



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

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

In Re: 6524047

Date: APR. 23, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an attorney, seeks to classify the Beneficiary, a management analyst, as an alien of extraordinary ability.<sup>1</sup> *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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 immigrant visas available to aliens 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.

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<sup>1</sup> The record does not formally designate the Beneficiary as the Petitioner's client, but, as the Petitioner notes, "any person" may file a petition to classify a given beneficiary as an alien of extraordinary ability. *See* 8 C.F.R. § 204.5(h)(1).

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 the beneficiary’s 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 they must provide sufficient qualifying documentation that the beneficiary 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).

## II. ANALYSIS

The Petitioner states that the Beneficiary seeks “to continue working in the field of Healthcare Strategy and Effectiveness, supporting providers (hospitals), payors (insurance companies), and life sciences companies to deliver value based care to millions of their customers in the United States.” The Beneficiary previously worked as an application manager at [REDACTED]. At the time of filing in February 2019, he was a strategy manager at [REDACTED] and the Petitioner stated that the Beneficiary “plans to continue working at [REDACTED]” More recently, [REDACTED] filed a nonimmigrant petition on the Beneficiary’s behalf. The nonimmigrant status granted to the Beneficiary by the March 2019 approval of that petition authorized the Beneficiary to work only for [REDACTED].<sup>2</sup> The appeal, filed in May 2019, after the change in employment, does not mention that change or address how it will affect the Beneficiary’s future work in the United States.

Because the Petitioner has not indicated or established that the Beneficiary 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 claims that the Beneficiary meets four criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

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<sup>2</sup> *See* 8 C.F.R. § 274a.12(b)(9). Part 4, line 8 of the petition form asked whether any other immigrant petitions had been filed by the Beneficiary or on his behalf. The Petitioner answered “yes,” and provided information about one other petition, stating that a notice of intent to deny had been issued in September 2018. U.S. Citizenship and Immigration Services (USCIS) records show that the petition in question was denied in November 2018, three months before the preparation and filing of the present petition. USCIS records also identify three other prior immigrant petitions that the Petitioner did not disclose on the petition form. Both [REDACTED] and [REDACTED] previously filed immigrant petitions on the Beneficiary’s behalf, seeking lower-priority classifications. Both petitions were approved, in 2015 and 2017 respectively, several years before the filing of the present petition.

The Director found that the Petitioner showed that the Beneficiary met the criteria numbered (iv) and (ix), relating to judging and remuneration, respectively. On appeal, the Petitioner asserts that the Beneficiary also meets the criteria numbered (v) and (viii), relating to contributions and leading or critical roles, respectively. After reviewing all of the evidence in the record, we agree with the Director that the Beneficiary meets only two evidentiary criteria. We address the other two claimed criteria below.

*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)

If a leading role, the evidence must establish that the alien 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>3</sup> If a critical role, the evidence must establish that the alien has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the alien's performance in the role is (or was) important in that way. It is not the title of the alien's role, but rather the alien's performance in the role that determines whether the role is (or was) critical.<sup>4</sup>

The Petitioner contends that the Beneficiary has performed in both leading and critical roles for [redacted] and [redacted]. The Director did not dispute the distinguished reputations of [redacted] and [redacted] but concluded that the Petitioner had not shown that the Beneficiary's role was "leading or critical to [redacted]s] and [redacted] as a whole, as opposed to his department or component within it."

On appeal, the Petitioner maintains that the Beneficiary's position as director of strategy and effectiveness constituted a leading and critical role for [redacted] and that previously submitted "letters describe the Beneficiary's role and affect [sic] in very specific terms." Most of the letters in question were from [redacted] officials; one was from an insurance company executive, and one was from a faculty member of a medical school.

The record shows that the Beneficiary played a significant role in [redacted]'s projects on behalf of several clients in the health care industry, including insurance companies and a medical school. Other participants attested that the Beneficiary played an important role in these projects, but the record does not provide the sense of scale necessary to show that the Beneficiary's role was leading or critical for [redacted] as an organization, and not just for the individual projects.

A given project is not, itself, an organization or establishment, and the record does not show that the Beneficiary was sufficiently high in [redacted]'s organizational hierarchy to have a significant effect on the company as a whole, rather than the subdivision that works with clients in the health care industry. The Petitioner states, on appeal, that the Beneficiary "has established the organizational structure and hierarchy of the company," but the Petitioner does not elaborate or identify the record evidence that would corroborate this assertion.

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<sup>3</sup> USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, 10 (Dec. 22, 2010), <http://www.uscis.gov/legal-resources/policy-memoranda>.

<sup>4</sup> *Id.*

The Beneficiary's prior work as a senior consultant and application manager at [redacted] appears to have had a similarly narrow focus. The only specific project detailed in the record is a health benefit exchange for small business owners in Kentucky. The Beneficiary managed a team of consultants, but this team is not, by itself, an organization or establishment with a distinguished reputation.

The submitted information shows that the Beneficiary has led individual projects, but those projects are not organizations or establishments with a distinguished reputation. The record supports the Director's conclusion that the Petitioner has not shown that the Beneficiary performed in a leading or critical role for [redacted] and [redacted] (rather than for subdivisions or projects thereof).

New letters submitted on appeal also support that conclusion, attesting to the importance of the Beneficiary's role but doing so in the context of projects for specific clients. The letters indicate that the Beneficiary's work was profitable for the company, in terms of both revenue and savings, but do not indicate the significance of the Beneficiary's financial impact relative to the entire organization. Some letters cite sums between \$10 million and \$18 million, but another letter in the record indicates that [redacted] and [redacted] each report annual revenues in excess of \$40 billion.

The Petitioner has not established that the Beneficiary performed in a leading or critical role for organizations or establishments with a distinguished reputation.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, a petitioner must establish that not only has the beneficiary made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

In an effort to satisfy this criterion, the Petitioner relied on the same letters cited as support the claim of performance in a leading or critical role. In the denial notice, the Director acknowledged the submitted letters, but concluded that those letters do not show "substantial influence beyond one's employer, clients, or customers."

On appeal, the Petitioner states that the letters in the record "not only describe [the Beneficiary's] work as original but point to how they have changed the way things are done in the industry after he started them." The examples cited on appeal, however, are not industry-wide. A [redacted] official quoted on appeal states that the Beneficiary's work "sav[ed] the company millions of dollars," while a [redacted] official refers to the Beneficiary's impact on "several [health care] providers in the commonwealth of Kentucky." The same [redacted] official asserts that "several frameworks and advances in the field of top-down cloud-based technical stack transformations pioneered by [the Beneficiary] during his tenure at [redacted] is [sic] being used at dozens of ongoing transformations" within the company.

The regulatory standard is major significance in the field, rather than significance to a particular employer or its clients. The record shows that the Beneficiary has successfully delivered results to results, to the mutual benefit of the clients and his employers, but the successful completion of a project is not intrinsically of major significance to the field. Furthermore, the Petitioner did not provide enough information to show that the Beneficiary's participation in these projects entailed original contributions rather than application of existing practices and principles. Assertions that the Beneficiary led a number of such projects do not provide key details about the nature of the Beneficiary's own contributions to those projects (as opposed to his oversight of teams performing that work).

A data scientist at [redacted] asserts that the Beneficiary "pioneered" "the proprietary [redacted] [redacted] platform," which "offers a powerful new model for improving health care quality." This individual states that "[l]eading health care providers around the world are embracing this new operating model," although he does not identify the providers by name, and he contends that "the next generation version of [the Beneficiary's] platform" will result in a 19% reduction in average hospital length-of-stay, with "a lower percentage of readmissions." Uncorroborated anecdotes and speculation about the potential future impact of the Beneficiary's work cannot suffice to show that the Beneficiary's work has had the impact and influence necessary to show major significance.

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

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, 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 finding that the Petitioner has established the acclaim and recognition required for the classification sought. We note that the record does not adequately attest to the Beneficiary's acclaim beyond his employers and some of their clients. Subjective assessments of the Beneficiary's talents do not necessarily reflect a consensus throughout the field.

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.