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

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

MATTER OF R-S-

DATE: OCT. 26, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an entrepreneur and engineer, seeks classification as an individual “of extraordinary ability” in the sciences. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The classification the Petitioner seeks makes visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. Currently, the Petitioner is working as the Chief Executive Officer (CEO) of [REDACTED], a company that the Petitioner founded and that has created a mobile-only search engine that indexes application (app) content. The Director determined that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or satisfaction of at least three of the ten regulatory criteria.

On appeal, the Petitioner submits an appellate statement and additional documentation. In the statement, the Petitioner asserts that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(iii), (v), (viii), and (ix). For the reasons discussed below, the Petitioner has established his eligibility for the exclusive classification sought. Specifically, he has provided evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has demonstrated that he is one of the small percentage who is at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3).

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

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- (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 has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The 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 achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this documentation, then he must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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 satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming U.S. Citizenship and Immigration Services' (USCIS) proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

In part 6 of his petition, the Petitioner indicated that his proposed employment in the United States is the CEO for [REDACTED]. Given the technology-based work the Petitioner has performed and continues to perform for [REDACTED] as an entrepreneur, including inventing processes used to create a mobile-only search engine that serves as [REDACTED] core business, we will consider the Petitioner's accomplishments in the sciences.

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A. Evidentiary Criteria¹

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not asserted or documented that he is the recipient of a major, internationally recognized award at the level similar to that of the Nobel Prize. As such, the Petitioner must satisfy at least three of the ten criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

In his February 24, 2015, decision, the Director concluded the Petitioner satisfied the published material criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii) and the leading or critical role criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The evidence in the record supports the Director's conclusion. First, the Petitioner submitted a July 17, 2014, [REDACTED] article entitled [REDACTED]; a July 17, 2014, article entitled [REDACTED] posted on [REDACTED] and a July 22, 2014, article entitled [REDACTED] posted on [REDACTED]. These materials, published in professional publications or major media, were about the Petitioner, relating to his work at [REDACTED]. Accordingly, the Petitioner has shown that he meets the criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Second, the record confirms that the Petitioner, as [REDACTED] founder and CEO, performs a leading and critical role for the company. The Petitioner has shown that [REDACTED] is an organization that has a distinguished reputation. The articles in the record reflect that [REDACTED] received \$9 million to further its work in creating, improving and operating a mobile-only search engine. According to an undated letter from [REDACTED] a Partner at [REDACTED] a venture capital firm, "[REDACTED] has a unique product in the mobile search space," and "deviates from [its] competition who rel[ies] on traditional search engines and produces a truly innovative search experience that is a major upgrade to anything on the market." Accordingly, the Petitioner has satisfied the requirements of this criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Finally, in addition to meeting the criteria the Director granted, the Petitioner satisfied the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v). Specifically, the Petitioner submitted a number of patent applications with the U.S. Patent and Trademark Office (USPTO). The titles of the inventions associated with the patent applications are:

[REDACTED]

[REDACTED]

On appeal, the Petitioner responds to the Director's concerns regarding the lack of development of the patent-pending technology by noting the high level meetings he has had and agreements he has

¹ We have reviewed all of the evidence the Petitioner has submitted and will address those criteria the Petitioner asserts that he meets or for which the Petitioner has submitted relevant and probative evidence.

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negotiated. [REDACTED] Chief Technology Officer for [REDACTED] stated that the Petitioner's inventions allow [REDACTED] to have "its own 'linked knowledge graph' of what are hundreds of millions of 'real world entities' that will not just find exactly what you want, but also make inference to predict what it is you are looking for." [REDACTED] affirmed that the Petitioner has designed a search ranking method that "relies heavily on how entities are referred to by different applications and the ratings and reviews that these entities have gotten on different social media channels." [REDACTED] noted that this ranking method "is a radical shift from the existing models of search engines." [REDACTED] a venture capital firm, confirmed in the article [REDACTED] [REDACTED] that [REDACTED] represents a significant step forward." [REDACTED] explained in his letter that [REDACTED] mobile-only search engine "is a major upgrade to anything on the market." According to an undated letter from [REDACTED] Executive Vice President, Applications and Services, [REDACTED] the Petitioner "has built [REDACTED] from ground up, with enterprise and innovation" and that the Petitioner's "innovative idea of using deep links, indexing, and grouping entities in mobile apps, for ranking and improving the search experience is of major significance in the field of mobile and search technology industry." In light of the above, the Petitioner has presented sufficient evidence showing that he meets the criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v).

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will conduct a final merits determination that considers the entire record in the context of whether or not the Petitioner has demonstrated: (1) that he enjoys a level of expertise indicating that he is one of a small percentage who have risen to the very top of the field of endeavor, and (2) that he has sustained national or international acclaim and that his achievements have been recognized in the field of expertise. 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. Based on the filings and consistent with *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm'r 1994), the Petitioner has made the requisite showing.

The reference letters and other evidence relating to the Petitioner's contributions not only show that his original work at [REDACTED] has significantly impacted the field of mobile search technology, this material is also indicative of the Petitioner's acclaim in the field nationally. Venture capital firms [REDACTED] and [REDACTED] which have invested in [REDACTED] and [REDACTED] raised an exceedingly large sum, \$9 million, to invest in [REDACTED] because they believe that the Petitioner "has a unique product in the mobile search space" that is "a major upgrade to anything on the market." [REDACTED] stated that [REDACTED] "is fundamentally altering how users interact with search engines on their mobile devices" and that the Petitioner "has the vision and the passion to solve a significant problem, which will impact billions of consumers globally." The Petitioner's work at [REDACTED] has also attracted attention and support from prominent technology companies. For example, [REDACTED] of [REDACTED] stated that both [REDACTED] and the [REDACTED] search engine "are closely engaged with [the Petitioner] in advancing his technology and bringing it to market." [REDACTED] further stated that [REDACTED] and venture capital firms who invested in [REDACTED] "believe that [REDACTED] is significantly enhancing the experience on mobile

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search and pushing the envelope of search technology forward.” An agreement between [REDACTED] and [REDACTED] corroborates these assertions.

Moreover, well-known publications, such as [REDACTED] have published articles about the Petitioner and his work at [REDACTED], garnering both him and his company name recognition. Specifically, a July 2014 [REDACTED] article reported that in 2013 [REDACTED], joining other leading technology companies including [REDACTED] and [REDACTED] in solving the problem of searching information on mobile devices. The article stated that [REDACTED] “has a big market [including] smart TVs, smart cars and smart homes” and that it has successfully secured a total of \$9 million in investments from venture capitalists. The Petitioner’s leading role for [REDACTED] a company receiving considerable venture capital and media attention, is also indicative of the Petitioner’s renown in the field.

Furthermore, accomplished figures in the technology sector have provided reference letters, noting the Petitioner’s acclaim in the field of mobile search technology, and concluding that the Petitioner’s contributions have allowed the United States to remain a leader in technology. For example, [REDACTED] of [REDACTED] stated that the Petitioner is “key to keep the United States on the forefront of innovation in technology.” [REDACTED] affirmed that the Petitioner “continues in the tradition of immigrants to the United States, forming companies at the cutting edge of technology, and ensuring that the United States maintains its lead as the center of global innovation.”

The record in the aggregate, including the Petitioner’s original contributions of major significance in the field, the impact of his work at [REDACTED] in the field, the role he has performed for [REDACTED], and the published materials about him as relating to his work, confirm that he enjoys a level of expertise that is consistent with a finding that he is one of a small percentage who have risen to the very top of the field of endeavor, that he has sustained national or international acclaim and that his achievements have been recognized in the field of expertise. *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. Accordingly, the Petitioner has established by a preponderance of the evidence that he is eligible for the exclusive classification sought.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must demonstrate that the Petitioner has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of his or her field of endeavor. The Petitioner has submitted qualifying evidence under at least three of the ten evidentiary criteria and has documented that he has a “level of expertise indicating that [he] is one of that small percentage who have risen to the very top of the field of endeavor” and “sustained national or international acclaim.” The Petitioner’s achievements have been recognized in his field of expertise. The Petitioner has shown that he seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the Petitioner has established his eligibility for the benefit sought under section 203 of the Act.

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In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of R-S-*, ID# 14167 (AAO Oct. 26, 2015)