



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

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

In Re: 34813105

Date: NOV. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an individual of extraordinary ability in weapons development. *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 at least three of the initial evidentiary criteria, as required, he did not show his sustained national or international acclaim and demonstrate he is among the small percentage at the very top of the field of endeavor. In addition, the Director determined the Petitioner did not demonstrate his intent to continue to work in his area of extraordinary ability in the United States and that his entry would substantially benefit prospectively the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

- (iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories 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

### A. Evidentiary Criteria

Because the Petitioner has not claimed or established his receipt of 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 the Petitioner met at least three of the claimed evidentiary criteria. However, the Director concluded the Petitioner did not show he garnered sustained national or international acclaim and his achievements have been recognized in the field of endeavor, demonstrating he is one of that small percentage who has risen to the very top of the field.

On appeal, the Petitioner argues his satisfaction of an additional criterion, and the evidence in the aggregate establishes his eligibility as an individual of extraordinary ability. Because the Petitioner has already shown that he fulfills the minimum requirements of at least three criteria, we will evaluate the totality of the evidence based on the documentation presented to the Director in the context of the final merits determination below.<sup>1</sup>

### B. Final Merits Determination

As indicated above, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim,<sup>2</sup> he is one of the small percentage at the very top of the field of endeavor, and his achievements have been recognized in the field through

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<sup>1</sup> *See* 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual>.

<sup>2</sup> *See* 6 *USCIS Policy Manual*, *supra*, at F.2(A)(1) (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of “sustain” is “to support or maintain, especially over a long period of time . . . To persist in making (an effort) over a long period of time”).

extensive documentation. In a final merits determination, we analyze an individual's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.<sup>3</sup> In this matter, we determine the Petitioner has not shown his eligibility.

The Petitioner provided documentation indicating that he “graduated from the [redacted] [redacted] and obtained complete higher education in specialty ‘Law Science’ and a qualification of a lawyer” in 1999 and “received a degree Candidate of Science Law” from the [redacted] in 2021. According to the Petitioner’s initial cover letter:

In Ukraine, in the period from 1999 to 2023, [the Petitioner] gained huge scientific, legal and practical experience. Building his career, [the Petitioner] rose from the position of a forensic expert – specialist in forensics examination of firearms and traces of their use, to the position of Deputy Head of the Expert Service of the [redacted] [redacted] . . . , in which [the Petitioner] headed six departments: of criminal examination and certification testing of arms and armaments, armor vests and other means of armored protection; cars and other motor vehicles; examination of currency, documents and securities, fingerprints, traces of burglary tools and instruments, locks and security seals; pyrotechnic articles and explosives; designing of shooting ranges and premises for safe storage of weapons.

As discussed further below, the Petitioner has received awards, conducted review work, made contributions, authored material, performed in authoritative roles, and earned salaries for his work. However, in considering the totality of the evidence, the Petitioner has not demonstrated that his achievements are reflective of a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Furthermore, the Petitioner has not shown that he has risen to that small percentage at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner has not established that he enjoys a career that meets this very high standard.

The Petitioner provided evidence reflecting his receipt of almost two dozen commendations from various cabinets within the government of Ukraine in the form of certificates, degrees, medals, orders, and other awards from 2002 – 2023. Although the awards show recognition of his work within the government of Ukraine, the Petitioner did not demonstrate how these internal honors translate into national or international acclaim from the forensics or weapons development field. Here, the Petitioner did not establish how his recognition for his government employment indicates that he is one of that small percentage who has risen to the very top of the field of endeavor. While the Petitioner submitted accompanying photographs, minutes, and resolutions, the Petitioner did not show that he received

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<sup>3</sup> See 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (instructing that USCIS officers should consider the petition in its entirety to determine eligibility according to the standard – sustained national or international acclaim and the achievements have been recognized in the field of expertise, indicating that the person is one of that small percentage who has risen to the very top of the field of endeavor).

awards indicative of the upper echelon in the field. Moreover, the Petitioner did not demonstrate how his government employment accolades place him among that small percentage at the very top of the field or that he garnered national or international acclaim in the field. 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).

Furthermore, the Petitioner provided evidence of his membership on the Expert Qualification Commission [redacted] for the attestation of forensic experts from 2005 – present. Specifically, the Petitioner assessed the knowledge and levels of training of forensic experts through the administration of exams. However, the Petitioner did not show how his membership or service resulted in sustained national or international acclaim or reflects that small percentage who has risen to the very top of the field of endeavor. The record, for instance, does not contain evidence indicating that he received national or international recognition based on his membership or service with this commission. In addition, the Petitioner did not establish that he has distinguished himself from others in the field based on his membership, gaining national or international attention or placing him among the upper echelon in his field.

Regarding the Petitioner’s service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22. The Petitioner submitted evidence that he serves as the deputy editor-in-chief for [redacted]. Specifically, the Petitioner served in this role for four issues from 2002 – 2023. Here, the Petitioner did not establish that his recent judging instances contributed to a finding that he has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim.

Moreover, the Petitioner did not show, for example, how his recent experience serving on the editorial board for a single publication compares to others at the very top of the field. In addition, the Petitioner did not establish, for instance, that he garnered wide attention from the field based on his editorial board work. Further, serving on an editorial board for a publication does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field. Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of serving on editorial boards for esteemed publications or judging recognized, acclaimed experts in his field, the Petitioner has not shown that his recent and narrow judging experience places him among that small percentage who has risen to the very top of the field of endeavor.

Likewise, authorship and publication do not automatically place one at the top of the field. The record reflects the Petitioner presented evidence showing that he authored 3 book chapters, 2 monographs, and 12 forensic-related articles. However, the Petitioner did not demonstrate that his publication record is consistent with having a career of acclaimed work, sustaining national or international acclaim, and being among the small percentage at the very top of his field. The Petitioner, for instance, did not show the significance of his authorship or how his publication record compares to others who are viewed to be at the very top of the field.

In addition, the citation history or other evidence of the influence of written work can be an indicator to determine the impact and recognition that his publications have had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that others 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. However, the Petitioner did not show the impact or influence that his written material has had on the field or otherwise show the significance or relevance of his publications. For instance, the Petitioner did not indicate that his work received a level of interest in the field commensurate with sustained national or international acclaim.<sup>4</sup>

Similarly, the Petitioner presented evidence of being an inventor for the patent, [REDACTED] in 2023 and his authorship of eight Standards for [REDACTED] which “establish obligatory requirements of Ukraine to the design and safety of certain products.” Again, the Petitioner did not demonstrate the significance or relevance of the patent and standards in the field. Although the evidence indicates the originality of his work, the Petitioner did not establish that his contributions garnered him national or international attention or reflects a career of acclaimed work in the field. Moreover, the Petitioner did not show how his patent or standards have impacted the field consistent with a very high standard requiring the petitioner to submit more extensive documentation than that required for lesser classifications.

Furthermore, the Petitioner provided several recommendation letters generally praising him and his work. For instance, Y-C- stated that the Petitioner “has made a significant scientific and practical contribution to the development of forensic ballistic examination, as well as forensic accounting of weapons and traces of their use.”<sup>5</sup> Here, the letter does not further elaborate and provide detailed information explaining how he “has made a significant scientific and practical contribution.” Moreover, the letters do not contain sufficient information and explanation to show that he is viewed by the overall field, rather than by a solicited few, among the upper echelon or that he has garnered recognition on a national or international scale, consistent with being among the small percentage at the very top of the field of endeavor. Although the letters identify the Petitioner’s original contributions, they do not reflect a career of acclaimed work in the field, garnering the required sustained national or international acclaim. Likewise, the letters do not establish his roles with the

[REDACTED]  
[REDACTED] or any other department within the [REDACTED] resulted in widespread acclaim from the field, that he drew significant attention from the greater field, or that the overall field considers him to be at the very top of the field of endeavor.

Finally, although the Petitioner documented his salary with the [REDACTED] the Petitioner did not establish that he commanded earnings commensurate with sustained national or international acclaim. The Petitioner did not show that his wages are tantamount to an individual who is among that small percentage at the very top of the field of endeavor. He did not demonstrate, for example, how his government salary compares to others at the very top of the field or other renowned weapon developers

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<sup>4</sup> At initial filing, the Petitioner’s cover letter claimed that his three books sold 3,000, 500, and 500 copies, respectively. Besides not providing evidence to support his assertions, the Petitioner did not demonstrate that these figures represent attention at a level consistent with being among that small percentage at the very top of his field.

<sup>5</sup> Although we reference a sample letter, we have reviewed and considered the other recommendation letters in the record.

or forensic experts, or that he received notoriety or attention based on his earnings separating himself from others in the field or placing him in the upper echelon.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought.<sup>6</sup> Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at \*5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at \*1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). In this case, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. *See* H.R. Rep. No. at 59; *see also* section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he is among the small percentage at the top of his field. *See* 8 C.F.R. § 204.5(h)(2).

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.<sup>7</sup> The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.

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<sup>6</sup> *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (providing that while a person may be stronger in one particular evidentiary area than in others, the totality of the evidence must establish that the person is extraordinary).

<sup>7</sup> As the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether he will continue to work in his area of extraordinary ability under section 203(b)(1)(A)(ii) of the Act and whether his entrance will substantially benefit prospectively the United States under section 203(b)(1)(A)(iii) of the Act. Accordingly, we reserve these issues. *See INS v. Bagambashad*, 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where applicants do not otherwise meet their burden of proof).