U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30189325

Date: MAR. 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an engineering executive, 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 Petitioner had not satisfied the initial evidentiary criteria, of which he must meet at least three. 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 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 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 claims to be an expert in drilling engineering, with specific emphasis on well completion for oil and gas exploration and production. He intends to continue his work in this filed 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 satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner only met the plain language requirements of two evidentiary criteria relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high salary at 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the Petitioner maintains that he also meets the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) related to memberships (ii), published materials (iii), judging (iv) and original contributions (v). The Petitioner does not address or contest on appeal the Director's finding that he does not meet the authorship criterion at 8 C.F.R. § 204.5(h)(3)(vi).[1] Accordingly, we deem this ground 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)).

Based on our de novo review, we conclude that the Petitioner has not established that he meets the requirements of at least three criteria.[2]

[1] In response to the Director's request for evidence, counsel for the Petitioner stated that the initial claim that the Petitioner had authored scholarly articles was the result of a drafting error, and requested that USCIS disregard the Petitioner's claim that he satisfied this criterion.

[2] While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.

> *Documentation of the [noncitizen'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 Petitioner asserts eligibility for this criterion based on his membership with the American Association of Drilling Engineers (AADE). USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field.[3] A petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.[4]

The Petitioner initially provided a letter from the president of the [redacted] chapter of AADE, who confirmed that the Petitioner served on the Steering Committee of the association's [redacted] from September 2006 to December 2008. The writer further indicated that membership in the association's Steering Committees "is based on merit and industry experience, and requires nomination by existing Steering Committee members."

The Director issued a request for evidence (RFE), noting that the submitted documentation was insufficient to demonstrate that the Petitioner satisfied the plain language of this criterion. In response, the Petitioner submitted a letter from the association's business administrator, confirming that the Petitioner was a member of the association. The Petitioner also submitted copies of meeting minutes for the Steering Committee demonstrating the Petitioner's nomination to and participation in the activities of the committee, as well as the association's mission statement.

In denying the petition, the Director determined that while the evidence demonstrated the Petitioner's membership in AADE, the record contained insufficient evidence to establish that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.

On appeal, the Petitioner asserts that the Director's determination was erroneous, and relies on the evidence previously submitted to establish eligibility. Specifically, the Petitioner claims that the evidence of record sufficiently demonstrates that the Petitioner was nominated for, appointed to, and served on the Steering Committee for the association's [redacted] and that such membership requires him to have outstanding achievements in the field.

Upon review, we agree with the Director's determination that the Petitioner has not satisfied this criterion. The Petitioner did not submit evidence of the membership requirements for AADE. As the record does not contain the bylaws or other official documentation of the association's membership criteria, we cannot evaluate whether the Petitioner's membership is qualifying.

Moreover, the Petitioner did not show that recognized national or international experts judge membership for AADE and/or its Steering Committee. Although the letters submitted indicate that AADE is comprised of "professional members . . . who represent the top of their professions," and that existing

[3] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual.
[4] *Id.*

Steering Committee members nominate new members, the Petitioner did not demonstrate that any of these members are recognized national or international experts. On appeal, we acknowledge the Petitioner's assertion that the voting members of the association's board of directors are "unquestionable experts in their disciplines or fields" and the assertion that many are high-ranking officials of major energy companies including ConocoPhillips and Halliburton Energy Services. However, the record does not contain documentation specifically identifying the voting members, nor does it indicate whether voting members are required to be recognized national or international experts or otherwise show that the body of voting members consists of recognized national or international experts. Moreover, the issue for this criterion is whether the individuals who determine membership are recognized national or international experts rather than the reputation of the companies who employ them. We are not persuaded that every employee who works for a recognized company is also a recognized national or international expert in the field. In addition to not specifically identifying the voting members, the Petitioner did not establish that the voting members are viewed as recognized national or international experts in their fields.

For the reasons discussed above, the Petitioner did not establish he meets this criterion.

> *Published material about the [noncitizen] in professional or major trade publications or other major media, relating to the [noncitizen'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).

To meet this criterion, the published material must be about the Petitioner and related to his specific work in the field for which classification is sought; it must include the title, date, and author of the material and any necessary translation; and the publication must qualify as a professional publication, major trade publication, or major media publication. 8 C.F.R. § 204.5(h)(3)(iii). With the petition, the Petitioner submitted copies of technical publications discussing engineering advancements in the Petitioner's field.

The Director determined that the Petitioner had not submitted sufficient evidence to satisfy this criterion. In addition to determining that the technical publications were not about the Petitioner, the Director noted that some submissions lacked the title, name of the author, and the publication date. Accordingly, the Director requested additional evidence to overcome these evidentiary deficiencies.

In response, the Petitioner maintained that the initially submitted evidence contained "advancements and findings made by [the Petitioner's] team of top-level researchers and scientists" and therefore constituted published material relating to his work in the field. The Petitioner also submitted copies of papers which he asserts were written by his team members and presented at conferences.

In denying the petition, the Director indicated that none of the published material satisfied all requirements stated in the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The Director noted that none of the published material mentioned, cited, quoted or otherwise referenced the Petitioner. Further, the Director determined that the Petitioner did not demonstrate that the papers submitted in response to the RFE constituted published material about his work as contemplated by this criterion. On appeal,

the Petitioner reasserts that the evidence submitted at the time of filing and in response to the RFE was sufficient and disagrees with the Director's conclusions to the contrary.[5]

We have reviewed the evidence submitted in support of this criterion, and conclude that the record supports the Director's determination that the Petitioner did not establish that any of the submitted documentation satisfies all requirements set forth at 8 C.F.R. § 204.5(h)(3)(iii).

According to the plain language at 8 C.F.R. § 204.5(h)(3)(iii), the published material must be both about the Petitioner *and* relating to his work in the field. Here, while we acknowledge the Petitioner's assertions that the technical publications and papers contain information about advances in his field as put forth by the Petitioner and his team, the submitted documentation does not discuss the merits of the Petitioner's work, his standing in the field, any significant impact that his work has had on the field, or any other information so as to be considered published material about the Petitioner as required by this criterion. Articles that are not about the Petitioner do not meet this regulatory criterion. *See, e.g.*, *Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor).

After review of the evidence submitted, we conclude that the Petitioner has not established that he meets the plain language of this criterion.

> *Participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

This criterion requires not only that the Petitioner was selected to serve as a judge, but also that the Petitioner is able to produce evidence that he actually participated as a judge. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the Petitioner seeks an immigrant classification within the present petition. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Here, the Director determined that a letter discussing the Petitioner's employment with [redacted] and the various positions held and associated duties he performed during the course of that employment, did not serve as evidence that he met this criterion. In response to the RFE and again on appeal, the Petitioner disputes the Director's determination, emphasizing that as a member of [redacted] Global Drilling and Completions Leadership Team and Personal Development Committee (PDC), "he reviewed the work of the entire Drilling and Completions workforce around the world (totaling thousands of members)." The Petitioner further asserts that he conducted performance reviews of the teams in the regions where he served as a manager, conducted annual performance appraisals, hired new employees, and selected individuals for promotion. The Petitioner also submitted copies of documents relating to the PDC, including a conference itinerary, charter, and enterprise PDC call

[5] The Petitioner also asserts that the Director erred by failing to consider the submitted documentation under the comparable evidence provision at 8 C.F.R. § 204.5(h)(4). We will address this assertion later in our decision.

letter, as well as email correspondence indicating that his team members had written papers regarding their work in the field.

Additionally, the Petitioner asserts that he oversaw and judged the work of his subordinates on the 19-member Rock Mechanics Team, nominated a subordinate as a [redacted] Fellow, and indicated that as executive vice president of completions for [redacted] he is currently "responsible for judging the work of others on a regular basis, as he constantly reviews the work of other engineers to promote a safer and more streamlined environment for the company and its customers."

In his appeal brief, the Petitioner does not point to specific evidence in the record demonstrating that he meets this criterion. To fulfill this criterion, the evidence must show that an individual "actually participated in the judging of the work of others in the same or allied field of specialization."[6] Here, the Petitioner asserts that his experience working as a team leader on various [redacted] projects, and his role as executive vice president of completions for [redacted] qualifies under this criterion. However, serving as a team leader or in an executive capacity where part of one's job duties includes evaluating others in the exercise of those duties does not equate to participation as a judge of the work of others in the field. Again, the phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of evaluating subordinate employees. Incidental evaluation responsibilities inherent to a supervisory or executive position do not establish that the Petitioner served in an official capacity, either individually or on a panel, as "a judge" of the work of others.

On appeal, the Petitioner cites to *MRC Energy Co. v. USCIS*, No. 3:19-CV-2003-K, 2021 WL 1209188, an instance in which USCIS's decision was found to be arbitrary and capricious because it imposed an extra-regulatory requirement that the beneficiary must have been invited to serve as a judge rather than do so as part of his job. Here, the Petitioner asserts that the Director's decision similarly imposed an extra-regulatory requirement by discounting the Petitioner's judging activities in the course of his employment. While we agree with the Petitioner's assertion that the plain language of the judging criterion does not require an individual to serve as a judge outside of their job, it nevertheless requires a petitioner to provide "evidence of [their] participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner has not done so here.

Regarding his claimed judging responsibilities at [redacted] the Petitioner submits a letter from one of the company's vice presidents reciting the Petitioner's career history and associated duties. Although the [redacted] letter generally claims that the Petitioner "reviewed" the work of the global drilling and completions workforce, it does not contain specific information, such as when the reviews occurred, whom he evaluated, what standards of review were imposed, and the ultimate outcome of those reviews, to support the writer's assertions and demonstrate that the Petitioner served as a judge of the work of others. In support of his claimed judging for [redacted] the Petitioner simply submitted his resume which outlines his position title and associated job duties. The Petitioner did not submit evidence indicating that either of his employers designated him "as a judge" in his capacity as

[6] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

a team leader or executive vice president of completions, or otherwise establishing that his roles as such were consistent with this regulatory criterion.[7]

Without further documentation, this evidence is insufficient to meet this criterion.

> *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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[8] For example, the Petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner initially submitted several testimonial letters in support of his eligibility under this criterion. The Director found these letters insufficient, and requested additional evidence in the form of objective documentary evidence demonstrating that people throughout the field regard his original contributions as important, or that his work has been widely cited, has provoked widespread commentary, or is being implemented by others. The Director provided a list of the types of documentary evidence the Petitioner could submit in addition to letters, including patents, trademarks and copyrighted materials, peer reviewed published materials, and licensed technologies.

In response, the Petitioner asserted that the Director erroneously discounted the evidence initially submitted, and asserted that the statements in the letters demonstrate that he has made original contributions of major significance to the field. The Petitioner also submitted an expert opinion letter in response to the RFE in support of this assertion.

In the denial decision, the Director acknowledged the Petitioner's submission of multiple letters but concluded that none of the letters articulated how his contributions reached beyond his employers and clients to be of significance to the field. On appeal, the Petitioner again asserts that the Director erred by not sufficiently analyzing and affording evidentiary weight to the letters, and further asserts that "there is extensive evidence on record" that the Petitioner is an expert in the industry.

Preliminarily, we note that this criterion requires the Petitioner to establish that he has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify his original contributions and explain why they are of major significance. Although the Petitioner asserts throughout the record that he is an expert in the field of drilling engineering and that the record demonstrates that has made original contributions of major significance to the field, he does not specifically identify those contributions or explain how his work has had such a deep or widespread impact as to be considered major in the field of oil and gas or drilling engineering.

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[7] We acknowledge the assertions that the Petitioner held senior-level positions for these employers. However, the high-level tasks he performed in these roles are more relevant to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), a separate and distinct criterion that the Petitioner has satisfied..

[8] *See generally* 6 *USCIS Policy Manual*, *supra,* at F.2(B)(1).

The Petitioner initially provided six reference letters from former colleagues at [redacted] and relies primarily on the testimonies contained therein to establish eligibility under this criterion. We will discuss each letter below.

The Petitioner submitted a letter from [redacted] a general manager of strategy and training at [redacted] who recounts his familiarity with the Petitioner during his career with the company and notes that the Petitioner "was able to reduce safety incidents to zero during his tenure" by implementing novel accountability measures, "improved drilling efficiency in Venezuela and Argentina" and "implemented programs to improve organizational capabilities and to prepare the workforce to take on challenging technical and management assignments across the world." The writer concluded that the Petitioner's efforts "have saved [redacted] hundreds of millions of dollars while keeping people safe and protecting the environment."

A letter from [redacted] president of [redacted] indicates that he served as the Petitioner's supervisor when he worked for the company in Canada. Mr. [redacted] states that during his first year running drilling and completions, the Petitioner "reduced the number of [safety] incidents from 13 to zero" through changes he implemented in agreements with service providers. He further states that in addition to improving the safety culture for the company in Canada, he improved drilling efficiency by reducing the amount of drilling days required for company projects in both Canada and Argentina.

A letter from [redacted] vice president of health, safety and environment at [redacted] recites the Petitioner's career history and associated duties at the company. Mr. [redacted] states that as a team leader for rock mechanics, the Petitioner's leadership on the team's projects "helped to reduce risks related to uncertainties in subsurface rock mechanics, ultimately reducing the company's capital expenditure on drilling and completions." Mr. [redacted] also discusses the process improvements and drilling efficiencies the Petitioner implemented in Canada, and further states that he was involved in the development of [redacted] "unique assurance program for well control."

[redacted] vice president and global account director for [redacted] also recounts the Petitioner's process improvements and drilling efficiencies. He further claims that the Petitioner's "overarching accomplishment has been to deliver large drilling projects around the world effectively, timely, under budget, and perhaps most importantly, safely," and that his "innovative approach was unique in my experience, and rarely is this level of collaboration found in the oilfield." Similarly, [redacted] a retired general manager for a [redacted] business venture in Argentina, recounts working with the Petitioner over the course of his career and reiterates the Petitioner's accomplishments in drilling efficiencies as well as cost and safety improvements.

[redacted], president and CEO of [redacted] states that he worked closely with the Petitioner on several initiatives and notes that the Petitioner's drilling initiatives "saved [redacted] over $1 million USD per well in completion costs." He further states:

> [The Petitioner] has personified extraordinary operational excellence in the field of oil and gas in every role I have seen him pursue. He has shown initiative to create a safer and more compliant workspace for his colleagues and his professionalism is at the

highest level I have seen. His employment at our client was imperative to building our relationship with them that continues to this day.

While these letters from the Petitioner's former colleagues at [redacted] highlight the importance and value of the Petitioner's job performance during his employment, they do not describe how his contributions as an employee led to impacts beyond [redacted] business operations. The authors repeatedly refer to the Petitioner's original and innovative approaches, specifically his drilling efficiencies and safety protocols and procedures, but they do not elaborate on any specific resulting outcomes that extend beyond the business operations of [redacted] These letters primarily contain attestations of the novelty and utility of the Petitioner's contributions and innovations without describing a specific original contribution that has impacted the broader field of oil and gas, provoked widespread commentary, or had an influence on subsequent work in the specific field of drilling engineering.[9] Moreover, the authors indicate that the Petitioner has helped [redacted] profitability and speak highly of his abilities, but do not specify how his safety protocols and drilling efficiencies implemented on behalf of [redacted] have been widely implemented in the field or establish that the Petitioner's work has had a demonstrable impact on the field as a whole commensurate with a contribution of major significance.

In response to the RFE, the Petitioner submitted an expert opinion letter from [redacted] general counsel for [redacted] who summarizes the declarations contained in the letters from the Petitioner's [redacted] colleagues and concludes that, based on his "over 30 years of legal and merger acquisition expertise in the energy industry," the Petitioner has made "business contributions of major significance in the field." The author, however, did not identify the Petitioner's specific contributions, nor did he elaborate and describe how these "business contributions" have somehow affected the field in a significant manner. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

While all of the letters submitted collectively speak to the Petitioner's innovations in safety and drilling efficiencies, they do not provide examples of the depth or breadth of that impact. Neither the letters nor other evidence within the record shows how the Petitioner's work has been widely implemented or has otherwise impacted the field of oil and gas or fields directly related to advancements in drilling engineering methodologies. Letters that specifically articulate how a petitioner's contributions are of major significance to the field add value.[10] On the other hand, letters that lack specifics and use hyperbolic language do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.[11]

The burden is on the Petitioner to not only identify his original contributions but to also demonstrate why they are considered to be of major significance in the field. Here, for the reasons discussed, the Petitioner has not met this burden.

[9] *Id.*
[10] *Id.*
[11] *Id.*

B. Comparable Evidence

Additionally, the Petitioner requested consideration of the documentation submitted in support of the published materials criterion as comparable evidence under 8 C.F.R. § 204.5(h)(4).

The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to their occupation, which in this case involves performing the work of an engineering executive. 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).[12]

While the Petitioner suggests that due to the nature of his work, the documents submitted as evidence of eligibility under the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii) "may not fit optimally within the plain language of this criterion," he does not discuss why the criterion is inapplicable to his occupation. A general unsupported assertion that the listed evidentiary criterion does not readily apply to the petitioner's occupation is not probative.[13] 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 of an engineering executive 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 submitted evidence that specifically addressed six of the ten criteria at 8 C.F.R. § 204.5(h)(3), and the record reflects that he has satisfied two of those criteria. 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.

C. O-1 Nonimmigrant Status

The record reflects the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

[12] *Id.*
[13] *Id.*

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. 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 he is one of the small percentage at 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.

ORDER: The appeal is dismissed.