



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

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

In Re: 27573483

Date: AUG. 01, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a technical program manager in the field of data storage, 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.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for the classification by meeting at least three of the criteria under 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that 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.” It also sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *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 that he has expertise in the are of data storage technologies, and that he intends to continue to work in this area in the United States with his current employer. The record shows that he has several years of experience in this field, particularly in the role of a technical program manager with responsibility over sales, marketing, and technical functions for data storage products.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that they received a major, internationally recognized award, they must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As noted above, the Director concluded that the Petitioner meets two of the evidentiary criteria, relating to his authorship of scholarly articles and a leading or critical role for organizations with a distinguished reputation. Because he concluded that the Petitioner did not meet two additional criteria that he claimed, the Director concluded that the Petitioner did not meet the classification’s initial evidentiary requirements, and thus did not conduct a final merits determination.

On appeal, the Petitioner notes that although the Director stated in his request for evidence (RFE) that the Petitioner met a third criterion, pertaining to his participation as a judge of the work of others in his field, this criterion was not considered in the Director’s decision. The Petitioner also asserts that the letters from experts in his field sufficiently established that he has made original contributions of major significance to his field of expertise.

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner submitted several types of evidence in support of this criterion, including emailed invitations to review manuscripts submitted to journals and invitations to serve as an advisory board

member for start-up companies. However, the plain language of the regulation requires evidence of *participation* as a judge of the work of others, and evidence of an *invitation* to participate as a judge does not meet that requirement. In addition, the Petitioner has not established that even if he had accepted these invitations, they would qualify as judging the work of others in the same or allied field as his, data storage. For example, two of the invitations are from the journal *IEEE Potentials* and do not appear to be related to data storage technologies.

The Petitioner also submitted an email from the editor of *International Journal of Information Management*, thanking him for reviewing an article on data governance and security. Based on this evidence, the Petitioner has established that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

In his decision, the Director concluded that the Petitioner meets this criterion. Based upon the evidence of the Petitioner's authorship of articles published in scientific journals such as *Applied Physics Letters* and *Materials Science in Semiconductor Processing*, we agree.

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)

In order to meet this criterion, a petitioner must show that they played either a leading or critical role for an organization or establishment, or a division or department thereof. In addition, they must show that that organization, establishment, department, or division has or had a distinguished reputation. The Director concluded that the Petitioner meets this criterion, but did not provide an analysis of the evidence. We first note that the evidence includes information about the reputation of the Petitioner's current and former employers, [REDACTED] but not about the reputation of the department or divisions of those employers in which he worked. As this evidence shows that both of those companies have a distinguished reputation, we will therefore determine whether the Petitioner's roles are or were leading or critical for those establishments as a whole.

The evidence regarding the Petitioner's role at [REDACTED] consists of two letters from executives of the company, who discuss his role as OEM Segment Lead for [REDACTED]. Although this evidence is insufficient to establish that the Petitioner played a leading role for [REDACTED] in this position, it does show that he performed in a critical role for the company. In this role, the Petitioner was responsible for business management, product development, sales, and marketing of the company's enterprise solid state storage products, and was credited with "more than \$1B worth of design wins." The evidence demonstrates that as a key player for the company's data storage business, the Petitioner played a critical role for [REDACTED]. We therefore agree with the Director's conclusion that he meets this criterion.

B. Final Merits Determination

The Petitioner has established that he meets the initial evidence requirement for classification as an individual of extraordinary ability by meeting at least three of the evidentiary criteria, and has therefore overcome the basis for the denial of his petition. However, as noted above, meeting the initial evidence

requirement does not suffice to establish eligibility for this classification. On remand, the Director must conduct a final merits determination, weighing the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and 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 doing so, the Director should consider evidence submitted in support of all of the evidentiary criteria claimed by the Petitioner, including those not addressed in this decision. *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. When reviewing the letters written by experts in the field, the Director should consider the sufficiency of statements regarding contributions and innovations made by the Petitioner which are not otherwise supported in the record. The Director's review should also consider the evidence submitted in support of the Petitioner's appeal.

III. CONCLUSION

As the Petitioner has overcome the basis for the denial of his petition, we remand this matter for the Director to consider the totality of the record in a final merits determination.

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