U.S. Citizenship and Immigration Services

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

In Re: 22726984

Date: OCT. 26, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and researcher in the field of cybersecurity, seeks classification 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 Petitioner 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)(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 is an entrepreneur and researcher who is currently working in the United States in the field of cybersecurity on his O-1 nonimmigrant visa.

### A. Evidentiary Criteria

Because the Petitioner has not indicated 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 denying the petition, the Director found that the Petitioner met only two of the initial evidentiary criteria, scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi) and high salary under 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the Petitioner maintains that he meets two additional criteria, published material under 8 C.F.R. § 204.5(h)(3)(iii) and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner does not pursue his initial claim that he meets the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) and does not contest the Director's determination that he did not submit evidence that meets this criterion. Therefore, we deem this issue to be waived and will not further address it in this decision. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

> *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.[1] The record contains several articles pertaining to the Petitioner. Articles published in *Dark Horse*, *Toms Guide*, *SC Magazine, SPAMfighter News,* and *The Register* mention the Petitioner and his role as co-founder and researcher for [redacted] a cyber security intelligence company, and quote him regarding vulnerabilities in [redacted] products and a tool that [redacted] was producing to combat such threats. The Petitioner also submits other articles, including a 2009 article from *Dark Reading* identifying the Petitioner as a researcher with [redacted] and 2011 articles published in *Global Security Magazine* and *Info Security Magazine* that identify the Petitioner as a researcher with [redacted] These articles also briefly quote the Petitioner regarding the projects each of his respective employers were undertaking at the time.

The Petitioner did not demonstrate, however, that the aforementioned articles reflect published material about him relating to his work. For example, the articles appearing in *Toms Guide* and *SC Magazine* articles quote the Petitioner regarding vulnerabilities discovered in the [redacted] produced by companies such as [redacted] and [redacted] The *Info Security Magazine* article quotes the Petitioner regarding the rise of [redacted] attacks against banks and other institutions. The *Global Security Magazine* article, entitled [redacted] interviews the Petitioner but focuses primarily about the differences between [redacted] attacks versus [redacted] attacks, rather than material about him. Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g.*, *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

The Petitioner argues on appeal that the articles are explicitly about him and his work. Although we acknowledge that several articles consist of interviews of the Petitioner, and identify him and his employer, they do not include details about his career history or accomplishments. While the Petitioner is briefly interviewed in each article in his capacity as researcher for [redacted] and discusses the companies' efforts to combat [redacted] and vulnerabilities in [redacted] products, the submitted documentation does not discuss the merits of the Petitioner's work, his standing in the field, any significant impact that his work has had on the field, or any other information so as to be considered published material about the Petitioner as required by this criterion. The submitted articles are about the threat of [redacted] and the vulnerabilities and defects in [redacted] products. The published material itself is not about the Petitioner. The regulation requires that the published material be "about the alien" and "relating to the alien's work in the field." It is insufficient that the Petitioner be mentioned within published material appearing in one of the three regulatory required publication types. The inclusion of the phrase "about the alien" is not superfluous and, thus, it must have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). According to the plain language at 8 C.F.R. § 204.5(h)(3)(iii), the relevant criterion in this matter, the published material must be both about the Petitioner *and* relating to his work in the field.

Although he is referenced, the articles are not about the Petitioner and do not otherwise meet this regulatory criterion. Here, again, the Petitioner provided articles only about his work instead of articles

[1] *See* 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policy-manual.

about him relating to his work. For these reasons, the Petitioner did not demonstrate that he meets this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

To qualify under this criterion, a petitioner must show that they played a leading or critical role for an organization or establishment, and that that organization or establishment has a distinguished reputation. When evaluating whether a role is leading, we look at whether the evidence establishes that the person is or was a leader within the organization, or a department or division thereof. A title, with appropriate matching duties, can help to establish that a role is or was leading.[2] For a critical role, we look at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment.[3]

The Petitioner claimed that he performed in a leading or critical role for two companies, [redacted] and [redacted] In his decision, the Director determined that the Petitioner had not established that these companies enjoyed a distinguished reputation as required by this criteria.[4] On appeal, the Petitioner asserts that the Director's determination was erroneous.

The Petitioner contends that he has performed in a leading role for [redacted] The record contains a letter from [redacted] chief executive officer, who states that [redacted] is "a cybersecurity company that offers a [redacted] protection platform against [redacted] attacks." According to [redacted] the Petitioner co-founded [redacted] in Israel in 2014 and served as its vice president of [redacted] research from 2014-2017 before assuming the same role in the United States for [redacted] which was founded in 2015. [redacted] indicates that the Petitioner initially managed the [redacted] research team before ultimately managing the day-to-day operations of this team and the [redacted] team. Upon review, the record supports the Petitioner's claim that he performed in a leading role for [redacted]

The Petitioner, however, has not established that [redacted] has a distinguished reputation, with "distinguished" defined as "marked by eminence, distinction, or excellence or befitting an eminent person."[5] In response to the Director's request for evidence, the Petitioner submitted documentation pertaining to recognition received by [redacted] The Petitioner submitted evidence demonstrating that [redacted] won the [redacted] Award in 2016, 2017, and 2018, an award the Petitioner claims highlights "the most [redacted] startups from Asia, Europe and the Americas." The Petitioner also submitted evidence demonstrating that [redacted] was listed among the top three vendors in [redacted] 2018 [redacted] Group Test. According to the Petitioner, [redacted] "is recognized globally as the most trusted source for independent, fact-based cybersecurity guidance." The Petitioner also documented [redacted] naming to [redacted] 2018 [redacted] List as among [redacted] noting that '[redacted] is the top technology news and

[2] *See* 6 *USCIS Policy Manual, supra*, at F.2 appendix.
[3] *See id.*
[4] The Director did not specifically render a determination regarding whether the Petitioner performed in a leading or critical role for each of these organizations.
[5] *See* 6 *USCIS Policy Manual, supra*, at F.2 appendix.

information source for solution providers, IT channel partners, and value-added resellers (VARs)." Finally, the Petitioner submitted documentation of [redacted] 2019 acquisition by [redacted], an American multinational company described as "a leading provider of [redacted] security."

Although the Petitioner presented evidence of [redacted] receipt of various awards which denote [redacted] recognition in its field, he did not sufficiently demonstrate their significance or relevance. Nor did he submit sufficient evidence portraying [redacted] standing in the field. The Petitioner did not include evidence, for example, showing the field's view of the organization, how its reputation compares to similar organizations, or how its successes or accomplishments relate to others, signifying a distinguished reputation consistent with the regulatory criterion.

The Petitioner also submitted information about [redacted] subsequent acquisition by [redacted] in 2019 from its website, but this information is not sufficient to demonstrate that [redacted], now [redacted], has a distinguished reputation in the cybersecurity field. U.S. Citizenship and Immigration Services (USCIS) need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, aff'd 317 Fed. Appx. 680 (C.A.9). While we note the submission of key data for [redacted] stock from www.forbes.com, this is simply a general overview of corporate and financial data and does not demonstrate how this organization has a distinguished reputation. There is insufficient corroborating evidence of [redacted] or [redacted] standing in the field to establish that they are recognized as having a distinguished reputation "marked by eminence, distinction or excellence."

The Petitioner also contends that he has performed in a leading or critical role for [redacted] as a [redacted] researcher and team lead from 2010-2012. A letter from [redacted], [redacted] co-founder and chief technology officer, describes the company as "a cyber security company delivering application and data security products," and discusses the Petitioner's role as a team lead for [redacted] research and the results he achieved for the company while employed in that position. The record demonstrates that the Petitioner performed in a critical role for [redacted] The Petitioner, however, has not established that [redacted] has a distinguished reputation.

The Director determined that the evidence of awards received by [redacted] was insufficient to demonstrate that the company was an organization or establishment with a distinguished reputation. The Petitioner submitted evidence of the company's receipt of several awards, such as the [redacted] Award for Best [redacted] Solution from [redacted] in 2017, the [redacted] Award in Best [redacted] Solution at the [redacted] Awards in 2017 for its [redacted] and the [redacted] Award Testing Award by [redacted], an independent division of [redacted] in 2016. The Petitioner also submitted an independent analysis of the [redacted] market conducted by [redacted] demonstrating that [redacted] "provides a number of advanced security technologies and flexible deployment models to protect customers' Web applications against the broadest range of threats."

As with [redacted] awards, discussed above, the Petitioner did not sufficiently demonstrate the significance or relevance of [redacted] awards. While the awards demonstrate that [redacted] garnered recognition in its field, the Petitioner did not include evidence showing the general field's view of the company, how its reputation compares to similar organizations, or how its products and processes relate to other companies, signifying a distinguished reputation consistent with the regulatory criterion.

Moreover, while the Petitioner relies on the [redacted] analysis of the [redacted] market, which resulted in [redacted] receipt of the 2014 [redacted] Leadership Award after a determination that [redacted] achieved a leadership position in the [redacted] market in 2013, these accolades do not demonstrate that [redacted] has a distinguished reputation, which is marked by eminence, distinction, or excellence. Here, the Petitioner did not submit sufficient evidence portraying [redacted] standing in the field, nor did it objectively demonstrate that [redacted] has a distinguished reputation. Accordingly, the Petitioner has not demonstrated that he fulfills 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 at least one O-1 nonimmigrant visa petition 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).[6]

## III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought. For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). 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).

[6] *See also* 6 *USCIS Policy Manual, supra*, at F.2(B)(3).

Although the Petitioner has experience in the field of cybersecurity, 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.