



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

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

In Re: 31109673

Date: MAY 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a computer scientist currently working with artificial intelligence and machine learning (AI/ML) technology, 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 although the Petitioner satisfied the initial evidentiary requirements for this classification, he did not demonstrate, as required, that he has sustained national or international acclaim and is among that small percentage at the very top of his field. The matter is now before us on appeal pursuant to 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 immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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 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 they meet 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 authorship of 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 completed his graduate studies in electrical engineering and computer science in Brazil. He worked as a faculty member and department head at two Brazilian institutions between 2001 and 2021. At the time of filing this petition, he was employed as the executive director for data science for a U.S.-based financial technology company, in O-1 nonimmigrant status.

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 Petitioner claimed to meet six criteria at 8 C.F.R. § 204.5(h)(3), summarized below:

- (ii), Membership in professional associations that require outstanding achievements;
- (iii), Published material in major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical roles for organizations that have a distinguished reputation.

The Director determined that the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iv), (vi) and (viii). The record supports the Director’s determination. The Petitioner provided evidence of his involvement in peer review for scientific journals and conferences which demonstrates that he participated as a judge of the work of others in his field under 8 C.F.R. § 204.5(h)(3)(iv). In addition, the Petitioner has authored and published scholarly articles and therefore satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(vi).

Finally, the record includes a letter from the Petitioner’s current employer which provides a detailed account of the nature of his leadership role as executive director for data science, as well as an explanation of how his contributions in this role have been critical to his employer’s technological development and financial growth. This letter was accompanied by evidence of the employer’s distinguished reputation in its field, including evidence that the business has received significant

funding from investors, positive coverage in industry media, and industry awards. Therefore, we agree with the Director that the Petitioner met the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which requires evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. As the Director determined that the Petitioner met three of the evidentiary criteria and thereby satisfied the initial evidence requirements, they proceeded to a final merits determination.

On appeal, the Petitioner asserts that he also satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (iii).¹ Because the Petitioner has shown that he satisfies three criteria, we will evaluate his claims regarding these two additional criteria in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international claim, that he is one of the small percentage at the very top of his endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if those achievements are sufficient to demonstrate their extraordinary ability in the field of endeavor. See section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.

As a preliminary matter, we note that a significant portion of the appellate brief references the Petitioner's filing of an immigrant petition requesting a national interest waiver (NIW) under section 203(b)(2)(B)(i) of the Act. Specifically, the brief mentions his eligibility under the three-prong analytical framework for adjudication of NIW petitions set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) and requests that the AAO "grant him the National Interest Waiver pursuant to INA § 203(b)(2)(B)." If it was the Petitioner's intent to request a change in the requested immigrant visa classification on appeal, we note that such a change cannot be granted after a petition has been adjudicated; we will only consider his eligibility for the visa classification annotated on the petition. With respect to the immigrant classification requested on the petition, the Petitioner generally contests the Director's unfavorable decision, emphasizes that he met at least three evidentiary criteria at 8 C.F.R. § 204.5(h)(3), and asserts that he is eligible for classification as an individual of extraordinary ability.

According to his résumé, the Petitioner completed his bachelor's degree in computer science in 1997 and received both his master's degree in electrical engineering and doctorate in computer science from [redacted] in Brazil, in 2001 and 2011, respectively. From 2001 until 2018, the Petitioner was employed by [redacted], a Brazilian college, as the head of the computer information systems department. In 2021, he joined the faculty of [redacted] as a computer

¹ On appeal, the Petitioner does not contest the Director's determination that he did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v), which requires evidence of an individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. Rather, the Petitioner asserts in his brief that the Director determined that he met this criterion. We note, however, that the Director's analysis of the claims and supporting documentation submitted in support of this criterion concluded with a determination that "the submitted evidence does not meet this criterion."

science professor and head of [redacted] information technology department, responsible for supervising the campus computer network infrastructure. Since 2021, the Petitioner has served as the executive director for data science for [redacted] a U.S.-based financial technology company, where he is responsible for leading a team of artificial intelligence professionals to develop machine learning models for financial applications.

As mentioned above, the Petitioner has participated as a judge of the work of others in his field as a peer reviewer, authored scholarly articles, and holds a leading or critical role for his current employer. We have also considered evidence related to his membership in an association in his field, his original research contributions, and published materials about him. This evidence reflects that he is an experienced and accomplished researcher, educator, and manager in the computer science field. The record, however, does not contain evidence sufficient to show that he has risen to the very top of his field and has sustained national or international acclaim.

The Petitioner provided evidence of his service as a peer reviewer for several professional journals and conferences in his field. Specifically, he documented that he reviewed manuscripts submitted for publication to the following journals and conferences: *IEEE Pervasive Computing* (one review in 2008); 2008 IEEE Conference on Emerging Technologies & Factory Automation (ETFAs) (two reviews); *Journal of Medical Systems* (one manuscript in 2014); and *Journal of Network and Computer Applications* (five reviews between June 2022 and April 2023). The Petitioner's résumé indicates that he has also served as a reviewer for *Journal of Enterprise Information Management*, *IEEE Transactions on Mobile Computing*, *IEEE Communications Letters*, and the 44th and 45th Southeastern Symposia on System Theory. In addition, some of the submitted reference letters indicate the Petitioner has reviewed "dozens" of manuscripts. However, he has not sufficiently documented any additional peer review activities beyond the nine instances mentioned above.

An evaluation of the significance of the Petitioner's experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. See *Kazarian*, 596 F. 3d at 1121-22 (finding that a review of the significance of the evidence submitted is appropriate in a final merits determination); see generally 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual>. The Director observed that "reviewing manuscripts for journals is a common expectation in the research and academic fields for professionals who themselves author and submit articles for review." The Director acknowledged that peer review work "indicates a level of knowledge or expertise in the field" but concluded "the record does not demonstrate that the [Petitioner's] judging/review work has set him apart from others."

We agree with the Director's determination that participation in the peer review process does not automatically support a conclusion that a researcher has achieved the recognition required for this classification, a determination that the Petitioner has not addressed on appeal. The Petitioner provided an expert opinion letter from a professor at [redacted] who states that "being asked to serve as a judge . . . for someone's work in scholarly events or academia recognizes [the Petitioner's] expertise," but he did not further expand on how the Petitioner's activities as a peer reviewer distinguish him from others in the field.

A recommendation letter from one of the Petitioner's former professors at [redacted] states that "well-known scientific journals only invite leading scientists to review/judge the scientific work submitted."

However, this statement is not adequately supported in the record, which does not include corroborating evidence documenting the criteria used by journals (such as *IEEE Pervasive Computing* or *Journal of Network and Computer Applications*) to select peer reviewers. Absent such evidence, the record does not support a determination that the journals that invited the Petitioner to conduct peer reviews reserve this distinction for those scientists and researchers at the top of a given field. In fact, the evidence submitted to document the Petitioner's peer review service for the 2008 IEEE ETFA Conference indicated that manuscript submissions were reviewed by approximately 300 reviewers and that all prospective conference participants who submitted their work were asked to review manuscripts submitted by their peers; there was no indication that the conference reserved such requests for "leading scientists."

Finally, as noted, while some of the submitted reference letters indicate the Petitioner completed "dozens" of reviews, he did not fully document his claimed peer review activities. Rather, he submitted evidence documenting his review of nine manuscripts over a period of 15 years. Without evidence that sets the Petitioner apart from other researchers who are called on to perform peer review services in his field, he has not provided sufficient context to demonstrate that the nature and scope of his peer review work is indicative of his sustained national or international acclaim or indicative of a "career of acclaimed work in the field" as contemplated by Congress. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

Likewise, publication of research does not automatically place a researcher or professor at the top of their field. Here, the Petitioner submitted his Google Scholar profile showing that 12 of his publications have been cited at least one time, including several journal articles and conference presentations, a book chapter, his master's degree thesis, and his doctoral dissertation. The dates of publication range from 2003 to 2021, with only two works published in the ten years preceding the filing of the petition in 2023 (one in 2015 and one in 2021). The Petitioner did not provide evidence differentiating his publication rate from those of others in his field, or otherwise establish that it is reflective of one who is among the small percentage at the very top of his field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

As authoring scholarly articles is often inherent to the work of scientists, researchers and academics, the citation history or other evidence of the influence of his articles can be an indicator to determine the recognition that his work has had on the field and whether such recognition or influence has been sustained. For example, numerous independent citations of the Petitioner's work may provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F.3d at 1122.

Here, the record indicates that, as of February 2023, the Petitioner's body of published work had received 74 total citations, with 13 citations since 2018. The Petitioner's two most-cited articles, a 2008 conference presentation titled [REDACTED] and a 2010 article titled [REDACTED] published in *Business Process Management Journal*, had received 32 and 13 citations respectively, with the latter last cited in 2018. The Petitioner's citations, both individually and collectively, show that his work has received some recognition in his field. However, he did not provide evidence demonstrating that the total rate of citations to his body of published work is high

relative to others in the field or that the citations to his research represent attention at a level consistent with being among small percentage at the very top of his field. *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (stating that depending on the field and the comparative data a petitioner provides, such evidence may indicate a person’s high overall standing in a given field).

The Petitioner emphasized that several of his peer-reviewed articles have been accessed or downloaded directly from the publishers’ websites and that overall, his work had been downloaded “more than 3200 times,” with one article receiving over 1600 downloads. However, the record does not contain comparative information, such as access or download data for papers published by others in his field. Without supporting evidence to provide such context, he has not supported his claim that the total number of times his published research was downloaded or accessed is indicative of his standing at the top of his field. Nor does the record demonstrate that evidence of downloads should carry the same weight as a high number of citations in terms of establishing the Petitioner’s recognition in the field. Unlike a citation history, an access or download count does not convey whether or how the Petitioner’s research findings have been used in subsequent research activities. If downloads of his work have resulted in few citations, then we cannot conclude that the number of downloads can be correlated with a pattern of sustained acclaim and recognition in the field. Here, although the Petitioner provided evidence that his 2010 article published in *Business Process Management Journal* was downloaded or accessed 1,600 times, the article was cited a total of 13 times in 13 years and had not been cited by others in the five years immediately preceding the date of filing. While we do not discount the possibility that a high number of downloads could indicate a level of recognition comparable to a high level of citations, the record here does not provide the context or evidence to support such a finding.

The Petitioner also stated that his most recent article, the final version of which was published in 2023, appeared in the *Journal of Intelligent Manufacturing*. The Petitioner emphasized that this journal has an impact factor of 7.136, which places it among the “most influential” journals in the field. Publication of an article in a journal with a relatively high impact factor, however, does not indicate the Petitioner has necessarily garnered recognition or acclaim as a result of such publication. A reference letter from the Petitioner’s former colleague and fellow researcher at [redacted] highlights the impact factor of this journal as evidence of this article’s “academic relevance” but the record otherwise lacks information regarding the level of recognition or acclaim associated with publishing in the *Journal of Intelligent Manufacturing*.

The Petitioner also highlights the inclusion of his article titled [redacted] [redacted] in the Astrophysics Data System (ADS), a digital library portal operated by the Smithsonian Astrophysical Observatory under a cooperative agreement with NASA. Evidence in the record indicates that ADS maintains over 13 million physics, astrophysics, and general science publications. The Petitioner submitted articles that highlighted the inclusion of his work in the ADS database from three Brazilian publications, including two newspapers and a technology news website. However, as discussed in the Director’s decision, the Petitioner did not demonstrate that these published articles appeared in professional or major trade publications or other major media or that they otherwise contributed to the Petitioner’s national or international acclaim in the field. Further, the record contains insufficient evidence to establish that having an article included in this database of 13 million publications is indicative of an individual researcher’s standing in their field. The record lacks supporting evidence regarding ADS and the criteria it uses to select articles for

inclusion in the database. Notably, the article the Petitioner had selected for inclusion in ADS, which was published in *International Journal of Electronics* in 2015, has been cited only one time, according to his Google Scholar profile.

Therefore, while the Petitioner's publication in a high impact journal and the inclusion of his article in ADS may be noteworthy, he did not demonstrate that his overall publication record demonstrates the required sustained national or international acclaim for this classification or reflects that he has reached the very top of his field of endeavor. *See* section 203(b)(1)(A) of the Act.

In addressing the Petitioner's leading and critical roles, the Director recognized the valuable work and contributions he has made to his employers' organizations. However, the Director concluded that the record lacked evidence to demonstrate how his work for those organizations sets him apart from others or how his roles reflected or resulted in his sustained national or international acclaim in the field. The Petitioner does not address or contest this conclusion on appeal.

The record reflects the Petitioner has been employed as a department head by two institutions of higher education in Brazil [redacted], and in a senior management role with [redacted]. Evidence of a person's employment or research experience with leading institutions in their field (such as U.S. or foreign universities with high or very high research activity, or a university that is highly regarded accordingly to widely recognized metrics) can be a positive factor toward demonstrating that the person is among the small percentage at the very top of their field. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(2). While the Petitioner provided evidence to demonstrate that his current employer has a distinguished reputation in its industry, he did not submit sufficient independent evidence demonstrating that the organizations that employed him previously are leading or highly regarded/highly ranked research institutions in Brazil, or that they, or the specific academic departments that he led, otherwise enjoy a distinguished reputation.

Further, although the record supports the Director's conclusion that the Petitioner has performed in critical roles for his employers, he has not demonstrated how or to what his extent his employment in these roles resulted in or is indicative of his sustained acclaim or recognition in his field. For example, with respect to his role at [redacted] a letter from the school's director-general, indicates that all its professor vacancies "must be hired upon approval in a Civil Service Examination for government jobs." She states that the Petitioner "achieved the second-highest score in the public examination for [redacted] professors," and as a result secured one of the available positions outlined in a public notice. While the Petitioner was successful in this competitive hiring process, the record does not establish how his high score on a civil service examination is consistent with national acclaim or indicative of his standing at the top of his field. The director-general's letter describes some of the projects the Petitioner undertook during his tenure at [redacted] and notes that he was invited to be a commencement speaker for graduating students of "the Technical Course in Computing Integrated to High School at [redacted]. However, the letter from [redacted] does not discuss how his role garnered him individual recognition outside of this organization at a level consistent with sustained national or international acclaim.

The letters documenting the Petitioner's tenure at [redacted] similarly lack an explanation as to how his role with this college contributed to his national or international acclaim in his field. While a former student from the Petitioner's department provided a letter highlighting his own professional

successes and those of other alumni, this evidence does not establish that the achievements of the college's graduates resulted in the Petitioner's receipt of widespread recognition or acclaim within the broader field. The Petitioner also provided evidence that he was one of several persons in his field quoted in an article titled [redacted] which was published by the Brazilian newspaper *Diario de Canoas* in [redacted] 2018. The article identified the Petitioner as a professor and "coordinator of the Information Technology course" at [redacted]. However, as noted by the Director, the article was not about him or his work in the field and was not published in major media.

Regarding his role as the executive director of data science at [redacted] a letter from the company's CEO indicates that the Petitioner was hired for his position based on the recommendation of a [redacted] employee who had worked with him during his graduate studies at [redacted]. While the CEO's letter details his important contributions to [redacted] it does not indicate that the Petitioner's activities with this company have garnered him individual recognition from the field or contributed to his sustained national or international acclaim, nor does it indicate that he was recruited or sought for the role based on his acclaim or standing in his field.

The Petitioner has consistently emphasized his senior membership in the Institute of Electrical and Electronics Engineers (IEEE) as evidence of his extraordinary ability, noting that only 10 percent of IEEE's over 400,000 members hold this membership rank. The record reflects that the Petitioner's senior membership in IEEE is notable in that it requires "extensive experience" and certain professional accomplishments in the field, such as publication of papers or development or furtherance of scientific or engineering courses. However, the record does not demonstrate that the "senior member" rank is reserved only for those IEEE members who have achieved acclaim at the national or international level or is otherwise indicative of their standing at the very top of the field.

With respect to the Petitioner's research activities, the Director observed that he had made original contributions to the field through his authorship of papers, conference presentations, and book chapters, and acknowledged the value this work. The Director also acknowledged evidence of interest in his work through citations and downloads, evidence that his work had been used by others (including the Hewlett Packard RFID Center of Excellence in Brazil), and the Petitioner's submission of letters from his colleagues, employers and experts that speak to both the nature and impact of his contributions and his standing in the field. However, the Director determined that he had not demonstrated that his contributions are of major significance to the field or that such contributions resulted in the Petitioner "having achieved sustained acclaim as one of the very top of the field of endeavor." The Petitioner does not directly address this determination on appeal.

The Petitioner has shown that his work, particularly the research he conducted in the field of RFID technology, was valuable and that he was a contributor to joint research efforts conducted by Brazil's universities and the private sector when this technology was in an early stage of development and adoption in the early 2000s. However, the evidence, considered individually and collectively, does not establish that his contributions have been recognized at a level that elevates him to the top of his field or that they have resulted in his sustained national or international acclaim.

For example, a letter from R-S-F-, a principal scientist at the [redacted] who states that he is personally familiar with the Petitioner's work, provides an overview of the Petitioner's

education and career, and details the nature of his contributions to this field by summarizing his publications and the number of citations or downloads they received. He opines that the Petitioner “can be considered a reference” in the RFID field but does not further elaborate on how his achievements have been recognized at a level that places him at the very top of the field. A letter from E-L-B-, a Microsoft software engineer who attended [redacted] with the Petitioner, is similar in content. The letter provides an overview of the Petitioner’s contributions to the RFID field, referring to him as a “key figure” in the development of this technology. A letter from S-P-D-, a manager at The [redacted] states that the Petitioner has “widely recognized achievements” and “remarkable accomplishments” in the field of RFID technology and “revolutionized its utilization.” While the Petitioner has earned significant praise from his former colleagues, the solicited letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner’s contributions in the RFID field, primarily conducted while he was completing his graduate studies, have resulted in his sustained national or international acclaim and that he is more broadly recognized as being among that small percentage at the very top of his field of endeavor.

The record, including the evidence discussed above, does not establish the Petitioner’s eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record does not indicate a degree of recognition consistent with the sustained acclaim that the statute demands. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

C. O-1 Nonimmigrant Status

The record reflects that USCIS previously approved a petition classifying the Petitioner as an O-1 nonimmigrant with extraordinary ability. Each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions. Therefore, the Petitioner’s O-1 status has been considered but is not determinative in the adjudication of this immigrant petition, which is governed by a different section of the statute and regulations and case law. We are not bound by service center or district director’s decisions. *See, e.g., La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam). For the reasons addressed above, the record does not establish the Petitioner’s eligibility for classification under section 203(b)(1)(A) of the Act. We are not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 597 (Comm’r 1988).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.