



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

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

In Re: 26876655

Date: JUL. 12, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the pharmaceutical industry, seeks classification as an individual of extraordinary ability in business. *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 satisfied the initial evidence requirements for this classification by demonstrating his receipt of a major, internationally recognized award or by submitting evidence to satisfy at least three of the ten evidentiary criteria at 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 dismiss the appeal.

## I. LAW

Under section 203(b)(1)(A) of the Act, an individual is eligible for the extraordinary ability classification if: (i) they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; (ii) they seek to enter the United States to continue work in the area of extraordinary ability; and (iii) their 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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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

The Petitioner has a bachelor of commerce degree and approximately 20 years of work experience as an accountant, auditor, financial controller, and entrepreneur. At the time of filing, he indicated that he was employed as a senior accounting manager for [REDACTED] a pharmaceutical products distributor, in H-1B nonimmigrant status. In addition, the record reflects that the Petitioner is the founder/president of two U.S. companies operating in the pharmaceutical industry. The Petitioner indicates that he intends to continue working in the United States as an entrepreneur in this industry.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must show that he satisfies at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed that he could meet four of the criteria.

The Director determined that the Petitioner met the criteria at 8 C.F.R. § 204.5(h)(3)(viii) and (ix) based on evidence that he performed in a leading or critical role for an organization that has a distinguished reputation, and evidence that he had commanded a high salary in relation to others in the field. The Director concluded that the record did not support the Petitioner's claims that he could meet the criteria at 8 C.F.R. § 204.5(h)(3)(ii), which requires evidence of his membership in associations which require outstanding achievements, and 8 C.F.R. § 204.5(h)(3)(v), which requires evidence of original contributions of major significance in the field. Accordingly, the Director determined that the Petitioner did not satisfy the initial evidence requirements for this classification.

On appeal,<sup>1</sup> the Petitioner asserts that the Director erroneously determined that the previously submitted evidence was insufficient to satisfy the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). The Petitioner does not address or dispute the Director's finding that he had not established eligibility under the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v). As the Petitioner provides no evidence or arguments addressing this criterion, we consider this issue to be waived and will not further discuss it. *See Matter of R-A-M-* 25 l&N Dec. 657. 658 n.2 (BIA 2012) (stating that when a

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<sup>1</sup> The Petitioner's appeal consists of the Form I-290B, Notice of Appeal or Motion, a cover letter, a copy of the Director's decision, and a brief statement identifying the basis for an appeal. The Petitioner indicated on the Form I-290B that he would submit a brief and/or additional evidence to this office within 30 calendar days of filing the appeal. The record does not reflect the Petitioner's subsequent submission of a brief or evidence in support of this appeal filed on February 13, 2023.

filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005) (citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998)).

After reviewing all the evidence in the record, we conclude the Petitioner has not satisfied at least three regulatory criteria and therefore does not meet the initial evidence requirements for classification as an individual of extraordinary ability.

*Documentation of the individual'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)

To demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership, and that such achievements are judged by recognized experts in the field. Membership requirements based on employment in a certain occupation, minimum education or experience, or payment of dues or fees do not satisfy this criterion as such requirements do not constitute outstanding achievements. *See generally 6 USCIS Policy Manual F.2(B)(2) Appendix*, <https://www.uscis.gov/policy-manual>.

On appeal, the Petitioner maintains that he submitted sufficient evidence to establish that his membership in the [redacted] chapter of The Entrepreneurs' Organization (EO) satisfies he requirements of this criterion.<sup>2</sup>

The Petitioner's original submission included evidence of his membership in EO, copies of e-mails he exchanged with EO in connection with his application, and information from the association's website which explains its purpose and mission, the membership application process, and the minimum qualifications required for membership. In response to a request for evidence (RFE), the Petitioner provided a letter from [redacted] an attorney and managing partner who serves as membership chair for the [redacted] EO chapter. [redacted] indicates that she interviewed the Petitioner as part of his membership application process.

EO is described as "a global, peer-to-peer network of more than 14,000+ influential business owners." To qualify for membership, a prospective member must apply with evidence that (1) they are a founder, co-founder, owner or controlling shareholder of a company, and (2) their company has gross income of more than US\$1 million annually. Prospective members that own venture backed companies must provided evidence of funding (\$2 million in privately raised funds or \$5 million in publicly raised funds) and evidence that they employ at least 10 full-time workers. Applicants who meet the membership requirements are interviewed before a decision is made on their applications.

In her letter, [redacted] asserts that, based on her position as membership chair of the [redacted] EO chapter, she "can attest that the membership qualification requires aspiring members to have extraordinary ability as business owners, as demonstrated by the qualifications and the invitation

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<sup>2</sup> The Petitioner does not pursue his previous claim that his position as a voluntary board member for [redacted] a community development fund and business accelerator, is a qualifying membership under 8 C.F.R. § 204.5(h)(3)(ii).

process that follows the application.” She emphasizes that “EO does not allow membership to every person running a company or corporation,” and states the minimum revenue requirements provided on the EO website. [redacted] also highlights the required interview, noting that it allows the opportunity to “explore the applicants’ interest in joining EO” and to ensure an aspiring member would be “a good fit for the organization.” She notes that “[o]nly after the interview will the local EO chapter determine whether to accept and invite the applicant into EO as an official member.” Finally, [redacted] [redacted] states that the Petitioner was invited to join because he met the “extraordinary requirements” and “demonstrated a commitment to the mission of EO.”

The Director acknowledged and discussed the documentation addressed above but determined that it was insufficient to establish that EO requires outstanding achievements as judged by recognized national or international experts in the field as required by the plain language of the regulation. The Director emphasized the lack of verifiable evidence such as the association’s bylaws or similar governing documents. On appeal, the Petitioner maintains that he submitted sufficient verifiable evidence to establish that his membership in EO satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner has correctly asserted that admission as a member in EO is not based on achieving a certain level of education, a minimum amount of professional experience, employment in a specific occupation or payment of dues alone. Although memberships based solely on these factors will generally not meet the requirements of 8 C.F.R. § 204.5(h)(3)(ii), it does not automatically follow that associations with a higher bar for admission necessarily satisfy all elements of this criterion.

Here, the record reflects that any individual who is a founder, owner or controlling shareholder of a company with gross annual income of \$1 million meets the minimum requirements for membership in EO. While this revenue requirement indicates a certain level of achievement and limits the number of business owners who are eligible for consideration, there is no indication that it is an achievement that is “judged by recognized national or international experts” as part of the decision-making process. Further, [redacted] indicated that the interview process ensures that an aspiring member is a “good fit” for the association, but the record does not establish what factors are considered other than demonstrating a dedication to the association’s mission, which appears unrelated to a determination that an individual has “outstanding achievements” in their discipline or field. While the record reflects that the “local chapter” makes membership decisions, there is no description of the decision-making process. The information provided on the EO website does not identify what other factors may be considered during that process and does not indicate who ultimately makes membership decisions and whether those individuals are recognized national or international experts in the business field.

Accordingly, we agree that there is insufficient verifiable evidence regarding EO’s membership requirements and admission processes to demonstrate that the Petitioner’s membership in this association satisfies the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

*Evidence that the individual 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 meet the requirements of this criterion, a petitioner must demonstrate that (1) they performed in a leading or critical role for an organization, establishment, or a division or department of an

organization or establishment, and (2) the organization or establishment, or the relevant department or division, has a distinguished reputation. The Director determined, without discussion of the evidence, that the Petitioner satisfied this criterion based on the documentation included with his initial submission. We conclude that the record contains insufficient evidence to support the Director's conclusion.

In a cover letter that accompanied the initial submission, the Petitioner stated that he served in a critical role for both [redacted]. The Petitioner submitted letters from persons able to attest to his performance in a critical role with both companies. However, the record does not contain evidence demonstrating that either of these organizations has a distinguished reputation, such as media reports or rankings, industry awards or any other relevant independent evidence that would establish the companies' reputation or standing in the field or industry. The Director erred by making a favorable determination without such evidence. Accordingly, we withdraw the Director's determination that the Petitioner satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

*Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix)

The Director determined that the Petitioner submitted sufficient evidence to satisfy this criterion. The Petitioner provided copies of his IRS Forms W-2 for 2016 and 2017, along with comparative salary data sufficient to demonstrate that his salary was high in relation to other similarly employed workers in his field. Accordingly, this criterion has been met.

However, based on the foregoing discussion of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), the Petitioner has satisfied only one of the ten criteria and therefore has not met the initial evidence requirements for this classification.

### III. CONCLUSION

As discussed, 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 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.

The Petitioner seeks a highly restrictive visa classification. USCIS 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 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 that 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).

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.