



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

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

In Re: 20217088

Date: SEPT. 16, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an executive in the oil and gas industry, 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. 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 sustain the appeal.

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

After earning a master's degree at the University of [redacted] as a Fulbright scholar, the Petitioner has worked for various companies in the petroleum industry in [redacted] including [redacted] Corporation and [redacted] Company. Since 2017, he has been the commercial and marketing vice president of [redacted] state-owned petroleum company. He intends "to [f]orm a company in Florida to be able to build commercial equipment to do trading and development of business" with Latin America.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that he 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 Petitioner claimed to have satisfied seven 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;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met three of the criteria, relating to membership in associations, participation as a judge, and leading or critical roles. On appeal, the Petitioner asserts that he meets all the previously claimed criteria.

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criteria relating to judging and leading or critical roles. We disagree with the Director about memberships, because the record does not show that the Petitioner is a member of any qualifying associations. Rather, he has represented his employers on the boards of associations for which the members are companies rather than individuals.

But we further conclude that the Petitioner has satisfied two other criteria, relating to published material about him in major media and original contributions of major significance. Because we agree with the Director's core finding that the Petitioner has satisfied at least three of the threshold criteria at 8 C.F.R. § 204.5(h)(3), we will proceed to the final merits determination.

B. Final Merits Determination

Because the Petitioner submitted the required initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and 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 their successes are sufficient to demonstrate that they have 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 1119-20.¹ In this matter, we determine that the Petitioner has established eligibility.

The Director's final merits determination did not consider the record in its entirety. Rather, the Director focused on the criteria at 8 C.F.R. § 204.5(h)(3) that the Petitioner had met, and explained that, while the Petitioner had met the letter of those requirements, the evidence did not show sustained national or international acclaim. For instance, while the Petitioner's involvement in academic evaluations constitutes participation as a judge of the work of others, the Director concluded that the Petitioner had not shown that such activity "places [him] among the small percentage of top executives at the very top of their field." The Director also questioned the weight of letters that the Petitioner had submitted in support of the petition.

We agree with the general proposition that some of the initial criteria do not specifically contain a directly stated element of sustained national or international acclaim, while other criteria are more specifically worded.² Additionally, we agree that establishing eligibility requires more than the submission of favorable letters alone. The record must reflect the individual's sustained national or international acclaim to merit approval. Nevertheless, the Director's final merits determination overlooks more persuasive elements of the record. Illustrative examples from the record show that the Petitioner has established eligibility by a preponderance of the evidence.³

Dinero magazine named the Petitioner among [redacted] in 2003. This accolade, by itself, speaks more to the Petitioner's promise than to his achievements at that time, but later materials in the record have borne out early predictions of his potential. In more recent years, the Petitioner has held high-ranking executive positions at major oil and gas companies. Such positions are not *sufficient* to place him at the top of the field, but they are *consistent* with such stature, and other evidence indicates that the Petitioner has done more than simply hold high-ranking offices at major energy companies.

Using his high profile in [redacted] oil and gas industry, he has expanded and reshaped that industry, participating in negotiations that significantly increased exports. An advisor to [redacted] stated that the

¹ *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).

² For instance, the regulation at 8 C.F.R. § 204.5(h)(3)(ii) refers specifically to "membership in associations . . . which require outstanding achievements of their members, as judged by recognized national or international experts," whereas 8 C.F.R. § 204.5(h)(3)(iv) refers generally to "participation . . . as a judge of the work of others," without consideration as to the level of judging, the nature of the circumstances where the judging occurs, and whether such judging is a routine element of one's job duties.

³ That record encompasses several thousand pages of submissions, and we will not attempt a comprehensive review of all the evidence here.

Petitioner “led, structured, and negotiated the [redacted] contract between [redacted] and Venezuela, which is unique in Latin America.” A major shipment of a million barrels of crude oil to South Korea received coverage on a major television network, indicating that interest in this work had a reach beyond specialized media that focus solely on business transactions. The Petitioner’s participation in several industry conferences, both as a speaker and as a panel moderator, have given him the opportunity to disseminate his expertise throughout the industry, increasing its reach and influence compared to proprietary innovations and strategies that a company might keep confidential in order to gain commercial advantage.⁴ At an [redacted] 2021 forum on renewable energy, the Petitioner was one of six participants, alongside [redacted] then-current Minister of [redacted]. The participation of this top-level official is an indication of the high profile of the event.

As noted above, the Petitioner’s positions within various industry associations is not membership in such associations, but we agree with the Petitioner’s assertion on appeal that his membership in their boards of directors and other governing bodies is, itself, an indication of his stature in the field.

Review of the totality of the record supports the conclusion that the Petitioner has established eligibility by a preponderance of the evidence. Therefore, we will sustain the appeal.

ORDER: The appeal is sustained.

⁴ Participation in industry gatherings is not, in and of itself, demonstrative of sustained national or international acclaim. Rather, we acknowledge this activity within the broader context of converging lines of evidence that indicate the Petitioner’s stature in his field.