



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 24527725

Date: MAR. 09, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a professional baseball player, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met 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. 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

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 international recognition of his or her 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 he or she 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).

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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. at 376.

II. ANALYSIS

The Petitioner indicates he is and intends to continue working in the United States as a professional baseball player.

The Petitioner did not indicate, and the record does not establish, that he has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3). The Petitioner must therefore demonstrate his eligibility under at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Before the Director, the Petitioner claimed to have met the following four criteria:

- Lesser prizes or awards;
- Published material about him and his work;
- High salary or remuneration; and
- Membership in associations.

The Director found that the Petitioner satisfied the regulatory requirements for two criteria, lesser nationally or internationally recognized awards or prizes under 8 C.F.R. § 204.5(h)(3)(i) and published material about the individual in professional or major media under 8 C.F.R. § 204.5(h)(3)(iii). The record reflects the Petitioner received nationally recognized awards. Accordingly, we agree with the Director that the Petitioner met the awards criterion. However, as discussed below, we find the record does not support the conclusion that the published material criterion has been met.

In denying the petition, the Director found the Petitioner’s evidence for two regulatory criteria was insufficient, membership in associations and high salary in relation to others in the field. On appeal,

the Petitioner argues that he meets both evidentiary criteria. After reviewing the evidence in the record, while we find that the Petitioner has established he meets the high salary criterion, he has not demonstrated that he satisfies at least three of the ten initial evidentiary criteria and is not otherwise eligible for the requested benefit.¹

Published material about the individual 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 Director found the Petitioner satisfied this criterion, but did not provide an analysis of the evidence to support that conclusion; upon de novo review, however, we find the record fails to establish eligibility for this criterion.

Many of the articles submitted do not include the author or date of the material, thereby not meeting the plain language of the criterion. For instance, the Petitioner submitted two articles, one published in *Diario Libre* titled, [REDACTED] dated [REDACTED] and another article published in *El Nacional* titled, [REDACTED] dated [REDACTED] [REDACTED] 2021, both of which report the Petitioner is expected to play his first major league baseball game and provide background about the Petitioner's baseball career. Neither article identifies an author, therefore, such articles do not meet the plain language of the criterion requiring "the title, date, and author of the material". *Id.* Another article published by *Listin Diario* titled, [REDACTED] [REDACTED] does not include the date of the article, therefore, also not meeting the plain language of the criterion.

The Petitioner submitted several articles and social media posts, most of which briefly mention the Petitioner's participation in games or report his game plays and batting results. For instance, the Petitioner submits an article dated [REDACTED] 2022, by [REDACTED] titled, [REDACTED] [REDACTED] which explains Dominican Republic's plays during its game against Venezuela for the 2022 [REDACTED] games, while briefly mentioning the Petitioner, [REDACTED]. The Petitioner submitted other similar articles and screen shots of online social media websites. Many of these articles report on the plays made by the entire team, and do not single out the Petitioner. Although mentioning the Petitioner, the material is not about the Petitioner and is instead about the team.

The reporting of the Petitioner being part of a team's roster is also not published material about the Petitioner. The Petitioner submitted material listing the players selected to play with the [REDACTED] [REDACTED] including the Petitioner as the catcher. These articles, while mentioning the Petitioner, report the team's player roster and are about the team.

In addition, the Petitioner provided screen shots of YouTube videos indicating these videos are interviews and information about the Petitioner. This regulatory criterion requires "published material" in professional or major trade publications or other major media and "the title, date, and author of the material." 8 C.F.R. § 204.5(h)(3)(iii). The Petitioner, however, did not include the regulatory required titles, dates, and authors of the material. Furthermore, the still images,

¹ While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

unaccompanied by transcripts, are not sufficient to show that his appearances amounted to published material about him, relating to his work.²

For the reasons discussed, the Petitioner has not submitted evidence demonstrating that he meets this criterion. We therefore withdraw the Director's finding that the Petitioner has met this criterion.

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).

To meet this criterion, a petitioner must demonstrate that their salary or remuneration is high relative to the compensation paid to others working in the field in similar positions and geographic locations.³

The burden is on the petitioner to provide appropriate comparative evidence. Examples may include, but are not limited to, geographical or position-appropriate compensation surveys. Persons working in different countries should be evaluated based on the wage statistics or comparable evidence in that country, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States.⁴

The Petitioner submitted evidence relating to his salary as a professional baseball player with two teams, [redacted] in the United States. The Director found the evidence suggests the Petitioner's earnings are at the low end in comparison to the major league players. The Director also pointed out that the record does not include objective earnings data for professional baseball players in Dominican Republic, with an article indicating the difficulty in obtaining levels of compensation for the players. Without objective evidence, the Director found that the evidence did not demonstrate the Petitioner commanded a high salary in Dominican Republic.

The Petitioner argues that the letter from [redacted] sufficiently demonstrates the Petitioner commands a higher salary since it states the monthly salary for other professional baseball players in the Dominican Republic is lower than the Petitioner's salary. The Petitioner provided articles related to salaries of baseball players and average persons living in Dominican Republic, and a letter from [redacted] relating to the Petitioner's current monthly earnings and the average salary of other players. The letter states the Petitioner earns a monthly salary of DR\$350,000, while "[t]he average salary of a professional baseball player who plays the same position as [redacted] in the professional league of baseball from the Dominican Republic ranges between DR (Dominican currency) \$50,000

² See generally 6 USCIS Policy Manual F.2 Appendix, <https://www.uscis.gov/policymanual> (explaining evidence may include documentation such as print or online newspaper or magazine articles, popular and academic journal articles, books, textbooks, similar publications, or a transcript of professional or major audio or video coverage of the person and the person's work).

³ See generally 6 USCIS Policy Manual, *supra*, at F.2 Appendix (stating that it is the petitioner's burden to provide geographical and position-appropriate evidence to establish that a salary is relatively high); see also *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *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. III. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. III. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

⁴ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(2) Appendix.

and DR\$200,000 monthly.” The letter explains, [redacted] is paid higher than most due to his excellent performance and skills on the field” An article published by eIDinero titled [redacted] [redacted] by [redacted] describes the difficulty in obtaining salary information for professional baseball players in the Dominican Republic, “Officially knowing the salaries in Dominican baseball is not an easy task. The Dominican professional baseball teams handle the issue with discretion to avoid friction between players. . . . The minimum fluctuates between RD\$60,000 to RD\$70,000 per month for lower category players.” The letter from [redacted] stating the Petitioner’s salary with the team and comparing it to others in the league, reviewed in conjunction with the article providing the minimum salary of baseball players in Dominican Republic and explaining the difficulty in obtaining salaries of baseball players in the Dominican Republic, are sufficient to demonstrate by a preponderance of the evidence that the Petitioner meets the criterion.

We find that the evidence in the record is sufficient to demonstrate that the Petitioner has commanded a high salary in relation to others in his field. Accordingly, for the reasons discussed above, we withdraw the Director’s finding on this issue and conclude that the Petitioner’s evidence establishes that he satisfies this 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 Director found the record does not establish that the Petitioner plays for an organization that requires outstanding achievements of its members.

In the appeal, the Petitioner clarifies that he submitted evidence based on his memberships with Dominican Professional Baseball League (LIDOM) and Major League Baseball (MLB) arguing these “organizations represent the highest level of professional baseball played in the Dominican Republic and in the United States, respectively.” The Petitioner argues on appeal that while MLB and LIDOM do not have bylaws specifying the qualification of their reviewers, each requires outstanding achievements of its members which are judged by experts. It is a petitioner’s burden to demonstrate every element of a given criterion, and we will not assume that every professional team requires outstanding achievements of its members as judged by recognized national or international experts in their fields.

The Petitioner submitted a letter from LIDOM, media articles relating to operations staff for some LIDOM teams, and informational materials about LIDOM, including its teams, history, and television broadcast coverage. While the Petitioner argues he is a member of LIDOM, the letter from LIDOM states that the Petitioner is a player for one of LIDOM’s member teams, [redacted]. The letter explains the eligibility requirements for a player to be selected to a LIDOM team. A player must first play rookie ball and then play 18 months with middle class A. After meeting these requirements, LIDOM does not select players to its teams, instead it is “the responsibility of each team’s manager and its operations staff, which is made up of experts in the sport.” The record does not demonstrate the selection requirements of players for [redacted] or LIDOM, or the outstanding achievements required for being selected to the team. Also, while the letter indicates the operations staff for each team who selects team players is made up of experts in the sport, and the articles

submitted provide information of some teams' operating staff, the evidence is not sufficient to demonstrate the Petitioner's membership to [redacted] or LIDOM, was judged by recognized national or international experts in his field.

For the Petitioner's MLB membership, the record includes two letters from [redacted] of the [redacted] [redacted] informational material about MLB's history, and articles explaining that a small percentage of baseball players play for professional teams. While the Petitioner argues he is a member of MLB, the record indicates the Petitioner is a player for the [redacted] which is a member of MLB. As pointed out by the Director, the letter from [redacted] states that only the top players with extraordinary abilities are part of MLB since players must be "exceptionally skillful, talented and disciplined." We agree with the Director's findings that the record does not demonstrate that being a member of the [redacted] [redacted] requires outstanding achievements, but instead refers to the players' skills and discipline. [redacted] provides the names and experience of some members of the [redacted] staff who select players to demonstrate they are experts in the field; however, the evidence does not demonstrate the outstanding achievements required to be a player for the [redacted]

We therefore conclude that the Petitioner has not established that he meets this criterion.

In summation, the record does not satisfy at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

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, 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 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.