U.S. Citizenship and Immigration Services

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

In Re: 28086854

Date: AUG. 31, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an executive with expertise in machine learning software, 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 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. 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 dismiss 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. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit 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 their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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. If those standards

do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we 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

In his native Israel, the Petitioner was an officer in the [redacted] Directorate of the Israel Defense Forces (IDF), leading its [redacted] Upon leaving the IDF in 2012, the Petitioner co-founded [redacted], later renamed [redacted] based in [redacted] Massachusetts, and he spent several years traveling between Israel and the United States. He most recently entered the United States in 2020 as an L-1 nonimmigrant intracompany transferee to serve as [redacted] vice president of research and development. The Petitioner claims to have "revolutionized the field of mineral discovery with his machine learning platform." Since June 2020, the Petitioner has served as the chief executive officer of [redacted], another [redacted] company he co-founded. Both [redacted] use machine learning to identify likely locations of mineral deposits for the mining industry.

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 initially claimed to have satisfied six of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner had not satisfied any of the claimed criteria. On appeal, the Petitioner asserts that he meets four criteria, pertaining to prizes or awards; judging the work of others; original contributions; and leading or critical roles. The Petitioner does not contest the Director's conclusions regarding authorship of scholarly articles and high remuneration, and therefore we consider the Petitioner to have waived appeal on those two criteria.[1]

Upon review of the record, we agree with the Director's conclusions, as discussed below.

[1] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived); *see also Sepulveda v. US. Att'y Gen.*, 401 F .3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner states that he received three awards for his military service in Israel.

The Petitioner documented his receipt of the 2005 Israel [redacted] from Israel's Defense Ministry. The Petitioner submitted printouts of news articles about the prize, but these articles are from other years and do not discuss the Petitioner's receipt of the prize. The Petitioner did not submit evidence from the Defense Ministry to explain why the Petitioner won the prize. That information would be relevant because the Petitioner must show that he received the prize for excellence in the field of endeavor that he intends to pursue in the United States.

The Petitioner submitted letters from former IDF officers, but these individuals did not discuss the Beneficiary's receipt of the Israel [redacted] or claim that they were in a position to know why the Petitioner received it. The letters focus, instead, in the Petitioner's work on defense strategy in the years after he received the award.

The Petitioner claimed that he "received two commendations from [the] United States Southern Command and Special Operations Command," but his introductory statement included no further information about the claimed commendations or the circumstances under which he received them. A letter from a special activities advisor at the U.S. Department of Defense indicates that the Petitioner participated in a collaboration between the U.S. and Israeli armed forces, but the letter does not mention any commendations.

The Petitioner also submitted photographs of what appear to be two challenge coins. The legend on one coin reads "United States / Special Operations Command"; the other reads "USSOCOM / J5 Strategy Plans and Policy." The photographed objects are not labeled as commendations and they do not show the Petitioner's name, and the Petitioner provided no other evidence relating to them. The photographs, by themselves, do not document the Petitioner's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor that he seeks to pursue in the United States.

In a request for evidence (RFE), the Director requested documentation to show the criteria for the claimed prizes and to explain why he received them. The Petitioner's response did not address this issue.

The Director denied the petition, stating that the Petitioner had not submitted requested evidence and information necessary to show that he satisfied this criterion. On appeal, the Petitioner asserts that he received the "extraordinarily prestigious" Israel [redacted] "[f]or his brand-new intelligence and analytics methodologies," and he repeats the claim that he received "commendations" from the two named U.S. military commands. But the Petitioner has not submitted any first-hand documentation from Israel's Defense Ministry to explain why he received the Israeli prize, or from the U.S. Department of Defense to show that he received the challenge coins as "commendations," and to explain the basis for those commendations.

The Petitioner has not documented his receipt of nationally or internationally recognized prizes or awards for excellence in his intended field of endeavor.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner stated that he "is responsible for bringing search and find machine learning methodologies to the mining industry. These patent-pending methods are fifty times more effective at mineral discovery than traditional means, having a major impact on the industry, as confirmed by field experts." A U.S. patent application filed in 2018 names the Petitioner as one of three inventors of '

The Petitioner's initial submission included three letters discussing his machine learning platform. One is from chief executive officer (CEO), a co-inventor of the technology. The Petitioner stated that the second letter is from "a global expert in the field of machine learning," and the third is from "a global expert in the field of mineral discovery." Both of those individuals – a professor of computer science at University and a professor of geology at College – were actively collaborating with the Petitioner at the time of filing, as technical advisors to The three submitted letters, therefore, all present the perspectives of individuals associated with

CEO stated:

> In business, one will come across many innovative ideas, but few are ever translated into real-world applicability. [The Petitioner] has accomplished this feat, introducing "Search & Find" methods to mining exploration.
>
> . . . Considering that each exploration attempt costs roughly two-to-five million dollars, this method holds the potential to save untold amounts of time and money in bottom line expenditures. Most impressively, [the Petitioner's] application of "Search & Find" machine learning methods is only in its initial stage, with untold practical applications still to be implemented. . . .
>
> . . . [The Petitioner's] expertise has positioned us as a forerunner in the mining exploration industry.

The Petitioner did not submit documentary evidence to establish position "as a forerunner in the mining exploration industry," or to show that practical application of the technology has borne out expectations of its "potential to save untold amounts of time and money."

The professor stated that the mining industry requires "[t]he ability to more accurately find metals such as copper, zinc, and cobalt, and to do so with precision," and that technology "is transforming the mining industry." She asserted: "in a recent blind test, [the Petitioner's methodology] performed 50 times more accurately than the current industry standard (for discovering economically viable deposits)." She provided no further details, and the record does not document this test.

The College professor stated that he has served "as a senior technical consultant for mineral discovery platform," but did not otherwise discuss that platform or its significant in the field. Instead, he devoted most of his letter to discussing a "postdoctoral research project" on which both he

and the Petitioner served "on the steering committee." The professor provided few additional details, stating that "the results of the research are currently subject to the terms of a confidentiality agreement." This confidentiality means that the research results have not yet been disseminated to the wider field. The Petitioner does not claim that, or explain how, his advisory role on a graduate student's research project amounted to an original contribution by the Petitioner.

Apart from statements from individuals employed by or working with [redacted] the only initial evidence that the Petitioner cited as evidence of the significance of his contributions is a blog post on *Medium*, entitled "[redacted]." The article discusses 12 "[redacted]." The article devotes one paragraph to [redacted] reproduced in full below:

> Born out of the Israeli high-tech community in 2013, [redacted] is a privately funded exploration company focused on identifying tier 1, world class assets. Based in [redacted] and a member of the MIT Computer Science and Artificial Intelligence Laboratory, [redacted] describe their approach as a Discovery Platform; an end-to-end discovery and resources definition package, which combines expert knowledge and data science. Known in the market for the applicability of their approach to identify large porphyry copper deposits, [redacted] emphasise that their platform is applicable for a range of mineral deposits at a variety of scales and in a range of jurisdictions. [redacted] also collaborate with a range of leading universities and research groups such as [redacted] College, [redacted]

The article does not comment on the significance of the Petitioner's platform. Rather, it paraphrases [redacted] own description and evaluation of the platform. The article does not indicate or establish that the Petitioner has made an original contribution of major significance. The article indicates that [redacted] is "[k]nown in the market for the applicability of their approach to identify large porphyry copper deposits," but "applicability" is not synonymous with major significance in the field. In the absence of further details and corroboration, this vague statement that [redacted] technology can be used to identify some copper deposits is not sufficient to establish the major significance of the Petitioner's original contributions.

The Petitioner asserted that the *Medium* article shows that "[redacted]." But while the article profiles several companies using machine learning, it does not indicate that rivals are "following [redacted] lead" or that [redacted] was the first company in its field to use machine learning in the manner described.

In the RFE, the Director requested "[o]bjective, documentary evidence of the significance of the beneficiary's contribution to the field" and "[o]bjective, documentary evidence that people throughout the field currently consider the beneficiary's work important." The Director also requested evidence of the Petitioner's "work being implemented by others."

In response to the RFE, the Petitioner stated that he "launched a machine learning revolution in the mining industry" "[w]ith [his] platform's debut in 2013." The Petitioner stated: "[redacted] . . formed a partnership with [redacted] to explore for copper deposits in several highly

prospective areas of northern Chile. This shows that [the Petitioner] made an original contribution to the industry that was adopted by the industry leader in gold and copper mining."

To support this claim, the Petitioner submitted a 2015 press release from [redacted] which uses [redacted] former name and reads, in part:

> Thus we have formed a strategic partnership with [redacted] to explore for copper deposits in a number of highly prospective areas of northern Chile.
>
> . . . [redacted] is pioneering a new, multidisciplinary approach to exploration. The company has built a world-class team of experts who have a proven track record of copper discoveries and expertise in machine learning and big data analysis, among other disciplines. Their internal R&D lab uses proprietary technology to develop new strategies and tools designed to increase the probability of discovery, faster than conventional approaches and at lower costs. They combine world-class technical expertise with cutting-edge computer science, and they bring in learning from other industries to develop non-traditional approaches.

The quoted language is complimentary toward [redacted] staff and technology, but there is no recognizable reference specifically to technology that the Petitioner developed. The patent application submitted with the petition dates from July 2018, more than three years after [redacted] press release, and therefore it is not evident that the vague phrase "cutting-edge computer science" refers to the technology described in the patent application.

The press release states that [redacted] technology represents an improvement over "conventional approaches," but does not establish that this improvement has major significance in the field. We note that the press release appears to announce the *beginning* of the partnership between [redacted] and does not indicate that [redacted] had yet implemented [redacted] technology or that the technology had already improved yields. We also note that the partnership with [redacted] began nearly five years before the Petitioner filed the petition, but his initial filing did not mention this partnership at all. The record is, therefore, silent as to the results of the collaboration.

[redacted] general mention of [redacted] technology in its own press release does not show that the Petitioner's machine learning contributions have "provoked widespread commentary" in the field. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. The [redacted] press release does not suffice to establish the major significance of the Petitioner's original contribution.

In his RFE response, the Petitioner cited "his current endeavor as a chief executive at [redacted]," but he did not establish [redacted] until June 2020, three months after he filed the petition. The initial petition did not indicate that the Petitioner sought to establish such a company. Rather, the initial filing was predicated on his continued involvement with [redacted] which employed him at the time of filing. A petitioner must meet all eligibility requirements at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). If the Petitioner was not already eligible at the time of filing, then he cannot become qualified later under a new set of facts while retaining the priority date of the same petition. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In the denial notice, the Director acknowledged the Petitioner's patent application, but concluded that the Petitioner had not shown "that the patent has been licensed and/or resulted in significant commercial sales, or had an impact on researchers or individuals in the field." The Director stated that the submitted letters do not establish the major significance of the Petitioner's contributions. The Director observed that [redacted] did not exist until after the petition's filing date, and that [redacted] press release "does not discuss the petitioner or his contributions."

On appeal, the Petitioner revisits prior claims, already addressed above. The Petitioner also states:

> [The Petitioner] is a top-tier researcher in the field of business who has developed and deployed new Search & Find methodologies to discover and extract military intelligence, as well as to discover minerals. . . . His methodology, which resulted in significant classified discoveries by the Israel Defense Forces (IDF), earned [the Petitioner] the Israel [redacted]

We have already discussed the award. Before the appeal, the Petitioner had not claimed that his military work included contributions of major significance. A retired Israeli military officer stated that the Petitioner had served on a "multidisciplinary team of senior IDF operational officers" whose work included "the application of . . . Intelligence 'Search-and-Find' methodologies," but he did not elaborate, stating only that "a majority of this taskforce's work remains classified," and thus unavailable for wider dissemination. He did not state or imply that the Petitioner's work with "'Search-and-Find' methodologies" led to his receipt of the Israel [redacted] Rather, he stated that the "multidisciplinary team" was active "[d]uring the years 2008-2009," several years after the Petitioner received the Israel [redacted] in 2005. As discussed above, the Petitioner has not documented the reason why he received that award.

The Petitioner, on appeal, has not shown that the Director erred in concluding that the Petitioner has not established the major significance of the original contribution identified in the petition.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining two criteria, relating to leading or critical roles and judging, cannot change the outcome of this appeal. Therefore, we reserve those issues.[2]

## 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 lesser 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 conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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. U.S. Citizenship and Immigration Services 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 recognition of his work that indicates sustained national or international acclaim or demonstrates 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 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).

The Petitioner served on a decorated team while working for IDF, but the record does not show that he earned national or international acclaim as a result. He submitted publicity materials about the Israel [redacted] but has not shown that he was publicly *named* as a winner. Whatever valid reasons there may have been for not publicizing the Petitioner's name, the Petitioner has not established that his receipt of the prize contributed to, or resulted in, national or international acclaim. Also, he has not shown the extent to which the prize relates to the field of endeavor in which he claims extraordinary ability. Some of the Petitioner's military service involved machine learning software that could be similar to what he now applies to the mining industry, but the Petitioner has not established a more direct connection between his military and civilian work.

Praise in the record for the Petitioner's machine learning platform has come from individuals connected with [redacted] and entities that were funding or doing business with [redacted] It is generally expected that one whose accomplishments have garnered sustained national or international acclaim would have received recognition for his or her accomplishments well beyond the circle of his or her personal and professional acquaintances. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). Published material about the Petitioner's platform consists largely of promotional press releases from entities that have business relationships with [redacted] and a blog post on *Medium*. The Petitioner's name does not appear in most of these published pieces, which limits the individual acclaim that could result from them. Discussion of the Petitioner's machine learning platform centers on tests described in general terms and expectations regarding the platform's anticipated future performance, rather than evidence that commercial use of the system has already yielded results that have had a significant impact on the mining industry.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

**ORDER:** The appeal is dismissed.