



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

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

In Re: 22646759

Date: NOV. 09, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive officer -solutions architect, 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 did not establish that he received a one-time achievement (a major, internationally recognized award) or that he satisfied at least three of the initial evidentiary criteria, as required for the requested classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See 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 the beneficiary's 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 the petitioner must provide sufficient qualifying documentation concerning the

beneficiary 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the beneficiary's occupation.

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 beneficiary 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 indicates that he is chief executive officer (CEO) and solutions architect for [REDACTED] [REDACTED]. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Petitioner claims eligibility for four of the regulatory criteria, specifically the criteria found at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (viii), and (ix), which includes membership in an association requiring outstanding achievement, published material about him or his work, performing in a leading or critical role for an organization with a distinguished reputation, and commanding a high salary.

In denying the petition, the Director determined that the Petitioner did not satisfy any of the criteria found at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner asserts that the Director applied the regulations incorrectly and ignored evidence in the record that he claimed demonstrates eligibility. After reviewing all of the evidence, the record does not reflect that the Petitioner meets at least three criteria. We will discuss each of the four criteria that the Petitioner claims in detail.

*Documentation of the alien'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).*

In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought. *See 6 USCIS Policy Manual* F.2(B)(2) appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

Associations may have multiple levels of membership, and the level of membership afforded to the foreign national must show that in order to obtain that level of membership, the foreign national was judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought. *Id.* The Petitioner asserts that his professional membership with the Young President's Organization (YPO), a global organization of chief executives with local chapters across the world, fulfills this criterion.

The record contains information from the YPO website listing the membership criteria as follows:

- Under 45 years old.
- President, CEO, Chairperson of the Board, Managing Director, Managing Partner, or Equivalent title.
- 50 full-time employees, *or* at least 15 full-time employees *and* a minimum of \$2 million in annual employee compensation.
- Minimum revenue by company type, *or* enterprise value.
  - \$13 million for sales, service, manufacturing corporations.
  - \$10 million for an agency-type businesses.
  - \$260 million, including assets under management.
  - \$20 million enterprise value.

The record also includes a printout of frequently asked questions from the YPO website that states, "Meeting the specific quantitative requirements does not automatically guarantee admittance into YPO. There are other important, less easily defined requirements that also need to be met. These are qualitative in nature and are at the discretion of the current chapter's executive committee."

The Petitioner also submitted the bylaws of his local chapter in [REDACTED] Brazil. The bylaws state that, in addition to the above membership criteria, a candidate must be recommended by two members, and requests for admission of candidates will be examined and approved by the membership director of the chapter.

In support of his membership in YPO, the Petitioner submitted a letter attesting to his membership since 2001 and his board membership in various positions at different times, meeting minutes identifying the Petitioner as a membership director, and an email announcing the Petitioner as a new member of the YPO [REDACTED] Board in August 2021, one month after the petition was filed.<sup>1</sup>

The Director acknowledged that YPO requires professional achievements of its members and requires nomination by other members. However, he noted that the chapter bylaws do not state that YPO requires outstanding achievements or uses recognized national or international experts to determine membership qualification. The Director concluded that the Petitioner had not shown that the minimum requirements for membership in YPO meets the plain language requirements of the criterion. He also concluded that the Petitioner did not provide documentary evidence demonstrating that his representation of YPO is a level of membership that requires outstanding achievements as an essential

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<sup>1</sup> A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

condition for admission as judged by recognized national or international experts in their disciplines or fields.

On appeal, the Petitioner asserts that the Director improperly imposed a requirement not in the regulations, that an organization's outstanding membership qualifications be expressed in its bylaws. He further asserts that YPO does use recognized or international experts to determine membership and requires outstanding achievements for admission. He states that the Director did not consider his level of membership in his position as a member of the [ ] board as one requiring outstanding achievements.

The Petitioner did not demonstrate that YPO's membership criteria requires outstanding achievements of its members. The record reflects that YPO's requirements for membership are based on age, job title, level of experience and general professional status based on the size and income of the employer. Although the Petitioner asserts that additional qualitative requirements apply, the record does not identify these additional requirements or establish that they are based on outstanding achievement. While we agree that there is no regulatory requirement that the YPO bylaws identify these qualitative requirements, no other evidence was submitted to support this assertion or elaborate on these additional criteria to show that selection was based on outstanding achievement. Relevant factors that may lead to a conclusion that the foreign national's membership in the association was not based on outstanding achievements in the field include, but are not limited to, instances where membership was based solely on a level of education or years of experience in a particular field.<sup>2</sup> Here, the requirements for YPO membership identified in the record are possessing a certain age, title, and level of experience.

In addition, the Petitioner did not support his assertion that recognized national or international experts judge outstanding achievements. On appeal, Counsel for the Petitioner identifies YPO as a "peer-to-peer organization where board members determine another's membership, meaning that only professional [*sic*] who have already demonstrated national/international acclaim in the business area will judge other members' eligibility." He further asserts that "[m]embers are evaluated by the board, according to formalities including proficiency exam, and other writing samples ..." We acknowledge that holding a senior executive position for a qualifying company relatively early in one's career is a significant professional achievement. However, the Petitioner's assertions are not supported by the record. The bylaws state that candidates for membership require recommendation by two members and that admission of candidates is approved by the membership director. However, neither the bylaws or other evidence in the record demonstrates that candidates are judged on outstanding achievements, nor is their evidence of the requirement of an exam or writing sample. Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

The Petitioner points to his position as member of the [ ] board of YPO as evidence of a level of membership for which he was judged by recognized national or international experts as having attained outstanding achievements in the field of business. However, the bylaws state that the YPO chapter is managed by an executive council elected by the majority of members present at the annual meeting. No other criteria for election are set forth or described elsewhere in the record. Receiving

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<sup>2</sup> See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) appendix.

the majority vote among other members of YPO does not demonstrate that the candidate was selected based on qualifications alone and is insufficient to establish eligibility for this criterion, as the Petitioner has not demonstrated that all members are nationally or internationally recognized experts.

Accordingly, the Petitioner did not demonstrate that he fulfills this criterion.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien'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).*

In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.<sup>3</sup>

The record reflects that the Petitioner claimed eligibility for this criterion based on the following published material:

- [redacted], in Estado de Sao Paulo (2012).
- [redacted] in Estado de Sao Paulo (2004).
- [redacted] in Folha de Sao Paulo (1997).
- [redacted] in Gazeta Mercantile (2004).
- [redacted] in Gazeta Mercantile (2004).
- [redacted] in Propmark (2004).
- [redacted] in Folha de Sao Paulo (2004).
- [redacted]', in Folha de Sao Paulo (2003).
- [redacted] in ClientSA Magazine (2003).
- [redacted] publication and date not provided.
- [redacted] in Valor Economico (2004).

The Petitioner also submitted media data for four of the publications, including Estado de Sao Paulo, Folha de Sao Paulo, Gazeta Mercantile, and Propmark.

The Director issued a request for evidence (RFE), notifying the Petitioner of several deficiencies, including that:

- The article titled [redacted] does not indicate the name of the publication in the English translation.
- The Petitioner is not the subject of the article titled [redacted]
- The Petitioner is not the subject of the article titled [redacted]' and the author's name is not provided.

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<sup>3</sup> See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) appendix.

- The article titled [REDACTED] does not include the author's name and no information about the publication was provided.

The Director further stated that the record did not include sufficient information about the publications to demonstrate that they qualified as a professional or major trade publication or other major media.

In response to the RFE the Petitioner submitted the same articles and media data. In a brief submitted with the RFE response, counsel for the Petitioner also highlighted quotes from three of the articles specifically mentioning the Petitioner.

In denying the petition, the Director concluded that the Petitioner did not meet the plain language requirements of this criterion. He noted the following about the published material:

- The article titled [REDACTED] did not include the author's name in the English translation and does not qualify because it is an interview with the Petitioner.
- The article titled [REDACTED] does not list the author's name and the Petitioner is not the subject of the article.
- The article titled [REDACTED] does not include the author's name.
- The article titled [REDACTED] does not include the author's name.
- The article titled [REDACTED] is not primarily about the Petitioner and his work in the field.
- The article titled [REDACTED] does not include the author's name.
- The article titled [REDACTED] does not include the author's name.

Additionally, the Director concluded that the Petitioner did not submit independent, objective evidence of the circulation statistics of any of the publications to demonstrate that each qualifies as a professional or major trade publication or other major media.

On appeal the Petitioner does not submit additional evidence regarding this criterion. Counsel for the Petitioner states "as a result of the extensive documentation submitted on this topic, it is clear that [the Petitioner] has been a major figure in the specialized media as a reference and highly accomplished businessman, with published material about [him] in professional or major business publications or other major media."

The Petitioner did not include the authors' names for nine of the eleven total articles in the record. The inclusion of the title, date, and author of the material is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii). Therefore, we will consider only articles that include the author's name, identified as:

- [REDACTED], in Folha de Sao Paulo (2004).
- [REDACTED], in Folha de Sao Paulo (2003).

These articles are not about the Petitioner. Instead, the articles are about the outsourcing industry in Brazil and a government employment program. Articles that are not about the foreign national do not fulfill this regulatory criterion. *See* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) appendix; *see also*, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Relating to the *Race for a Space* article, the material mentions a single comment from the Petitioner involving language barriers in employment; the article does not discuss the Petitioner and is not about him. Likewise, regarding the [redacted] article, the material mentions a single comment from the Petitioner about a social project to employ young people in Brazil; the article does not discuss the Petitioner and is not about him. We also note that, even if the remaining articles had included the author and publication details, only one represents material about the Petitioner. The [redacted] article includes an excerpt from an interview with the Petitioner discussing his views on business success, and also includes a summary of his experience as an entrepreneur and executive. However, the remaining articles are brief announcements about the Petitioner's career progression or about projects and business developments with the Petitioner's employers.

In addition, the Petitioner did not establish that any of the publications represents a professional or major trade publication or other major medium.<sup>4</sup> Although the Petitioner provided media data for Estado de Sao Paulo, Folha de Sao Paulo, Gazeta Mercantile, and Propmark, we note that the evidence does not demonstrate that any of these publications represents a professional or major trade publication or other major medium. The media kits for Estado de Sao Paulo and Folha de Sao Paulo are dated 2021 and 2017, respectively, nearly 10 years from the dates of the articles provided. Similarly, the publication data for Gazeta is from 2018, 14 years from the publication dates of the material provided. Further, the Petitioner did not support the record with independent, objective evidence corroborating the publications' claims. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D.C.A. July 6, 2007) *aff'd* 2009 WL 604888 (9<sup>th</sup> Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of a major medium); *see also*, e.g., *Victorov v. Barr*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at \*8 (C.D.C.A. Apr. 9, 2020). Additionally, the data submitted for Propmark is undated and no data was provided for ClientSA Magazine or Valor Economico.

For the reasons discussed above, the Petitioner did not demonstrate that his documentation satisfies all of the elements of this criterion, and we withdraw the Director's decision for this criterion.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

To meet the plain language requirements of this criterion, a petitioner must establish that they have performed in either a leading or critical role, and that the role has been for an organization or establishment (or a division or department of an organization or establishment) having a distinguished

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<sup>4</sup> *See* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) appendix (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

reputation. If a leading role, the evidence must establish that the petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.<sup>5</sup>

The Petitioner asserts that he performed in critical roles for various organizations, including as a founder and partner of [REDACTED] in Brazil, and as CEO in the United States. The Director concluded that the record demonstrates the Petitioner's leading or critical role at [REDACTED] but the evidence is insufficient to establish the distinguished reputation of the organization. The Director further concluded that the record did not establish the Petitioner's leading or critical role in the other claimed organizations, or the distinguished reputations of those organizations.

On appeal, the Petitioner does not provide new or additional evidence to demonstrate the distinguished reputation of any organization, or his leading or critical role with other organizations. Counsel for the Petitioner states in the brief on appeal that the Petitioner "created an impressive portfolio of companies through several acquisitions" while with [REDACTED]

The Petitioner has not established that [REDACTED] has a distinguished reputation, with "distinguished" defined as "marked by eminence, distinction, or excellence or befitting an eminent person." 6 USCIS Policy Manual, *supra*, at F.2 appendix.

While the record includes evidence relating to various acquisitions within the portfolio of [REDACTED], this evidence does not discuss the reputation of [REDACTED]. The record does not include evidence demonstrating that [REDACTED] has a distinguished reputation. Nor does the record include evidence concerning the reputation of any other organizations with which the Petitioner is associated.

The Petitioner has not established that the Beneficiary meets this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

In order to meet this criterion, a petitioner must demonstrate that their salary or remuneration is high relative to the compensation paid to others working in the field. The burden is on the petitioner to provide appropriate comparative evidence. Examples may include, but are not limited to, geographical or position-appropriate compensation surveys. Persons working in different countries should be evaluated based on the wage statistics or comparable evidence in that country, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States.<sup>6</sup>

The Petitioner claims eligibility for this criterion based on his salary as CEO and Managing Partner for [REDACTED]. The Petitioner submitted his 2019 tax return, and data from two salary report websites, Payscale and Glassdoor, and the U.S. Bureau of Labor Statistics. The salary reports reflect the average salary data for CEO positions in Brazil and the United States in 2019.

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<sup>5</sup> See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) appendix (noting that Merriam-Webster's online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence or befitting an eminent person").

<sup>6</sup> See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) appendix.

The Director concluded that the evidence was insufficient to establish that the Petitioner's salary is high relative to others working in the field, as the salary reports are representative of base salaries and do not provide a review of salary information of members of the field with more experience. The Director also noted that the salary reports reflect the average wages of CEOs, rather than CEO-Solutions Architects, as described on the petition.

On appeal, the Petitioner does not provide new or additional evidence to establish that he commands a high salary relative to the compensation paid to others in his field. In the brief on appeal, counsel for the Petitioner asserts that the Petitioner's salary derives from his role as CEO and Managing Partner and states that actual salary information of other CEOs is not openly shared and available for comparison.

We note that the Petitioner asserts that his total remuneration includes salary, bonuses and stock option compensation. He compares his total remuneration to the base salary earnings of others, which is not an accurate and persuasive comparison.

Further, the Petitioner compares his salary as the CEO and Managing Partner to that of salaries of CEOs, without the duties and responsibilities of Managing Partners. He did not establish that he commands a high salary in relation to other CEO and Managing Partners performing both roles. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner did not show that the comparison of average and median salaries of single-role positions reflects his commandment of a high salary in relation to other multi-role CEOs.

For these reasons, the Petitioner did not establish that he satisfies this criterion.

### III. CONCLUSION

The Petitioner did not show either a one-time achievement (a major, internationally recognized award) or demonstrate that he satisfies three of ten initial criteria. Specifically, he did not demonstrate that he met the criteria relating to memberships, published material, leading or critical role, or high salary. Accordingly, 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 conclusion 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. *Price*, 20 I&N Dec. at 954. 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 who has risen to the 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). Although the Petitioner has experience in business and as an executive, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.