



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

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

In Re: 28980948

Date: DEC. 7, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a project manager in augmented reality and virtual reality, 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 Nebraska Service Center denied the petition, concluding the Petitioner did not satisfy at least three of the initial evidentiary criteria. 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 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 sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories 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

Because the Petitioner has not indicated or established 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 determined the Petitioner did not fulfill any of them. On appeal, the Petitioner maintains he meets four evidentiary categories.

*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 claims eligibility for this criterion based on his receipt of the Certificate of Merit from the [REDACTED]. USCIS determines if the person was the recipient of prizes or awards.<sup>1</sup> The description of this type of evidence in the regulation indicates that the focus should be on the person's receipt of the awards or prizes, as opposed to the employer's receipt of the awards or prizes.<sup>2</sup>

USCIS then determines whether the award is a lesser nationally or internationally recognized prize or award, which the person received for excellence in the field of endeavor.<sup>3</sup> As indicated by the plain language of the regulation, this criterion does not require an award or prize to have the same level of recognition and prestige associated with the Nobel Prize or another award that would qualify as a one-time achievement.<sup>4</sup>

The Petitioner initially submitted a certificate indicating his receipt of the award “for his great personal contribution to the development of environmental management, environmental protection and active participation in the preparations for the Year of Ecology in Russia.” In response to the Director's request for evidence (RFE), the Petitioner provided a letter from K-M-S-, director of the [REDACTED] [REDACTED] who stated:

<sup>1</sup> *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policymanual>

<sup>2</sup> *Id.*

<sup>3</sup> *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

<sup>4</sup> *Id.*

This award is given to civil servants of the [redacted] federal services, and federal agencies under the Ministry's jurisdiction, their territorial bodies, employees of subordinate organizations, and other individuals for their personal contribution to the implementation of the state policy in the field of studying, using, reproducing, and protecting natural resources.

The criteria for evaluation for receiving (the Honorary Certificate) are the project's uniqueness, its potential for subsequent use, its demonstration of responsible nature management, and its scalability. All of this is stated in the application, which is addressed to the Minister. Heads of subordinate organizations are responsible for the information provided in accordance with the legislation of the Russian Federation. In case of the detection of false information, the award is revoked, and the applicant is held responsible for the inaccurate information provided, up to criminal liability.

The Petitioner did not establish how the letter reflects the national or international recognition for excellence in the field for the Certificate of Merit. The letter does not discuss the field's view of the Certificate of Merit or explain why the award is considered to be nationally or internationally recognized for excellence. In this case, although the letter provides some background information, such as the evaluating criteria, the Petitioner did not demonstrate the recognition of the award beyond the [redacted]

For the reasons discussed above, the Petitioner did not show he meets this criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*  
8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner contends eligibility for this criterion based on his membership with the All-Russian Society for the Protection of Nature (ARSPN). USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field.<sup>5</sup> The petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.<sup>6</sup>

The Petitioner initially submitted a membership confirmation letter from ARSPN and a recommendation letter from T-T-U-, member of ARSPN, who described several of the Petitioner's professional accomplishments but made no mention of the organization's membership requirements or judging body. In response to the Director's RFE, the Petitioner provided another letter from T-T-U- who stated:

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<sup>5</sup> See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

<sup>6</sup> *Id.*

Persons who make obvious contribution to the development and popularization of the protection of nature in the territory of the Russian Federation can become members of our Society. Board of the Society and the Chairman make decision on admission to members of Society on the basis of application and delivery of documents that confirm the professional activities of the applicant and his/her contribution to the development and popularization of the protection of nature in the territory of the Russian Federation.

The Petitioner did not demonstrate how the letter shows that membership with ARSPN requires outstanding achievements and recognized national or international experts determine membership. In fact, based on the letter, membership requires an “obvious contribution.” The letter does not further elaborate and explain what constitutes an “obvious contribution” and how that is tantamount to an “outstanding achievement.” Moreover, while the letter indicates that the board and chairman make the decision on admission, the letter does not show whether they are considered to be recognized national or international experts.

Accordingly, the Petitioner did not demonstrate he fulfills this criterion.

### III. CONCLUSION

The Petitioner did not establish he satisfies the criteria relating to awards and memberships. Although the Petitioner also claims eligibility for the published material under 8 C.F.R. § 204.5(h)(3)(iii) and original contributions under 8 C.F.R. § 204.5(h)(3)(v), we need not reach these additional grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.<sup>7</sup>

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability,”); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is “extremely restrictive by design,”); *Hamal v. Dep’t of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at \*5 (D.D.C. June 8, 2021), *aff’d*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are “reserved for a very small percentage of prospective immigrants”). *See also Hamal v. Dep’t of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at \*1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that “[c]ourts have found that even highly accomplished individuals fail to win this designation”)); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that “arguably one of the most famous baseball players in Korean history” did not qualify for visa as a baseball

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<sup>7</sup> *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).

coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or 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 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). The record does not contain sufficient evidence establishing him 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.