



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

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

In Re: 29867541

Date: MAR. 4, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a public school system, seeks to classify the Beneficiary 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 Petitioner did not establish that the Beneficiary had received a one-time achievement (a major, internationally recognized award) or that he satisfied at least three of the initial evidentiary criteria, as required for the requested classification. 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 [noncitizen] 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 [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen'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 recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the 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).

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 intends to permanently employ the Beneficiary in the position of high school science teacher. It states that the Beneficiary “has risen to the very top of his field of endeavor and is among the ‘most-skilled, highest-paid’ professionals in the industry.”

The Petitioner initially claimed that the Beneficiary won a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3) and alternatively claimed that he also satisfies at least three of the ten alternative criteria. The Director determined that the Beneficiary’s one-time achievement did not meet the criteria of 8 C.F.R. § 204.5(h)(3). The Director further determined that the Petitioner had established that the Beneficiary met only two of the required three alternative criteria - judging the work of others at 8 C.F.R. § 204.5(h)(3)(iv) and commanding a high salary at 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the Petitioner maintains that the Beneficiary’s one-time achievement is comparable to a major, internationally recognized award. The Petitioner further asserts that the record includes comparable evidence to establish that the Beneficiary meets at least three of the alternative criteria under 8 C.F.R. § 204.5(h)(3)(i) and (viii).

### A. One-Time Achievement

The Petitioner asserts that the Beneficiary qualifies for classification as an individual of extraordinary ability based on his one-time achievement of the Teacher of the Year Award, that the Beneficiary received in 2021 from the [REDACTED]. The Director first noted in a request for evidence (RFE) that the record did not include evidence that the competition for the award attracted internationally recognized individuals in the field. After reviewing the Petitioner’s response to the RFE, the Director noted that the information about the award indicated that nominees must be members of the [REDACTED] to be eligible for consideration, excluding individuals who are not part

of a specific association based in the United States. He also noted that all published materials about the award originated from [redacted] indicating that the award lacks international-level media coverage. The Director concluded that the record did not demonstrate that this award was internationally recognized in the field to reach the level of one-time achievement.

On appeal, the Petitioner asserts that “teaching as a field does not receive recognition in the media commensurate with its contributions,” and that comparable evidence, including evidence of regional and local media coverage of the Beneficiary’s Teacher of the Year Award, should be considered.

Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at \*6739. The House Report specifically cited to the Nobel Prize as an example of a one-time achievement; other examples which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example Congress provided, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, Congress’ example clearly shows that the award must be global in scope and internationally recognized in the field as one of the top awards.

It is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). As such, the Petitioner must offer sufficient evidence demonstrating that the Beneficiary’s 2021 [redacted] Teacher of the Year Award qualifies as “a major, international[ly] recognized award.” *See* 8 C.F.R. § 204.5(h)(3). While it may be true that teaching as a field does not garner significant recognition in the media, this does not exempt the Petitioner from establishing that the award is internationally recognized under 8 C.F.R. § 204.5(h)(3). We agree with the Director’s conclusion that the Petitioner has not demonstrated that the Beneficiary’s Teacher of the Year award qualifies as a one-time achievement.

#### B. Evidentiary Criteria

Because we conclude that the Petitioner has not established that the Beneficiary has received a major, internationally recognized award, the Petitioner must establish that the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As noted above, the Director determined that the Petitioner met the plain language requirements of two evidentiary criteria relating to judging the work of others at 8 C.F.R. § 204.5(h)(3)(vi) and commanding a high salary at 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the Petitioner maintains that the Beneficiary also meets the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i) related to lesser nationally recognized awards, and (viii) performing in a leading role for organizations with a distinguished reputation. The Petitioner does not address or contest on appeal

the Director's conclusions that he does not meet the membership in associations requiring outstanding achievement (ii), published materials (iii), or original contributions of major significance (v) criteria. Accordingly, we deem these grounds to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

*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).

In order to satisfy this criterion, the Petitioner must demonstrate that the Beneficiary received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. *See 6 USCIS Policy Manual F.2(B)(1)*, <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>. Relevant considerations regarding whether excellence in the field was the basis for granting the prizes or awards include, but are not limited to: the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize recipients as well as any limitations on competitors. *Id.* (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance).

The Petitioner contends that the Beneficiary received the following awards to meet this criterion:

- Current Semifinalist for [redacted] Science Teaching Award by the [redacted] [redacted] (2023).
- Chemistry Teacher of the Year Award by the [redacted] (2021).
- Excellence in Environmental Education Award: Outstanding Environmental Educator in P-12 Settings by the [redacted] Association for Environmental Education (2021).
- Computer Science Teaching Excellence Awards by the Computer Science Teachers Association and Infosys Foundation USA [redacted] (2021, 2022).
- Sustainable Economic Development Award (2018).
- Excellence in Education Award: Sustainable Economic Development Initiative in [redacted] (2018).
- Teacher of the Year Award: Governor's Celebration of Innovation by the [redacted] Technology Council (2018, with honorable mention in 2015-2017).
- [redacted] Rural County Teacher of the Year Award from [redacted] (2017).
- Outstanding Earth Science Teacher of the Year Award: Southwest Section State Award in [redacted] by the National Association of Geoscience Teachers (2016).
- [redacted] Teacher of the Year Award (2015).
- STEM Superhero Award by the [redacted] Foundation (2014).

The Director determined that this criterion was not met because "the Beneficiary's prizes or awards appear to be local or regional in nature." The Director again noted that consideration for the [redacted] Chemistry Teacher of the Year Award is limited to [redacted] members and the record lacks information about [redacted] membership. The Director also noted that the record did not include evidence such as national or international-level media coverage to show that the award represents national or

international recognition. The Director further noted that the Beneficiary's consideration as a "semifinalist" is not an actual prize or award, as the award winner is yet to be determined.

In its brief on appeal, the Petitioner addresses only the first two awards mentioned above – the Chemistry Teacher of the Year Award from [ ] and the [ ] Science Teaching Award (semifinalist) from [ ]. The Petitioner asserts that the Beneficiary's status as a semifinalist was based on his selection among only ten candidates nationally. However, the Petitioner does not explain how this selection as a semifinalist, without meeting the plain language of being "in receipt" of the award, demonstrates that the Beneficiary has met this criterion.

With regard to the [ ] Chemistry Teacher of the Year Award, the Petitioner asserts that [ ] "is a national organization that primarily serves K-12 teachers but is open to all with an interest in chemistry education." The Petitioner states that one purpose of limiting consideration for the award to [ ] members is to ensure that only licensed teachers be considered, as [ ] "has already verified that the individual is a licensed teacher currently working in the United States." The Petitioner further states that the award winner is "chosen from chemistry teachers from across the United States and that, therefore, this award is national in scope." Additionally, the Petitioner requests that comparable evidence of the scope of the award be considered, "in light of the fact that national coverage of the teaching industry is much rarer than in other fields."

In determining whether an award meets this criterion, the USCIS Policy Manual states that limitations on competitors is a relevant consideration regarding whether the basis for granting the award was excellence in the field. *See 6 USCIS Policy Manual, supra*, at F.2(B)(1). Other considerations include the criteria used to grant the award, the national or international significance of the award in the field, and the number of award recipients. *See id.*

The record includes the selection criteria for the [ ] Teacher of the Year Award, which involves two criteria of equal value:

- Excellence in chemistry, teaching and innovation (defining attributes include: innovative and effective chemistry teaching, inspiring and challenging students, and positive contributions to the teaching profession outside of [ ]); and
- Outstanding contributions to chemistry teaching through [ ] (defining attributes include: participation in [ ] activities, contributions to [ ] materials and offerings, quality of contributions to [ ] including impact on students and colleagues, and promotion of [ ] to colleagues).

The above criteria are judged based on the required submission of an application questionnaire, a resume, and a letter of support that cites to specific examples of the applicant's eligibility.

On appeal, the Petitioner references an expert opinion prepared by [ ] of [ ] University. We acknowledge that the expert opinion includes an analysis of the Beneficiary's asserted qualifications as an individual of extraordinary ability under 8 C.F.R. § 204.5(h)(3)(i), as well as a "final merits" analysis, in which [ ] discusses information that he asserts should be considered in any review in the totality.<sup>1</sup> In his analysis [ ] generally discusses the [ ] Chemistry

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<sup>1</sup> The expert opinion does not address any other alternative criteria under 8 C.F.R. § 204.5(h)(3).

Teacher of the Year Award and its criteria. He states that the “award is prestigious in nature” and that “only a few teachers are recognized at a national level for their skills in teaching.” However, [redacted] does not support these assertions with facts, statistics or citations. Further, we note that [redacted] states that the Beneficiary “is a person of extraordinary ability in the field of business.” This statement is not consistent with the Petitioner’s assertion that the Beneficiary is an individual of extraordinary ability in education, rather than business.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as it does not meaningfully address whether the [redacted] Chemistry Teacher of the Year Award is a nationally recognized award for excellence in the field of endeavor in accordance with the requirements of 8 C.F.R. § 204.5(h)(3)(i).

We agree with the Director that the Petitioner has not established the national or international significance of the [redacted] Chemistry Teacher of the Year Award. Although the Petitioner asserts that national or international-level media coverage is not available and submits evidence to support the limited recognition of awards for teaching, the Petitioner does not submit comparable evidence to demonstrate the national significance of the [redacted] award. The Petitioner’s appellate arguments center on the national scope of the [redacted] rather than on whether the award itself is nationally recognized and awarded for excellence in the field of endeavor. In examining all of the relevant considerations, we conclude that it is not.

For the reasons discussed above, the Petitioner did not show that the Beneficiary meets this criterion.

*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).

In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(viii), a petitioner must establish that a beneficiary performed in a leading or critical role for an organization, and also that the organization has a distinguished reputation. *See 6 USCIS Policy Manual, supra*, at F.2(B)(1). The Petitioner asserts that the Beneficiary holds the following roles that meet this criterion:

- Regional Director of the [redacted] (2013-2017).
- Member of the Board of Directors of the [redacted] [redacted] (2017-2021).
- Equity Fellowship member for [redacted] (2021-2022).
- [redacted] Ambassador (2020, 2021).
- [redacted] Academy Ambassador (2020, 2021).
- [redacted] Ambassador by [redacted] Physics Teachers (2021-2022).

The Director concluded that the Petitioner did not demonstrate this criterion because the record did not indicate that each of the Beneficiary's roles was leading or critical or that each organization had a distinguished reputation.

On appeal, the Petitioner submits additional evidence about [redacted] and [redacted] and references evidence already in the record. He does not address the other three organizations referenced in the list above. The Petitioner describes [redacted] as a chapter of the National Science Teachers Association and submits a letter from [redacted] executive director recommending the Beneficiary for a doctoral program. The letter does not describe the Beneficiary's duties as regional director or explain how this role is leading or critical. Nor does the evidence in the record describe [redacted] distinguished reputation.

The Petitioner provides an organizational chart of [redacted] indicating that the board of directors "sits at the very top of the executive structure of this organization." Also included is a letter from the president of [redacted] referencing the organization's bylaws with the job description for board members. However, the letter does not explain how this role is leading or critical. Nor does the evidence in the record describe [redacted] distinguished reputation.

The Petitioner submits a letter from the professional learning manager of [redacted]. The letter describes [redacted] as "an international organization dedicated to the creation of a community of computer science teachers teaching students from kindergarten through high school." The letter also describes the duties of an equity fellow. However, the letter does not include a description of the Beneficiary's specific accomplishments as an equity fellow or explain how this role is leading or critical. Nor does the evidence in the record describe [redacted] distinguished reputation.

We agree with the Director that the Petitioner has not established that the Beneficiary has performed in a leading or critical role for an organization with a distinguished reputation. The record does not specify how the Beneficiary contributed to these organizations in a way that is significant to the organizations' outcome or what role he played in the organization's activities. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, at 135 (D.D.C. Dec. 16, 2013). The regulation also requires that the organization have a distinguished reputation. The Petitioner does not address this prong of the criterion, and the record lacks evidence establishing the reputation of the organizations. In light of the above, the Petitioner has not submitted qualifying evidence that meets the plain language requirements of this criterion.

### C. Comparable Evidence

Several of the criteria are written broadly such that they can readily apply to the greatest number of occupations. 56 Fed. Reg. 60897-01, 60898. The regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence if a petitioner is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the occupation. It is the Petitioner's burden to explain why the regulatory criteria are not readily applicable to the occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Here, the Petitioner requests consideration of comparable evidence because recognition in the field of teaching does not generally garner national or international attention. The regulatory language precludes the consideration of comparable evidence in this case, however, as there is no indication that eligibility for visa preference in the occupation as a teacher cannot be established by at least three of the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, the Petitioner mentioned evidence that specifically addressed seven of the ten criteria at 8 C.F.R. § 204.5(h)(3). Additionally, in the RFE the Director provided examples of internationally recognized prizes or awards in the field of education. The Petitioner did not submit evidence that the Beneficiary received any of the awards listed in the RFE. Where a petitioner is unable to meet or submit sufficient documentary evidence of at least three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. As such, the Petitioner has not demonstrated that it may rely on comparable evidence.

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence that establishes the Beneficiary's receipt of a one-time achievement or shows that he meets 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, after reviewing the record in the aggregate, we conclude that it does not sufficiently demonstrate the Beneficiary's sustained national or international acclaim or that his achievements have been recognized in the field through extensive documentation. For these reasons, the Petitioner has not established the Beneficiary qualifies for classification as an individual of extraordinary ability.

**ORDER:** The appeal is dismissed.