



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

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

In Re: 22395252

Date: OCT. 7, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, an attorney, seeks to classify the Beneficiary, a software development entrepreneur, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for the entry of a new decision.

## I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 international 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 the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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 states:

[The Beneficiary] is a well-known, widely respected, and exceedingly accomplished Entrepreneur who specializes in [redacted]. He also holds the distinction of being one of the top 100 [redacted] entrepreneurs in [redacted] and has had enormous success in the field of startup innovation technology. As Founder and Chairman of the [redacted] [redacted] [of] Companies, [the Beneficiary] has developed numerous highly successful startups in the areas of information technology, enterprise software, [redacted] and more. Notably, the small [redacted] startup he founded more than 2 decades ago, [redacted] became a leading, nationally lauded company in the [redacted] space.

Because the Petitioner has not indicated or shown that the Beneficiary received a major, internationally recognized award, the Petitioner must instead submit evidence to satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have submitted evidence to satisfy six of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner’s evidence met two of the criteria, pertaining to judging the work of others and authorship of scholarly articles. On appeal, the Petitioner asserts that the Beneficiary also performed in a leading or critical role for organizations or establishments with a distinguished reputation, thereby satisfying the requirements of 8 C.F.R. § 204.5(h)(3)(viii).

Upon review of the record, we agree with the Petitioner that the evidence satisfies this third criterion.

The Beneficiary is chairman and chief executive officer of [redacted] and “is also the board chairman of each of [redacted] subsidiary companies.” The Beneficiary is also a cofounder and member of the board of trustees for [redacted]. The Director agreed that these capacities constitute leading or critical roles. The Director determined, however, that the Petitioner had not

established that [redacted] and [redacted] have distinguished reputations, defined as “marked by eminence, distinction, or excellence or befitting an eminent person.”<sup>1</sup>

On appeal, the Petitioner argues that the Director did not fully consider record evidence of the reputations of these organizations. We agree. Published articles in the record refer to [redacted] as [redacted] [redacted] and indicate that it one of its flagship products has “a [redacted] market share.” This evidence, uncontradicted in the record, is sufficient to establish by a preponderance of the evidence that [redacted] has a distinguished reputation.

In the denial notice, the Director stated: “while these organizations may enjoy some local popularity in Iran, the record does not contain evidence of their eminence, distinction, or excellence in the field as a whole.” This conclusion, however, imposes a requirement that the organizations must have a distinguished reputation at an international level. The statute and regulations, however, refer to “national or international acclaim”; a distinguished reputation in one country is sufficient within this framework. *See* 8 C.F.R. § 204.5(h)(3), “A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.”

Because the evidence about [redacted] is sufficient to meet the criterion at 8 C.F.R. § 204.5(h)(3)(viii), we need not explore, here, the question of whether [redacted] also has a distinguished reputation.

If the Director had not reached an erroneous conclusion about the distinguished reputation of [redacted] [redacted] then the Director would have proceeded to a final merits determination to weigh the totality of the evidence to determine if the Beneficiary’s 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>2</sup>

Therefore, we will remand the matter, so that the Director may undertake the final merits determination that would have ensued if not for the Director’s error.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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<sup>1</sup> *See* <https://www.merriam-webster.com/dictionary/distinguished>, cited in 6 *USCIS Policy Manual* F.2 appendix, <https://www.uscis.gov/policymanual>.

<sup>2</sup> *See also* 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual> (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 for the immigrant classification).