commendation from Design and Architecture Awards [redacted]). The record describes [redacted] as:

Headquartered in [redacted], [redacted] is a company founded on the idea of environmentally conscious living. With 20 full time staff, the goal of the organization is to develop communities which are self-reliant in seven strands of sustainability – energy, food, water, air, animals, people and shelter. The project – [redacted] – is an amalgam between [redacted] environments in what is an innovative paradigm that we call [redacted] with a goal to make the development a [redacted] community by using an innovative credit system for the seven strands.¹

¹ See screenshot from worldgbc.org.

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.² The description of this type of evidence in the regulation indicates that the focus should be on the person's receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes.³ Here, the Petitioner's evidence shows that the company or its project received the various awards rather than his receipt of them. In fact, none of the awarding documentation mention the Petitioner or credit him as a recipient for any of the awards. Because he did not establish his receipt of the awards, we need not determine their national or international recognition for excellence in the field and reserve this issue.⁴

For the reasons discussed above, the Petitioner did not show 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.⁵ 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.

The record reflects that he submitted nine articles, in which only four articles contained the required title, date, and author of the material.⁶ Moreover, none of the articles reflect published material about the Petitioner. Instead, the articles reflect media coverage about [REDACTED]. In fact, the Petitioner is never mentioned in seven of the articles. In the other two articles, the Petitioner is only quoted in providing background information relating to [REDACTED].⁷ Because he did not demonstrate that his evidence qualifies as published material about him relating to his work in the field, we need not determine the professional, major trade, or other major media status of the publications and reserve this issue.⁸

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

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

³ *Id.*

⁴ 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 appeal where an applicant is otherwise ineligible).

⁵ See 6 USCIS Policy Manual, *supra*, at F.2(B)(2).

⁶ See articles from [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

⁷ See articles from [REDACTED] and [REDACTED].

⁸ See *INS v. Bagamasbad*, 429 U.S. at 25-26 (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *L-A-C-*, 26 I&N Dec. at 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner maintains eligibility for this criterion based on [redacted]. In order to meet this criterion, a petitioner must show that the work that was displayed is the person's work product, and the venues were artistic exhibitions or showcases.⁹ Although he provided evidence indicating that he was one of the founders of the communal project, the Petitioner did not demonstrate that [redacted] was displayed at an artistic exhibition or showcase. He did not specifically identify an artistic venue that displayed the project. In fact, according to the submitted documentation, [redacted] was "[b]uilt on [redacted] land in [redacted] in [redacted]" which the Petitioner did not show represents an artistic exhibition or showcase.¹⁰ Here, the Petitioner did not establish that building a [redacted] on the outskirts of a city involves displaying his work product at an artistic venue consistent with this regulatory criterion.

Accordingly, the Petitioner did not show that he meets this criterion.

III. CONCLUSION

The Petitioner did not demonstrate that he satisfies the criteria relating to awards, published material, and display. Although the Petitioner claims eligibility for two additional criteria on appeal, relating to original contributions 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.¹¹

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

⁹ See 6 USCIS Policy Manual, *supra*, at F.2(B)(2).

¹⁰ See article from [redacted].

¹¹ See *INS v. Bagamasbad*, 429 U.S. at 25-26 (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also L-A-C-*, 26 I&N Dec. at 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.