



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

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

In Re: 23069520

Date: JAN. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and business development executive, 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 did not meet the initial evidence requirement for this classification through evidence of either a one-time achievement or that he meets three of the alternative evidentiary criteria under 8 C.F.R. § 204.5(h)(3). In addition, the Director determined that the Petitioner did not establish that his entry will substantially benefit prospectively the United States. The matter is now before us on appeal.

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 their 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 they must provide sufficient 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 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 determined that the Petitioner fulfilled only one of the initial evidentiary criteria, published material about him at 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner maintains that he also meets five additional evidentiary criteria, which will be discussed below.

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)

To meet this criterion, the Petitioner must demonstrate his prizes or awards are nationally or internationally recognized for excellence in the field of endeavor.¹ Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field including, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.²

Here, the Petitioner submitted documentation indicating that he was among [redacted] professionals” who received a “[redacted] Award” (2021) from “[redacted]”³

¹ *See generally* 6 USCIS Policy Manual F.2, Appendices, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>.

² *Id.*

³ The Petitioner presented a [redacted] 2021 article, entitled “Publisher honors [redacted] immigrants in the community” posted at [www.\[redacted\].com](http://www.[redacted].com). This articles states: [redacted]

Promotional material offered by the Petitioner for this award indicates that “[t]he creation of the [redacted] [redacted] award has several meanings, but the key point is to highlight stories with ethical, moral and social values from people who were hitherto little known and who now have the chance to make public in the globalized publishing universe, in which we specialize.”

While the Petitioner provided promotional information about his award from [redacted] and coverage in several newspapers serving the [redacted] community in the United States⁴, this documentation does not indicate the national or international significance of his “[redacted] Award” award in the field of endeavor.⁵ The record does not include evidence demonstrating that the Petitioner’s award was recognized by the field in general rather than mainly limited to the readership of a few [redacted] newspapers published in the United States. Nor does the evidence show that the limited media coverage relating to the Petitioner’s award rises to the level of national or international recognition. Without further evidence regarding its national or international significance in his field, the Petitioner has not demonstrated that his “[redacted] Award” award is a nationally or internationally recognized award for excellence in the field.

For the above reasons, we agree with the Director that the Petitioner has not established he meets this regulatory 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 submitted his “membership diploma” from the [redacted] Institute of Entrepreneurship, Innovation and Sustainable Development – [redacted]. He also presented information describing the organization’s goals, mission, and target membership. This documentation does not indicate that the selection process for [redacted] requires outstanding achievements or that admission to membership is judged by recognized national or international experts.

With the appeal, the Petitioner submits a declaration from the [redacted] Institute of Corporate Governance stating that he has been a member since [redacted] 2022, but this membership post-dates the filing of the petition. Eligibility must be demonstrated at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

Having reviewed the evidence submitted under this criterion, we agree with the Director and conclude that the Petitioner does not meet this criterion.

[redacted] an American company founded in 2017 by [redacted] living in the United States, to represent, promote, edit and distribute books by [redacted] writers in the United States. The objective of the award is to highlight the biography of these immigrants.”

⁴ For example, the Petitioner submitted articles in [redacted], [redacted], and [redacted]. The record also includes an article in [redacted] (a news portal serving the city of [redacted] in southeast [redacted]), but this article received only “11 views” according to the webpage presented by the Petitioner.

⁵ Consideration for this award appears limited to [redacted] men working in the United States. *Cf.*, *Strategati, LLC v Sessions*, 2019 WL 2330181 (S.D. CA 2019) (upholding finding that “Woman of the Year” award eliminated men from consideration and thus did not “measure the petitioner’s standing or selection from the whole field.”)

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 specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner contends that he “has judged the work of other professionals in the field while conducting his business affairs.” He argues that “[w]hile managing strategies, functions, processes, activities, staff, and strategic alliances, [his] judgments about the work of others have produced substantial accomplishments for his business ventures.” The Petitioner further asserts that he “must judge the works of others in order to coherently and effectively manage the myriad facets of the large-scale real estate development projects.”

In his appeal brief, the Petitioner does not point to specific evidence in the record demonstrating that he meets this criterion. To fulfill this criterion, the evidence must show that an individual “actually participated in the judging of the work of others in the same or allied field of specialization.”⁶ Here, the Petitioner has not offered evidence to demonstrate that he has participated, either individually or on a panel, as a judge of the work of others. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified in the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Nor has the Petitioner shown that performing managerial responsibilities as part of his business affairs constitutes his participation, either individually or on a panel, as a judge of the work of others in the field. Accordingly, we agree with the Director that the Petitioner has not demonstrated 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 served in a leading or critical role for an organization or establishment, and that the organization or establishment has a distinguished reputation.⁷ The Director determined that the Petitioner had performed in a leading role for both [redacted] and [redacted] but that his evidence was insufficient to demonstrate that either company has a distinguished reputation.⁸

The Petitioner maintains on appeal that both “companies enjoy a distinguished reputation within their field.” He points to a [redacted] 2017 press release he posted through AB Newswire (a paid press release distribution service) entitled “[redacted]” [redacted].” In addition, the Petitioner provided a [redacted] 2020 article in [redacted] (a newspaper serving the [redacted] community in the United States) entitled “[redacted] [the Petitioner].” The record also includes articles entitled “[redacted] [the Petitioner]” (*Forbes.com*), “[redacted] [the Petitioner] [redacted] [redacted]” (*T2conline.com*), “[The Petitioner] [redacted] [redacted]” (*NYundressed.com*), “[The Petitioner] [redacted] [redacted]” [redacted].

⁶ See generally 6 USCIS Policy Manual, Appendices, *supra*, at F.2.

⁷ “Merriam-Webster’s online dictionary defines distinguished as marked by eminence, distinction, or excellence.” *Id.*

⁸ The record includes letters of support [redacted] and [redacted] discussing the Petitioner’s role for [redacted] and [redacted] [redacted] but these individuals do not elaborate on the reputation of the Petitioner’s two companies or identify specific examples of evidence indicating that they have garnered a distinguished reputation.

[redacted]” (*Impactwealth.com*), “[The Petitioner] [redacted]” (*FSHNmagazine.com*), and “[redacted]” (*T2conline.com*).” While these articles discuss the Petitioner and his [redacted] property, they do not mention [redacted] and [redacted]. Accordingly, the aforementioned articles do not demonstrate that either company has a distinguished reputation.

The Petitioner also submitted an article entitled “[redacted]” ([redacted] *Business Journal*). This article states that “[redacted] currently owns the three land parcels that [redacted] would be built on, according to county records. The [redacted] is tied to a [redacted]-based holding company that acquired the three properties” This limited information, however, is insufficient to show that [redacted] Art Services, [redacted] enjoys a distinguished reputation.

With the appeal, the Petitioner presents a [redacted] 2022 *PRNewswire* press release entitled “[redacted] [the Petitioner] [redacted]” He also provides a [redacted] 2022 article in [redacted] *Business Journal* entitled “[redacted]” These two articles post-date the filing of the petition. Eligibility must be demonstrated at the time of filing. See 8 C.F.R. § 103.2(b)(1).

For the above reasons, we agree with the Director that the Petitioner has not established he meets this criterion.

III. CONCLUSION

The Petitioner did not demonstrate that he satisfies the criteria relating to awards, membership, judging, or leading or critical role. Although the Petitioner claims eligibility for an additional criterion on appeal, relating to original contributions of major significance in the field at 8 C.F.R. § 204.5(h)(3)(v), we need not reach this additional ground 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, or render a determination on the issue of whether the Petitioner’s entry will substantially benefit prospectively the United States. Accordingly, we reserve these issues.⁹

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. 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. *Price*, 20 I&N Dec. at 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

⁹ 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, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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) (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 coach). 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). 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.