



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

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

In Re: 26387387

Date: JUNE 8, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marine biologist, seeks classification as an individual of extraordinary ability in the sciences. 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 the Petitioner did not establish that he satisfied the initial evidentiary requirements through evidence of a one-time achievement or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). 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 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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 international 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 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).¹

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).²

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 acknowledged that the Petitioner met the criteria relating to judging and authorship, but determined that he did not satisfy the awards, membership, published material, original contributions, artistic display, leading or critical role, and salary criteria. After reviewing all the evidence, we conclude the Petitioner has not shown that he satisfies the requirements of at least three criteria.

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.³ 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.⁴

Here, the Petitioner provided a March 2017 letter from the “Manager of [redacted] at the [redacted] in Ecuador stating that he “was approved as a [redacted] Researcher Category 3, on July 25, 2014, by the Executive Committee of Scholarships of the [redacted]. . . to develop his research project, entitled ‘Ecosystematic characterization of the benthic community in the [redacted] and in

¹ *See generally* 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual> (indicating that USCIS officers should first “[a]ssess whether evidence meets regulatory criteria: Determine, by a preponderance of the evidence, which evidence submitted by a petitioner objectively meets the parameters of the regulatory description that applies to that type of evidence”).

² *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (stating that in the final merits determination, USCIS officers should evaluate all the evidence together when considering the petition in its entirety to determine if a petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

³ *See generally* 6 *USCIS Policy Manual* F.2, *Appendices*, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>.

⁴ *Id.*

sandy beaches of the surrounding oceanic coast,' which was developed from September 10, 2014 to September 9, 2015, satisfactorily fulfilling all the objectives of the project.” The Petitioner also submitted information about the [redacted] but this documentation does not demonstrate the significance of his specific “Researcher Category 3” fellowship in the field of endeavor or show that his particular fellowship was recognized by the field in general rather than mainly limited to those associated with the [redacted]. In addition, the Petitioner submitted a June 2015 article in *El Telegrafo*, entitled “[redacted]” [redacted] This article does not mention the Petitioner or demonstrate that his 2014 fellowship has received media coverage or attention that rises to the level of national or international recognition.⁵ Without further evidence regarding its national or international significance in his field, the Petitioner has not demonstrated that his [redacted] fellowship is a nationally or internationally recognized prize or award for excellence in the field. For these reasons, the Petitioner has not established that 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 documentation indicating that he is a member of the International Biometric Society (IBS) and that he fulfilled the accreditation requirements of the [redacted] as a foreign researcher working in Ecuador. He also presented information about the IBS’ regular member “Qualifications” which stated that “[r]egular members are those individuals who are interested in the scope and purpose of the society.” In addition, the Petitioner provided [redacted] “Requirements for registration” which indicated that individuals “must have at least two (2) years of experience in research and/or technological development (R&D) activities; which must be endorsed through the presentation of certificates from the institution or institutions responsible for the R&D process, relevant works and/or indexed articles we will also be considered as endorsement.” The Petitioner has not demonstrated that the aforementioned IBS and [redacted] criteria (including interest in a society, two years of research experience, or authorship of papers) rise to the level of “outstanding” achievements. Without evidence indicating that receiving IBS membership or [redacted] accreditation requires outstanding achievements and that admission to their membership is judged by recognized national or international experts, Petitioner has not established that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner submitted a 2013 article in *El Serviola* (a publication of the Universidad [redacted] [redacted] entitled “[redacted]” This article is about a research project and only briefly mentions the Petitioner as the lead researcher. This regulatory criterion requires “published material about the alien.” Articles that are not about him do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008)

⁵ Nor did the Petitioner present circulation data for *El Telegrafo*.

(upholding a finding that articles about a show are not about the actor). Further, while the Petitioner asserts on appeal that *El Serviola* “is a major trade publication,” he did not offer comparative circulation statistics or other evidence to corroborate his claim.⁶ Accordingly, the Petitioner has not established that he meets this criterion.

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)

As evidence under this criterion, the Petitioner submitted his research articles, citation evidence for his published work, and letters of support from colleagues in the field. The Director considered this documentation, but found that it was not sufficient to demonstrate that the Petitioner’s work constituted original contributions of major significance in the field. For the reasons discussed below, we agree with that determination.

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field.⁷ For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

In his appeal brief, the Petitioner asserts that he provided letters of support from several experts “in the field of marine biology, which document the major significance of [his] work.”⁸ These references discussed his research relating to the ecology of sandy beaches, but their statements do not demonstrate its major significance in the field. As discussed below, the reference letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to show the nature of specific “original contributions” that the Petitioner has made to the field that have been considered to be of major significance.

Dr. A-M-, the Petitioner’s former academic advisor at S-B- University, indicated that the Petitioner’s research articles about the influence of rivers on sandy beaches have “been used by other Latin American researchers” in their published work. For instance, Dr. A-M- stated that the Petitioner’s findings relating to the beach clam *Tivela mactroides* allowed Dr. A-T- and his “collaborators to establish a theory that explains the mortality events of this organism.” The record, however, does not include sufficient information and evidence demonstrating that the Petitioner’s work has affected the field in a substantial way beyond Dr. A-T-’s research team or otherwise constitutes a contribution of major significance in the field.

In addition, Dr. O-D-, a professor at U-R-, stated that his research team “used the results reported in the doctoral thesis of [the Petitioner].” Dr. O-D- further noted that the Petitioner’s work “contributed to understanding the patterns of diversity and species richness at a biogeographic spatial scale of benthic invertebrates associated with South American sandy beaches,” but he did not offer specific

⁶ See 6 USCIS Policy Manual, Appendices, supra, at F.2 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

⁷ See 6 USCIS Policy Manual, Appendices, supra, at F.2.

⁸ While we discuss a sampling of the letters of support, we have reviewed and considered each one.

examples indicating that the Petitioner's findings have influenced the field of marine biology to the extent that they are of major significance in his field.

Regarding the Petitioner's work involving "ecological processes in the marine-coastal zone," Dr. I-O, an associate researcher at F-U-R-G-, asserted that the Petitioner's scientific papers have contributed "to the understanding of the functioning of coastal marine ecosystems and sandy beaches, providing solid evidence for the proposal of ecological models that explain the patterns of spatiotemporal variations and how these can be modulated by fluvial nutrient inputs from the rivers that flow into them." We recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, but not every finding that broadens knowledge in a particular field constitutes a scientific contribution of major significance in that field. Here, the Petitioner has not shown that his research findings have been widely utilized or otherwise represent an original contribution of major significance in the field.

As another form of evidence under this criterion, the Petitioner's response to the Director's request for evidence (RFE) included June 2022 information from ResearchGate.net indicating that his body of published work had received 70 cumulative citations.⁹ The Petitioner, however, did not identify how many were self-citations or independent citations. In addition, he did not establish how many of the citations occurred in papers published prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1). Nor has the Petitioner compared the number of his authored works and their citation rate to other researchers in his field to differentiate his work as majorly significant.

Notwithstanding the above, this criterion requires the Petitioner to establish that he has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify his original contributions and explain why they are of major significance in the field. Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or written work. However, the Petitioner has not sufficiently shown that the number of citations for any of his published articles is commensurate with contributions of major significance in the field. Here, the Petitioner did not articulate the significance or relevance of the citations to his articles. For example, he did not demonstrate that these citations are unusually high in his field or how they compare to other articles that the field views as having been majorly significant.

The information from ResearchGate.net also indicated that Petitioner's articles had "5,778 Reads." The Petitioner, however, has not shown that this online readership statistic indicates a contribution of major significance in his field. The appropriate analysis is to determine whether a petitioner has shown that his individual articles, factoring in citations and other corroborating evidence, have been considered important at a level consistent with original contributions of major significance in the field. Here, the Petitioner has not presented sufficient documentation to demonstrate that any of his published findings have risen to the level of a contribution of major significance in the field of marine biology.

⁹ The Petitioner has not demonstrated that his cumulative number of citations represents contributions of major significance in the field. Moreover, aggregate citation figures tend to reflect a petitioner's overall publication record rather than identifying which published research, if any, the field considers to be majorly significant. Here, the Petitioner does not explain or specify how the number of citations to his individual or particular articles resulted in original contributions of major significance in the field.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.
8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner contends that presentations of his work at scientific conferences and seminars are comparable evidence for this criterion. The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are able to show that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation. A petitioner should demonstrate that the standards described in the regulations do not readily apply to their occupation as well as that the evidence they have provided is “truly comparable” to that required under 8 C.F.R. § 204.5(h)(3).¹⁰

The Petitioner asserts that he “is not within an occupation that readily provides him with the opportunity to display his work at artistic exhibitions or showcases. The work of a marine biologist is scientific in nature . . . and requires display at scientific conferences and seminars. The Petitioner cannot display his work at artistic exhibitions or showcases because his work is not artistic in nature.” He further contends that “the only difference between the Petitioner's display of work and that of an artist is the venue used to present the work. As such, [the Petitioner's] evidence is comparable evidence to that required by this criterion.”

The Petitioner, however, has not demonstrated that presentations at scientific conferences and seminars are truly comparable to the display criterion at 8 C.F.R. § 204.5(h)(3)(vii). Rather, his scientific presentations are based on authored scholarly articles and therefore relevant for consideration as comparable evidence under the scholarly articles criterion, a criterion the Petitioner has already satisfied. Here, we do not consider scientific presentations to be truly comparable under the display criterion as the characteristics and nature of his scientific presentations are more akin to the scholarly articles criterion. The Petitioner therefore has not established that he qualifies for this criterion through the submission of comparable evidence.

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 played a leading or critical role for an organization or establishment, and that that organization or establishment has a distinguished reputation.¹¹

The Petitioner submitted a June 2022 letter from W-M-F-, a sustainability senior advisor, discussing the Petitioner's work for [REDACTED] W-M-F- asserted that he formed these companies and that they provided “services for many oil and gas projects in Venezuela, for international companies like Chevron, Enron, Shell, Amoco, BP, and Perenco.” The

¹⁰ See 6 USCIS Policy Manual, Appendices, supra, at F.2 (stating that officers must consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation).

¹¹ See 6 USCIS Policy Manual, Appendices, supra, at F.2 (defining “distinguished” as marked by eminence, distinction, or excellence).

Director determined W-M-F-'s letter was insufficient to demonstrate that the Petitioner had performed in a leading or critical role for either company, or that they had distinguished reputation.

In the appeal brief, the Petitioner argues that “[redacted] past business relationships with some of the most recognizable oil companies in the world is [sic] indicative of its distinguished reputation,” but he did not offer evidence to corroborate the claims in W-M-F-'s letter regarding the existence of these business relationships.¹² Aside from mentioning that [redacted] offered services for various oil companies, W-M-F-'s letter does not elaborate on the reputation of his two companies or identify specific examples of evidence indicating that they have garnered a distinguished reputation. Nor did the Petitioner include evidence of any media reports or company awards, for example, showing how [redacted] reputation compares to other environmental companies, or how their successes or accomplishments in the industry differentiate them from other businesses, indicating a distinguished reputation consistent with this regulatory criterion. The limited information and evidence presented does not show that [redacted] have a distinguished reputation.¹³ The Petitioner therefore has not established that he meets this criterion.

Evidence that the alien 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 Petitioner submitted documentation (dated 2019) from E-S-P-L- (a public university in Ecuador) indicating that, as a “Professor” in the “Faculty of Life Sciences,” he received monthly remuneration of \$3,150.00. As evidence that his salary is high relative to others in the field, the Petitioner presented information from 2000carreras.com listing the “average salary” for “recent” graduates who are “beginning” their careers as a “Marine Biologist.”¹⁴ Regarding the “average salary” data from 2000carreras.com, the Petitioner must submit evidence showing that he has earned a high salary or other significantly high remuneration relative to others in his field rather than just a salary that is above “average” in his field.

Furthermore, the Petitioner has not shown that comparing his professor’s salary to novice marine biologists (who recently graduated college and are at the beginning of their career) represents a proper basis for comparison. The Petitioner must present evidence showing that he has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996)

¹² Nonetheless, the Petitioner has not shown that having a business relationship with a larger company signifies a distinguished reputation.

¹³ Since this issue is dispositive of this criterion, we decline to reach and hereby reserve the appellate arguments regarding whether the Petitioner has performed in a leading or critical role. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is 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).

¹⁴ The “Marine Biologist” salary information from 2000carreras.com stated: “Today we will take the case of a recent graduate. In 2021, the average salary is around 1,100.00 dollars per month when working full time This salary is at the beginning, the more experience and seniority you have in the area, your salary will be higher”

(considering NHL enforcer's salary versus other NHL enforcers); *Mumi v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner has not established that the comparative salary data he offered shows that his earnings are high relative to others in his field. Accordingly, the Petitioner has not demonstrated that he meets this criterion.

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 criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve the final merits determination.¹⁵ Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding 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 for individuals progressing toward the top. *See Matter of Price*, 20 I&N Dec. at 954 (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) (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"))).

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 sustained 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.

¹⁵ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).