U.S. Citizenship and Immigration Services

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

In Re: 33941201

Date: DEC. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is a chief executive of an aquaculture company in a foreign country who seeks classification as an alien 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) 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-step analysis. In the first step, 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 move to the second step to 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, 1121 (9th Cir. 2010) (discussing a two-step 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

## II. ANALYSIS

The Petitioner worked in the information technology field for several decades then in approximately 2019 he applied much of that knowledge to the aquaculture industry, involving the farming of fish, shellfish, plants, and other organisms in water.

### A. The Beneficiary's Field of Expertise

In Part 6 of the petition, the Petitioner listed the Beneficiary's job title for the proposed employment as chief executive and provided the Department of Labor's standard occupational classificational code for the occupation by that same title. In the material accompanying his initial petition filing, the Petitioner discussed his recent achievements as a chief executive for a company in the aquaculture industry in a foreign country and he indicated that upon approval of this petition, he will continue in that industry and bring the aquaculture internet of things technologies to the United States where he will start a new company.

The statute requires those filing for this immigrant classification to show they have extraordinary ability by demonstrating their "achievements have been recognized *in the field*" and that they seek "to enter the United States to continue to work *in the area of extraordinary ability*." Section 203(b)(1)(A)(i)–(ii). The statute uses these terms synonymously. Stemming from that statutory concept, the regulation at 8 C.F.R. § 204.5(h)(2) defines extraordinary ability as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of *the field of endeavor*." 8 C.F.R. § 204.5(h)(3) requires that a foreign national's "achievements have been recognized *in the field of expertise*" through either a one-time achievement or through a sufficient number of criteria listed thereafter. And 8 C.F.R. § 204.5(h)(5) mandates the foreign national "is coming to the United States to continue work *in the area of expertise*." (Emphasis added in each citation).

Therefore, congress created, and the agency promulgated, this immigrant classification providing an overarching structure requiring that one's achievements have been recognized in the same field of expertise that the individual intends to work in as a permanent resident in the United States. Federal

courts agree with the prospect—and favorably cite to the USCIS Policy Manual—that where one's historical achievements rely on different skillsets than the area of expertise they intended to engage in within the United States, that USCIS acts within its authority to decide the historical accolades do not satisfy the regulatory requirements at 8 C.F.R. § 204.5(h)(3)(i)–(x). *See Mussarova v. Garland*, 562 F. Supp. 3d 837, 843–44 (C.D. Cal. 2022) (citing *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002)); *see also Integrity Gymnastics & Pure Power Cheerleading, LLC v. United States Citizenship & Immigr. Servs.*, 131 F. Supp. 3d 721, 729–31 (S.D. Ohio 2015) (finding it appropriate to disregard distant claims and evidence as a competitor under the regulatory criteria when the foreign national is applying as a coach or instructor).

These requirements relate to this case in the following way. The Petitioner had a career and accumulated achievements outside of the aquaculture industry and only joined that field in the late twenty-teen years. When he filed the petition, the Petitioner indicated he "is one of the few best chief executives," and that he "will continue working in the aquaculture industry, bringing IoT [internet of things] technologies that have been proven successful to the United States." As a result, the Petitioner must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his accomplishments in the aquaculture industry, as that is his field of endeavor in which he intends to engage in the United States. Also, were he to satisfy at least three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), USCIS would limit their totality of the evidence analysis to his claims and evidence in the field of aquaculture, as well as any claims he presents as comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4).

We observe the USCIS Policy Manual provides the following relating to the final merits determination:

> At this step, officers consider any potentially relevant evidence in the record, even if such evidence does not fit one of the above regulatory criteria or was not presented as comparable evidence. The officers consider all evidence in the totality. Some evidence may weigh more favorably on its own, while other evidence is more persuasive when viewed with other evidence.

*See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual. But we further observe that the statute and the regulation operate under the rubric that a foreign national must demonstrate their achievements have been recognized in the same field of expertise that the individual intends to work in as a permanent resident in the United States. As a result, the USCIS Policy Manual's language comes into play in which it states, "officers consider any potentially relevant evidence in the record." The phrase "any potentially relevant evidence" here refers only to the Petitioner's area of extraordinary ability or area of expertise rubric, as the policy does not expressly depart from the statutory and regulatory requirements that the foreign national is coming to the United States to continue to work in those areas.

B. Evidentiary Criteria

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). Before the Director, the Petitioner claimed he met four of the regulatory criteria. The Director decided that the Petitioner satisfied one of the criteria relating to published material, but

that he had not satisfied the criteria associated with original contributions, authorship of scholarly articles, or performing in a leading or critical role. On appeal, the Petitioner maintains that he meets the evidentiary criteria the Director declined to grant. After reviewing all the evidence in the record, we agree with the Director's overall determination that the petition does not warrant an approval.

> *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).

The primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 (citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 586 U.S. 392, 415 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

As we noted above, the Petitioner is applying to continue working in the field of aquaculture, and his claimed contributions must fall under that umbrella. We therefore will not factor in his claimed contributions from his career prior to joining the aquaculture field in the areas of virtual and augmented reality technology. The Director determined that the Petitioner did not meet the requirements of this criterion. Making that determination, the Director acknowledged the originality of the Petitioner's contributions through his research, but incorrectly permitted his contributions from fields outside of his claimed area of extraordinary ability or expertise in which he will continue to work in the United States. Ultimately, the Director recognized the Petitioner's patents and claims relating to inventions and intellectual property, but decided the record lacked adequate documentation to corroborate his claims.

[redacted] founded [redacted] The Petitioner is now the chief executive of that company and it is where his efforts in aquaculture have been recognized. Mr[redacted] stated in his letter that in China, the aquaculture industry's adoption of technology was at a bare minimum but when he brought the Petitioner into the company, the Petitioner's efforts changed that over the preceding years. Other letters within the record reflect a similar view of the Petitioner's effect in this field in China. As the Petitioner's patents relating to the aquaculture industry in his home country reflect, his contributions are original as it relates to that country. But the Petitioner did not address that other very similar devices and methods already existed in other countries when he joined [redacted]

The regulation and the USCIS Policy Manual require the Petitioner's contributions to impact the broader field and not simply the industry within his home country. We note scholarly work that preceded the Petitioner's efforts by several years call into question the originality of his contributions to the broader aquaculture field. For instance, two published works at a 2017 conference were presented relating to automating water quality in a controlled aquaculture environment similar to some

of the Petitioner's advancements in Chinese aquaculture.[1] And in 2013 [redacted] founded [redacted] a smart feeding technology that changed the way aquaculture farmers feed their fisheries through a similar internet of things feeding solution as the Petitioner describes as his contribution to the aquaculture field.

The evidence the Petitioner presented is not adequate to show his contributions to the aquaculture field are both original and of major significance, especially considering much of his claimed achievements already existed outside of his home country. The Petitioner has not satisfied this criterion's requirements.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The evidence the Petitioner provided under this criterion was a 1998 article he published about how different materials behave under stress, especially when cracks are present in the material. He also provided a 2006 article he published in a computer graphics periodical relating to using an algorithm to extract symbols from topographical maps to simplify the digital scanning process.

We review this criterion under the rubric that the Petitioner's achievements under the regulatory criteria must be in his field of aquaculture. Applying that to the authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), the Petitioner's articles themselves must have been published in the same field of endeavor in which he intends to continue working in the United States. Although the Petitioner has a background in circuitry and systems engineering, as we note above, he is applying within this petition as a chief executive who intends to start a company in the United States that is similar to his company in another country. His foreign company is an internet of things organization specializing in the aquaculture market. The Petitioner has not established that an article in the field of structural or materials science, nor one related to geospatial information science and digital image processing has a sufficient nexus to: (1) his field or area of extraordinary ability (statutory terms); or (2) his field of endeavor, field of expertise, or area of expertise (regulatory terms).

As a result, the Petitioner has not satisfied this criterion's requirements relying on evidence from a different field from the one he intends to engage as a lawful permanent resident in the United States.

We conclude that although the Petitioner satisfies the published material criterion, he does not meet the criteria regarding authorship of scholarly articles or original contributions of major significance. While he argues and submits evidence for one additional criterion on appeal relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), it is unnecessary that we make a decision on this additional ground because he cannot numerically meet the required number of at least three criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve the remaining issues. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS*

[1] A. D. M. Africa, J. C. C. A. Aguilar, C. M. S. Lim, P. A. A. Pacheco and S. E. C. Rodrin, Automated aquaculture system that regulates Ph, temperature and ammonia, *2017IEEE 9th International Conference on Humanoid, Nanotechnology, Information Technology, Communication and Control, Environment and Management (HNICEM)*, Manila, Philippines, 2017, pp. 1–6; M. C. De Belen and F. R. G. Cruz, "Water quality parameter correlation in a controlled aquaculture environment," *2017IEEE 9th International Conference on Humanoid, Nanotechnology, Information Technology, Communication and Control, Environment and Management (HNICEM)*, Manila, Philippines, 2017, pp. 1–4.

*v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Larios-Gutierrez De Pablo & Pablo-Larios*, 28 I&N Dec. 868, 877 n.8 (BIA 2024) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

## III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.