



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

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

In Re: 26967863

Date: JUNE 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a professional baseball player, seeks classification as an individual of extraordinary ability in athletics. *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 sustain 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 a high salary).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

A. Evidentiary Criteria

The Petitioner is currently a professional baseball player for the [redacted] in Major League Baseball (MLB). 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 did not satisfy the awards, membership, published material, and salary criteria. After reviewing all the evidence, we conclude the Petitioner has shown that he satisfies the requirements of at least three criteria.

We find that the Petitioner meets the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), the critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), and the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix). Specifically, the Petitioner received a [redacted] 2019 MLB American League “Player of the Week Award” as an outstanding player. In addition, he has been the subject of articles in major media, including ESPN.com, USA Today.com, and MLB.com. Furthermore, as a starting outfielder for the [redacted] the Petitioner has performed in critical role for a distinguished organization and has commanded a high salary relative to other professional baseball players. Accordingly, the record indicates that he has satisfied at least three of the ten regulatory criteria.

B. Final Merits Determination

As the Petitioner satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will analyze his accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. We evaluate

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).

whether the Petitioner has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In the present matter, the Petitioner has demonstrated his eligibility for this classification.

The Petitioner has played as an outfielder for the [redacted] in MLB since 2018. He received MLB's "Player of the Week Award" in 2019 and was named as a finalist for the 2020 American League "[redacted]" for his position. In addition, the record includes sports coverage of the Petitioner's offensive and defensive play in media such as SBNation.com, WhiteCleatBeat.com, ESPN.com, USA Today.com, and MLB.com. The Petitioner also submitted copies of his MLB player contracts showing that he commanded a salary of \$2,450,000 in 2022 and \$3,550,000 in 2023.

With regard to the Petitioner's professional baseball career, S-B-, who *Forbes* magazine ranked as the 2022 "most powerful agent in North American team sports," writes:

[The Petitioner] is entering his prime and his talents have established himself as one of the best outfielders in baseball. He made his Major League debut in 2018 and has performed against the highest level of competition available in the world. Since 2018, his defense has been recognized among the best in the Major Leagues by consistently receiving votes for the prestigious "[redacted]" as one of the best defensive outfielders in the American League. . . . And, while [the Petitioner's] defense is well-known, his offense is even more impressive. Since 2018, only 16 other players in the game have matched him in home runs (62), doubles (88), stolen bases (45), walks (119), and on-base plus slugging (.768).

The aforementioned information from S-B-, along with additional corroborating evidence in the record, sets the Petitioner apart from other professional baseball players through 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. The totality of the evidence demonstrates that the Petitioner possesses a level of expertise consistent with a finding that he is one of a small percentage at the very top of the field of endeavor and that he has sustained national acclaim in his sport. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20. *See also Matter of Price*, 20 I&N Dec. 953, 956 (Assoc. Comm'r 1994).

III. CONCLUSION

The Petitioner has established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). He has also demonstrated sustained national acclaim and that his achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that he intends to continue working in his area of expertise and that he will substantially benefit prospectively the United States. He therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.