



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

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

In Re: 18389347

Date: MAR. 22, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a physical education specialist, 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 at least three of the initial evidentiary criteria, as required, the Petitioner did not establish his sustained national or international acclaim and demonstrate that he is among that small percentage at the very top of the field of endeavor.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. 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 his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten 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 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 met three of the claimed evidentiary criteria relating to judging at 8 C.F.R. § 204.5(h)(3)(iv), scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). However, the Director concluded that the Petitioner did not show that he garnered sustained national or international acclaim and that his achievements have been recognized in the field of expertise, demonstrating that he is one of that small percentage who has risen to the very top of the field. On appeal, we will review the totality of the evidence in the context of the final merits determination below.<sup>1</sup>

### B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim,<sup>2</sup> that he is one of the small percentage at the very top of the field of 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 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. We note that in conducting the final merits determination, the Director focused only on evidence related to those criteria which he had found that the Petitioner met. USCIS policy states that *all*

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<sup>1</sup> *See* 6 *USCIS Policy Manual* F.2, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

<sup>2</sup> *Id.* (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

evidence in the record be considered under the final merits determination, independent of the evidentiary criteria analysis performed previously.<sup>3</sup> Accordingly, we have analyzed the record in its entirety, which includes other relevant evidence such as the Petitioner's membership in professional associations, original contributions of major significance, and high salary. In this matter, we determine that the Petitioner has not shown his eligibility.

The record reflects that the Petitioner received a bachelor's degree in physical education from the [REDACTED] in 1989, a specialization in exercise physiology from the [REDACTED] in 1991, and a master's degree in collective health from [REDACTED] in 2003. He has been employed by [REDACTED] since 1987, most recently as coordinator of the exercise physiology laboratory of its pulmonary rehabilitation center since 2005. As indicated above, the Director determined that the Petitioner reviewed several papers, authored some scholarly material, and serves in a critical position for the Petitioner. However, the record does not demonstrate that the Petitioner enjoys a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Relating to 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.<sup>4</sup> The record reflects that the Petitioner's judging events included serving as an evaluator on the examination board for final papers related to physical education at [REDACTED] in November 2014; participating as a member of the examining board for final works in the specialization course in family health at [REDACTED] in May, July, and September 2015; and performing as an evaluator of student works in physical education during Physical Education Week at [REDACTED] in November 2017. However, the Petitioner did not establish that these instances place him among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner did not show, for example, how his review experience compares to others at the very top of the field.

In addition, the Petitioner did not demonstrate that these judging events, occurring approximately within four years from the filing of the petition in September 2018, contribute to a finding that he has a career of acclaimed work in the field or are indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not establish, for instance, that he garnered wide attention from the field based on his review work. Moreover, participating in the peer review process 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 completing a substantial number of review requests relative to others, served in editorial positions for distinguished journals or publications, or chaired technical committees for reputable conferences, the Petitioner has not shown that his peer review experience places him among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

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<sup>3</sup> *See* 6 USCIS Policy Manual, *supra*, at F.2 (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

<sup>4</sup> *See also Id.* (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

Likewise, authorship and publication do not automatically place one at the top of the field.<sup>5</sup> The record reflects that the Petitioner's article, "[redacted]," was published by [redacted] in 2003. The Petitioner also emphasizes that he has presented his research at national and international conferences. The record shows his three articles, "[redacted]" "[redacted]" and "[redacted]" were presented at [redacted], the 2016 International Convention on Science, Education, and Medicine in Sport (ICSEMIS), and the 40th International Symposium on Sports Sciences (2017),<sup>6</sup> respectively. The record does not show that conference presentation is a privilege reserved for those at the very top of the field. In addition, the Petitioner did not demonstrate that his publication record of four documents in a fifteen-year timeframe is consistent with having a career of acclaimed work and sustaining national or international acclaim. See H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.<sup>7</sup> 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 did not establish that his authorships reflect being among the small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not show the significance of his authorships or how his publications compare to others who are viewed to be at the very top of the field.

Moreover, the citation history or other evidence of the influence of his written works 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 works have 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 Petitioner did not show that his written or presented material garnered him any national or international acclaim. See section 203(b)(1)(A) of the Act. The Petitioner did not submit corroborating citatory documentation or other evidence consistent with a very high standard requiring the petitioner to present more extensive documentation than that required for lesser classifications. See 56 Fed. Reg. at 30704.

As it relates to the Petitioner's service in a leading or critical role, as mentioned above, the Petitioner has been employed by [redacted] as coordinator of its exercise physiology laboratory since 2005. He

<sup>5</sup> See 6 USCIS Policy Manual, *supra*, at F.2 (stating that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

<sup>6</sup> The record shows that the annual International Symposium on Sports Sciences is organized by the [redacted].

<sup>7</sup> The record contains two additional articles and one e-book indicating the Petitioner's authorship. The Petitioner's 2019 article in the *International Journal of Cardiovascular Sciences*, 2022 article in the *International Journal of Health Science*, and e-book [redacted] published in 2019 were after the date when the petition was filed in September 2018. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Accordingly, we will not consider this evidence.

also has served as First Secretary of the [redacted] since 2016. The Petitioner provided letters of recommendation from several colleagues that summarized his work with [redacted] and [redacted].<sup>8</sup> However, the Petitioner did not establish that his role with either organization resulted in attention or recognition from the field, reflecting a career of acclaimed work in the field or a very high standard to present more extensive documentation than that required. See H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30704. For instance, [redacted] head of the pulmonary rehabilitation center at [redacted] highlights the Petitioner's development of a year-long, weekly improvement course for municipal physical education teachers, and asserts that the Petitioner's contributions have "permanently improved the Pulmonary Rehabilitation Center." In addition, [redacted] Second Secretary of [redacted] confirms the Petitioner's role as First Treasurer of [redacted] since 2016, provides that he is responsible for the organization's financial department and "treasury file," and asserts that he has "contributed in a way that is of significant importance to the outcome" of [redacted].

Although the above letters describe the Petitioner's duties and highlight several of his contributions, they do not discuss whether any of his professional achievements with those organizations garnered him any national or international acclaim. See section 203(b)(1)(A) of the Act. Further, the letters do not show the Petitioner's recognition on a national or international scale, consistent with being among that small percentage at the very top of the field. See 8 C.F.R. § 204.5(h)(2). Here, the Petitioner did not establish how his roles resulted in widespread acclaim from his field, that he drew significant attention from the greater field, or that overall field considers him to be at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704. Moreover, [redacted]'s letter does not explain or justify how the Petitioner's position with [redacted] has resulted in his having, as he asserts, "sustained national acclaim and his achievements have been recognized in the field through extensive documentation." Repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

Beyond the three criteria that the Petitioner has satisfied, we have considered additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. For the reasons discussed below, the evidence does not establish that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of his field.

As it relates to his membership in associations in the field, on appeal the Petitioner highlights his memberships in the [redacted] Paralympic Academy, the board of directors of [redacted], and the local organizing committee of ICSEMIS 2016. The Petitioner has not demonstrated how membership in those organizations reflects or results in national or international acclaim or is indicative of his placement among the small percentage of scientific researchers who have risen to the top of the field. Without this evidence, the Petitioner has not demonstrated that being a member of these associations reflects a level of sustained national or international acclaim necessary for this highly restrictive classification. See section 203(b)(1)(A) of the Act.

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<sup>8</sup> Although we do not discuss every letter submitted, we have reviewed and considered each one.



As it relates to his original contributions, the record contains several reference letters that briefly describe the Petitioner's past research projects but do not elaborate and explain any attention that he received from the field based on his written work and research.<sup>9</sup> For example, in two letters, [REDACTED], the Petitioner's co-author at [REDACTED] and doctoral student, discusses the research methods and findings of their article titled "[REDACTED]", which he characterizes as "an original contribution of major significance" in the field. He broadly claims that "other individuals of great renown in our areas of expertise have been utilizing the techniques and methodologies developed by [the Petitioner]." Similarly, in his above-referenced letter, [REDACTED] claims that the Petitioner's article titled "[REDACTED]" was published and presented at congresses and "had an incredible impact," and [REDACTED], the Petitioner's master's thesis advisor, asserts that the Petitioner's study titled "[REDACTED]" had "such great impact" that it was presented at "one of the most important" conferences in the field, the 2017 [REDACTED] conference.<sup>10</sup> Although the letters of [REDACTED], [REDACTED], and [REDACTED] reflect the originality of the Petitioner's work and that it has received some attention, the Petitioner did not demonstrate 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. See 8 C.F.R. § 204.5(h)(2). Moreover, the letters did not provide specific information, such as identifying the authors, papers, and publications that cited to the Petitioner's written or presented research, or the number of citations to the Petitioner's published work, and explain how those citations sufficiently demonstrate a level of interest in the field commensurate with sustained national or international acclaim or represent attention at a level consistent with being among small percentage at the very top of his field. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

Moreover, [REDACTED] the vice-dean of the [REDACTED] extension program, states that the physical education extension courses taught by the Petitioner in the city of [REDACTED] were a significant contribution to the general population "who benefitted from more trained and qualified professionals." [REDACTED] worked with the Petitioner in the [REDACTED] program, a government program initiated in 2013 to address the shortage of doctors in [REDACTED] by expediting the provision of training and certification to foreign doctors. He provides that the Petitioner was a supervisor in the program, monitoring the progress of doctors enrolled in a residency program in General Family and Community Medicine at the [REDACTED] medical school, and claims that without the Petitioner's "original contribution of major significance . . . the ability to hire foreign physicians in [REDACTED] would have suffered a considerable delay. . . ." However, these letters do not explain how the Petitioner's teaching duties with the [REDACTED] extension program or his supervisory activities with the [REDACTED] program support the assertion that he is considered

<sup>9</sup> Although we discuss a sampling of letters, we have reviewed and considered each one

<sup>10</sup> [REDACTED] also claims that the Petitioner's 2019 article titled "[REDACTED]", published in the *International Journal of Cardiovascular Sciences*, "provoked widespread public commentary." However, this article was published after the date when the petition was filed in September 2018. As noted, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). We, therefore, will not consider this evidence.

among that small percentage at the very top of his field of endeavor or that he has garnered sustained national or international acclaim.<sup>11</sup>

Finally, although the record reflects the Petitioner's income with [REDACTED] the record does not establish that he commands earnings commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. 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. *See* 8 C.F.R. § 204.5(h)(2). For example, the Petitioner did not demonstrate how his salary compared to others at the very top of his field, or that he received notoriety or attention based on his earnings separating him 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. 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. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (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) (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). 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 the Petitioner has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 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. 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>11</sup> Further, although the Petitioner highlights his purported participation as the coordinator for the 2018 seminar "[REDACTED] [REDACTED]," the documentation submitted from that seminar reflects that the coordinator was [REDACTED] and does not indicate the Petitioner's participation.