



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

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

In Re: 26842681

Date: JUN. 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, 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 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

An individual is eligible for the extraordinary ability classification if 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; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 engineering degree in civil engineering and approximately 20 years of professional experience with employers in Pakistan and United Arab Emirates, primarily working in the construction engineering field. Since 2007, he has worked for [REDACTED] where he served as a team leader for advanced and specialized construction systems (from 2007 to 2018), and, since 2018, as a commercial manager for concrete admixture systems and cement solutions. He indicates his intention to continue his work in the same field in the United States.

### A. Evidentiary Criteria

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 Director determined that the Petitioner submitted evidence related to the criteria at 8 C.F.R. § 204.5(h)(3)(i), (v) and (viii) and concluded that he satisfied only one criterion. Specifically, the Director concluded that the Petitioner met his burden to demonstrate his performance in a leading or critical role for an organization or establishment that has a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner asserts that he also provided evidence of published material in professional publications or major media and evidence of his original contributions of major significance in the field sufficient to meet the criteria at 8 C.F.R. § 204.5(h)(3)(iii) and (v).<sup>1</sup> We will discuss the evidence submitted in support of these two criteria below.

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<sup>1</sup> On appeal, the Petitioner does not dispute the Director's finding that he had not established eligibility under criterion (i), related to lesser nationally or internationally recognized prizes or awards. Additionally, the Petitioner did not claim eligibility under 8 C.F.R. 204.5(h)(3)(ii), (vi), (vii), (ix) or (x) before the Director or on appeal. As the Petitioner provides no evidence or arguments addressing these six criteria on appeal, we consider these issues to be abandoned. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a 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); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (finding plaintiffs claims abandoned as he failed to raise them on appeal to the AAO).

In addition, the Petitioner has consistently indicated that he satisfies one of the criteria at 8 C.F.R. § 204.5(h)(3) based on evidence of his “recognition by authorities in his field as an engineer of extraordinary ability.” However, we emphasize that “recognition by authorities in the field” is not one of the enumerated regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Further, the Petitioner has not claimed that he is seeking to have this evidence, which consists of testimonial letters from colleagues and business associates and evidence related to the companies that employ them, considered as “comparable evidence” under 8 C.F.R. § 204.5(h)(4).

In order to succeed on a comparable evidence claim, a petitioner must establish that one of the criteria at 8 C.F.R. § 204.5(h)(3) is not readily applicable to their occupation. If a petitioner makes such a showing, USCIS will evaluate the evidence to determine whether the evidence provided is truly comparable to the criteria listed in that regulation. Here, the Petitioner has not articulated a comparable evidence claim. Further, claims that USCIS should accept witness letters as comparable evidence are not persuasive.<sup>2</sup> We will consider the submitted testimonial evidence under 8 C.F.R. § 204.5(h)(3)(v), and note that such evidence would also be properly considered in a final merits determination if the Petitioner satisfied at least three of ten criteria at 8 C.F.R. § 204.5(h)(3).

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.

*Published material about the individual in professional or major trade publications or other major media, relating to the individual'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 did not specifically claim eligibility under this criterion at the time of filing or in response to the Director's request or evidence (RFE) but indicates on appeal that he previously provided evidence that meets this criterion. Any published material submitted to satisfy this criterion must be about the individual petitioner and relate to their work in the field, and not just relate to their employer or other organization with which they are associated. Further the evidence must identify the title, date and author of the material, identify the name of the publication, and include evidence to demonstrate that the material was published in a professional or major trade publication or other major media.

The Petitioner submitted several articles published in the same January 2016 issue of a print publication called [redacted] which appears to be a [redacted] company publication. The three articles are titled [redacted]

[redacted] None of the three articles mention the Petitioner or his work as an employee of [redacted]. The Petitioner draws particular attention to the [redacted] article, noting that the Petitioner received an award at this event, but, as noted, the article does not mention him nor does it mention that awards were granted at this event. Even if the Petitioner had established that one or more of these articles is about him, he

<sup>2</sup> See generally 6 USCIS Policy Manual, F.2 Appendix, <https://www.uscis.gov/policy-manual> (providing guidance for the evaluation of evidence submitted under 8 C.F.R. § 204.5(h)(3)(i)-(x) and 204.5(h)(4)).

did not provide evidence that [redacted] is a professional publication, major trade publication or other major media. Evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (online or in print) or viewership is high compared to other statistics and show who the intended audience is.<sup>3</sup>

The Petitioner also states that his employer published a profile about him but does not identify where the profile was published or provide the date or author of the publication, as required by the plain language of this criterion. Based on the format and contents of the profile, we cannot determine whether it was written and published by his employer. For example, the submitted document uses several different font types and sizes that appear inconsistent with an official publication and includes private information such as the value of the Petitioner's salary and benefits package, the addresses of property he owns, and a valuation of this property.

For the reasons discussed, the Petitioner did not submit evidence to satisfy the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii).

*Evidence of the individual'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)

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

In his personal statement, the Petitioner placed particular emphasis on his role in engineering concrete for the construction of [redacted] noting that he and his team “overcame numerous engineering challenges and world records to [redacted] [redacted] He also notes his involvement in other major projects that involved “innovating various concepts and technologies which help to conserve energy, save time in construction with green building systems for mega projects.” Finally, he indicates that he has “developed innovative new solutions and blazed a trail for other engineers and teams by using these new solutions in actual projects.”

The Petitioner primarily relies upon several support letters from business associates and coworkers to establish his eligibility under this criterion. The authors indicate that the Petitioner, during his tenure at [redacted] contributed to major building projects, including the construction of [redacted] The letters support a determination that the Petitioner is a highly experienced civil engineer with advanced technical skills and expertise in his field, and that he has offered solutions to engineering problems posed by the major building projects to which he was assigned. However, the letters do not describe a specific original contribution that has impacted the broader field of civil or construction engineering, provoked widespread commentary, or had an influence on subsequent work in the specific field.<sup>4</sup> Nor

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<sup>3</sup> See generally 6 USCIS Policy Manual, supra, at F.2 Appendix.

<sup>4</sup> Id.

do the letters speak in sufficient detail regarding the “innovative new solutions” the Petitioner references in his own statement, or specify how he has “blazed a trail for other engineers.”

A letter from a procurement manager at [redacted] states that the Petitioner, as a representative of [redacted] provided “extraordinary services” to [redacted]. Specifically, he states that the Petitioner has offered services in the area of technical construction, chemical application services, various solutions related to advanced construction systems, and “value engineering” that have helped [redacted] deliver “various mega projects” in UAE, and that his company is “fully satisfied” with the Petitioner’s knowledge and expertise. The general manager of another [redacted] client, [redacted] similarly praises the Petitioner as “technically and commercially extraordinarily competent” to solve technical challenges. The general manager of [redacted] credits the Petitioner with offering “extraordinary solutions and services,” reports that his company “is fully satisfied” with the Petitioner’s “technical knowledge and extraordinary expertise,” and refers to him as “a remarkable executive who has been blessed with professional genius, leadership and a clear vision of the future of innovation.” While these letters offer high praise of the Beneficiary’s technical and professional skills and ability to provide innovative solutions to specific engineering problems, they fall short of identifying with specificity the Petitioner’s original contributions and their impact or subsequent influence on the engineering field.

The Petitioner also offered two letters from managers at [redacted]. The country manager for admixture systems in UAE, Bahrain and Kuwait confirms that the Petitioner was “technically involved” in mega projects that included the [redacted] and more than 15 others, that he has received company awards, and that he has trained “indirect distribution channels, engineers, and consulting firms” in construction and concrete admixture systems. Another manager with [redacted] UAE operations describes the Petitioner as an “accomplished expert in various construction segments,” and praises his “strong technical knowledge of construction materials and techniques,” and his “ability to add value to various projects.” Neither of these letters from the Petitioner’s employer articulate how his contributions to projects undertaken by [redacted] and its clients, or his other contributions to the company, have had an impact consistent with original contributions of major significance. We do not doubt that the Petitioner’s involvement in major building projects has required him to be innovative and to solve complex engineering challenges, and that he has been successful in meeting these challenges. However, the Petitioner must show that his work has had an impact on the field that extends beyond his employer and its clients. The record does not support a finding that the Petitioner developed solutions that are now being used by other engineers in the field or otherwise demonstrate how his specific contributions have influenced the field.

Accordingly, we conclude that the authors who provided support letters do not sufficient identify the Petitioner’s original contributions, nor do they provide specific, detailed information explaining how the contributions have been majorly significant in the field. Because the Petitioner has not established that his professional achievements are original contributions which have been of major significance to the overall field of civil engineering, we conclude that he does not meet 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. 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. 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.