



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

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

In Re: 16897920

Date: MAY 23, 2022

Certification of Texas Service Center Decision

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

The Petitioner, a psychiatrist specialist, seeks classification as an alien 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.

In the latest decision, the Director of the Texas Service Center denied the petition, concluding that although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.¹ On October 27, 2021, the Director certified the decision to our office for review. The Petitioner has not submitted a legal brief on certification.

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 affirm the Director's denial of the petition.

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,

¹ The Director denied the petition and dismissed the Petitioner's subsequent joint motion to reopen and reconsider, and the matter came before us on appeal from the dismissal of the motions. We determined that the Director erroneously dismissed the motions as untimely filed. We, therefore, withdrew the Director's decision and remanded the matter for further consideration and entry of a new decision which, if adverse, was to be certified to us for review. The Director's initial certified decision dated January 2021 did not contain, as required, a Notice of Certification (Form I-290C) notifying the Petitioner of the right to submit a brief to us within 30 days of the notice.

- (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 is a psychiatrist specializing in the treatment of [redacted] with the use of [redacted]. He received his medical degree from the [redacted] in 1998 and completed his residency in physical medicine and rehabilitation at the [redacted] in 2004. At the time of filing the petition in September 2018 the Petitioner indicated he was employed as head of the physical medicine and rehabilitation department at [redacted] psychiatrist at [redacted] assistant professor of medical residents at the neurological rehabilitation unit at the [redacted] [redacted] director of the medical rehabilitation unit [redacted] and consultant for the laboratories [redacted], [redacted], [redacted] and [redacted] on the use of [redacted] in neurorehabilitation.

A. Evidentiary Criteria

Because the Petitioner has not claimed 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 his certified decision, the Director determined that the Petitioner met four of those criteria: published material under 8 C.F.R. § 204.5(h)(3)(iii), judging under 8 C.F.R. § 204.5(h)(3)(iv), scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). Although we do not agree with the Director's decision regarding the published materials criterion, the record reflects that the Petitioner satisfies three of the evidentiary

criteria.² The documentation submitted indicates that the Petitioner has served as a judge for the 23rd Congress of the Latin American Medical Association for Rehabilitation in 2008 and published his research in journals, thus satisfying the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi). The record also demonstrates that the Petitioner has held a leading or critical role with his current employer, [redacted] and includes evidence of the hospital's distinguished reputation in the field. See 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner contested the Director's determination that he did not satisfy the criteria related to lesser awards and memberships and asserted the Director did not consider the totality of the evidence in the record in making his determination.³ Because the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence, including evidence submitted in support of those criteria, in the context of the final merits determination below.⁴

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, 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 petitioner'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 1119-20.⁵

As mentioned above, the Petitioner judged others within his field, authored scholarly articles, and performed in a leading role. We have also considered evidence related to an award he received during his residency at the [redacted], his membership in associations, and published materials in certain media. The record, however, does not demonstrate that his achievements reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

² Regarding the published materials criterion, the record indicates that the Petitioner was interviewed regarding topics in chronic pain and disability for the television programs [redacted] in 2012 and [redacted] in 2014 which were broadcast on the [redacted] television network, and for the radio program [redacted] in 2014. However, the Petitioner did not provide a transcription of the video or radio coverage demonstrating published material about him relating to his work. 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)). Further, the Petitioner did not establish that the television shows [redacted] and [redacted] or the radio program [redacted] represent a major medium. Although the Petitioner provided general information about the [redacted] television network in [redacted], the issue is whether these shows are a major medium.

³ The Director also determined that the Petitioner did not satisfy the claimed criteria related original contributions and high salary. On appeal, the Petitioner requested we "disregard" the evidence submitted under the original contributions criterion and consider it under the criterion related to scholarly articles.

⁴ See 6 *USCIS Policy Manual*, *supra*, at F.2 (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

⁵ See also *Id.* (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

Relating to the Petitioner'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 1121-22.⁶ The record indicates that at the time of filing, the Petitioner had served as a tribunal member reviewing and selecting [redacted] for the 23rd Congress of the Latin American Medical Association for rehabilitation in 2008. Participating on a [redacted] tribunal does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field. In evaluating this evidence in the final merits determination, the Director acknowledged that the Petitioner had performed as a juror at that conference. The Director determined that because invitations to peer review the work of others can be routine in the Petitioner's field, this evidence alone did not demonstrate that he is at the top of the field or otherwise establish his sustained national or international acclaim. We agree with the Director's determination. The record does not contain evidence that the nature of the peer review work he has performed is reserved for the small percentage at the very top of the field, such as evidence that he had reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal.

The Petitioner claims he has completed other judging duties, such as serving on thesis review committees for the [redacted] in 2008 for the works titled "[redacted]" and "[redacted]". However, while the record contains invitations to participate in the judging, it lacks evidence demonstrating that the Petitioner completed those activities.⁷ Moreover, the Petitioner has not submitted evidence demonstrating that the invitations to participate are indicative of sustained national or international acclaim or recognition of his accomplishments by others in the field.

Likewise, publication of a petitioner's research does not automatically place one at the top of the field. Regarding his publication history, the Petitioner presented evidence showing that he authored two scholarly articles. The Petitioner emphasizes that he has presented his research and clinical findings at national and international conferences. The record does not show that conference presentation is a privilege reserved for those at the very top of the field. In addition, the Petitioner did not demonstrate that his publication record of two articles in a twenty-year span is consistent with having a career of acclaimed work and sustaining national or international acclaim.⁸ The Petitioner did not submit evidence showing the significance of the Petitioner's authorships or how his overall publications

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

⁷ See 6 USCIS Policy Manual, *supra*, at F.2 appendix (providing an example of peer reviewing for a scholarly journal, as evidenced by a request from the journal to the alien to do the review, accompanied by proof that the alien actually completed the review).

⁸ See 6 USCIS Policy Manual, *supra*, at F.2 (providing that publications should be evaluated to determine whether they were indicative of the person 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).

compare to others who are viewed to be at the very top of the field. *See* H.R. Rep. No. 101-723 at 59, section 203(b)(1)(A)(i) of the Act, and 8 C.F.R. § 204.5(h)(3). Without evidence that sets the Petitioner apart from others in his field, such as evidence that he has a consistent history of publishing articles in prestigious journals, the Petitioner has not shown that his publications reflect being among the small percentage at the very top of his 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 Petitioner's written work can be an indicator to determine the impact and recognition that his publications have had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized over a period of time. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. The Petitioner did not submit a citation history for his published work. Therefore, the Petitioner has not demonstrated a level of interest in the field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(3). In addition, the Petitioner has not demonstrated a level of interest in his work representing 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.

As it relates to the Petitioner's service in a leading or critical role, the Petitioner provided letters of recommendation from several colleagues that summarized his work with [redacted] and [redacted] as well as his involvement as a consultant with the pharmaceutical companies [redacted] and [redacted].⁹ While the Director acknowledged evidence demonstrating the Petitioner has performed a leading or critical role with several organizations, he found that the record lacked evidence 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. We agree with the Director's determination that the letters do not contain sufficient information and explanation to show that the Petitioner 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).

For instance, in two letters, [redacted] a neurologist and the Petitioner's co-author and colleague at the [redacted] provides that Petitioner's focus is on neurological patients who are disabled from medical conditions including Parkinson's disease, dystonia, multiple sclerosis, and stroke, and that he provided "medical treatment, local infiltrations, treatment with [redacted] [redacted] physiotherapy, and occupational therapy." [redacted] a physiatrist, indicates that the Petitioner was her mentor during her fellowship at the [redacted] where she studied the [redacted]. She asserts that the Petitioner is a specialist in the technique of "localization of motor points" in the [redacted].

[redacted] a physiatrist and senior lecturer in the department of physical medicine and rehabilitation at the [redacted] indicates she has worked with the Petitioner on educational lectures and training workshops for doctors regarding the neurological pathologies that merit the use of [redacted].¹⁰ She provides that at [redacted] the Petitioner utilized [redacted].

⁹ Although we do not discuss every letter submitted, we have reviewed and considered each one.

¹⁰ We note that [redacted] letter has not been properly translated. Any document in a foreign language must be

in patients with neurological disorders, developed [redacted] and provided courses and workshops on [redacted] consistent with initiatives of the [redacted] of Social Security. Although the above letters describe the focus of the Petitioner's clinical work and mention his modalities and technique, they do not establish that his role as head of the rehabilitation department at [redacted] garnered him acclaim outside the hospital.

Similarly, in his above-referenced letters, [redacted] indicates the Petitioner's role as medical director of [redacted] includes participation in therapeutic studies and national congresses on the topic of the treatment of [redacted], but the record does not show how his role within [redacted] garnered him acclaim outside of that institution. In sum, while the Petitioner's reference letters indicated his leading or critical role with [redacted] and [redacted] they did not show how those 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.

In addition, the record contains letters from several pharmaceutical companies describing the Petitioner's role as a consultant. [redacted] Business Unit Manager at [redacted] indicates that the Petitioner has motivated many of his colleagues to learn more about the correct use of [redacted] by conducting workshops on [redacted] at [redacted] for patients and hospital staff. [redacted] of [redacted] states that the Petitioner participated in several of the company's regional meetings as a speaker and consultant in the field of physical medicine and rehabilitation. [redacted] of [redacted] indicates that the Petitioner is responsible for the company's [redacted] product development department. Although the record shows that the Petitioner has been a consultant on the use of [redacted] in neurorehabilitation for the laboratories [redacted] [redacted] and [redacted] the letters from representatives of those pharmaceutical companies do not address how the Petitioner's consultant positions were leading or critical to these organizations as a whole or have resulted in his being recognized as among the small percentage of psychiatrists in his field who have achieved sustained national or international acclaim as evidenced through extensive documentation. Further, although the Petitioner has been an assistant professor of medical residents at the [redacted] [redacted] and a psychiatrist at [redacted] the record does not contain evidence documenting his professional career with either of those organizations and that it has garnered him sustained national or international acclaim.

Apart from the recommendation letters the record does not contain other independent evidence, such as news articles or other relevant materials, demonstrating that the field of psychiatry has widely recognized the Petitioner's roles with his employers in a manner that evidences a "career of acclaimed work." The Petitioner's talents and his successes to date have garnered him increasing leadership responsibilities as evidenced by his current role with [redacted] and [redacted]. However, the evidence does not show that his roles at these organizations are at a level that places him among "that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Here, the translation does not contain a certification from the translator. Accordingly, this translation does not comply with the requirements of 8 C.F.R. § 103.2(b)(3) and has diminished probative value.

Beyond the three criteria that the Petitioner has satisfied, we have considered additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. For the reasons discussed below, we find that the evidence neither fulfills the requirements of any further evidentiary criteria nor contributes to an overall finding that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of his field.

With respect to his receipt of awards, the record reflects that in 2004 the Petitioner's paper "[redacted]", was awarded a prize at the [redacted], held by the Faculty of [redacted] [redacted] a physiatrist and the Petitioner's co-author on that paper, confirms that the Petitioner received the award during his medical residency. The submitted evidence indicates that the competition was restricted to the medical institute's resident physicians, and it does not reflect that it is a national or internationally recognized award in the field as a whole or that the Petitioner garnered recognition for this award that extended beyond the institute. Further, the Petitioner did not establish that his 2004 receipt of a single award reflects a career of acclaimed work in the field, placing him among that small percentage at the very top of the field of endeavor. *See* H.R. Rep. No. 101-723 at 59 and 8 C.F.R. § 204.5(h)(2). The record, therefore, has not shown the Petitioner's receipt of the award established or contributed to his sustained national or international acclaim in the field.

Regarding the Petitioner's membership in associations in the field, on appeal the Petitioner highlighted his membership in the [redacted] since 2005 and emphasized his service between 2011 and 2015 as a member of the board of directors of the Metropolitan Chapter of the organization in the position of secretary. He asserts that the Director erred in determining that this scientific society does not qualify as an association that requires its members to have outstanding achievements as judged by recognized national or international experts. *See* 8 C.F.R. § 204.5(h)(3)(ii). We agree that the evidence does not establish that [redacted] requires its members to have outstanding achievements.

The Petitioner provided two letters from [redacted] board member [redacted] confirming that the Petitioner became an Active Member of [redacted] in 2005 and served as a member of the board of directors of the Metropolitan Chapter of the organization in the position of secretary between 2011 and 2015. The Petitioner also submitted two letters from [redacted] a physiatrist and past president of [redacted] who states that the Petitioner became a member of [redacted] based upon his having "presented scientific works as a first step in his admission" and asserts that the Petitioner's membership was "granted by the society to him as an outstanding doctor," although these requirements are not stated elsewhere in the submitted materials and no explanation was provided regarding how these factors are weighed.¹¹ The Petitioner submitted the 2008 [redacted] bylaws that indicate the organization has four categories of members: Founding Members, Honorary Members, Active Members, and Associate Members. The requirements for "Active" membership include attaining the medical specialty of physical medicine and rehabilitation, completing at least three years of approved

¹¹ We note that the record also contains recommendation letters from past president of [redacted], [redacted] and past vice-president of [redacted], [redacted], but these letters do not mention either the Petitioner's membership in the society or the [redacted] membership requirements.

post-graduate training in physical medicine and rehabilitation, and having “recognized teaching or assistance activity.” Even if we determined that those educational and work experience requirements can be deemed an “outstanding achievement,” the Petitioner has not demonstrated how membership in the organization, or on the board of directors of its Metropolitan Chapter, reflects or results in national or international acclaim or is indicative of his placement among the small percentage of scientific researchers who have risen to the top of the field.

As it relates to media coverage, as noted, the documentation submitted indicates the Petitioner was interviewed regarding topics in [redacted] for the [redacted] network television programs [redacted] in 2012 and [redacted] in 2014, and for the radio program [redacted] in 2014. However, the Petitioner did not demonstrate that such minimal press coverage, without any media reporting pertaining to him since 2014, is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. The Petitioner did not show how this 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 of approximately three interviews in a 20-year span reflects a career of acclaimed work in the field or meets a very high standard to present more extensive documentation than that required for lesser classifications. *See* H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

Finally, although the record reflects the Petitioner’s income as a physician between August 2017 to July 2018, the record does not establish that he commands earnings commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The Petitioner did not show that his wages are tantamount to an individual who is among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). For example, the Petitioner did not demonstrate how his salary compared to others at the very top of his field, or that he received notoriety or attention based on his earnings separating himself from others in the field or placing him in the upper echelon. In addition, the Petitioner did not document his earnings beyond the period from August 2017 to July 2018, showing a consistent history and recognition from the field of his extraordinary ability. *See* 56 Fed. Reg. at 30704.

The record as a whole, including the evidence discussed above, does not establish the Petitioner’s eligibility for the benefit sought. Here, 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. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm. 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that the Petitioner 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).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The petition will be denied for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The petition is denied.