



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

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

In Re: 6963747

Date: FEB. 5, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a scientific researcher, seeks classification as an alien 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 Nebraska Service Center initially denied the petition and subsequently affirmed his decision on motion, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

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) 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).

## II. ANALYSIS

The Petitioner indicates his most recent employment as a senior applied mechanics engineer at [redacted] in [redacted] Tennessee from October 2013 to November 2017.<sup>1</sup> Because the Petitioner has not indicated 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).

In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). Although we agree with the Director that the Petitioner authored scholarly articles in professional publications, we do not concur with the Director's finding relating to the judging criterion, discussed later.

On appeal, the Petitioner asserts that he meets three additional criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that he satisfies the requirements of at least three criteria.

*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).

The Petitioner argues for the first time on appeal that he meets this criterion based on senior membership with the International Association of Computer Science and Information Technology (IACSIT).<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> See the Petitioner's curriculum vitae and Form I-485, Application to Register Permanent Residence or Adjust Status. Although he provided an approval notice for H-1B nonimmigrant classification for employment with [redacted] from September 2017 to September 2020, the Petitioner indicated that he ceased employment in November 2017. Moreover, the record does not show the Petitioner's employment since November 2017.

<sup>2</sup> The Petitioner previously claimed eligibility for this criterion based on his membership with other associations; however, he does not argue on appeal, nor does the record reflect, his eligibility based on those associations.

<sup>3</sup> See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions*;

At the outset, the Petitioner submits a letter from [redacted] for IACSIT, dated December 2018, thanking him for joining the association. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). As he filed his petition in February 2018, the Petitioner did not demonstrate that his senior membership with IACSIT occurred prior to or at the time of his initial filing.

Notwithstanding the above, the Petitioner contends that senior membership with IACSIT requires “a doctor of philosophy and the highest university degree possible.” Moreover, he submits screenshots from [iacsit.org](http://iacsit.org) highlighting that “only PhD holders should apply,” as well as the benefits of IACSIT membership, such as proposing to organize and chair conferences, inviting to review conference and journal material, and registering for conferences at discounted rates. Furthermore, he cites to statistics of American adults possessing a doctorate degree (1.63%). In addition, he references a letter from [redacted] who indicated that he introduced the Petitioner as a senior member of IACSIT, which “is one of the societies that has PhD degree and excellence in the field for a Senior Member,” and a letter from [redacted] who claimed that the Petitioner “has been an active member of the engineering professional organizations but is limited to the committees having the prerequisites for its members to have a doctoral degree and who have made significant contributions.”

Here, the Petitioner did not establish that the IACSIT’s requirements rise to the level of “outstanding achievements” consistent with this regulatory criterion. Instead, based on the presented documentation, senior membership for IACSIT exclusively involves possessing a doctoral degree, which in-and-of-itself, the Petitioner did not show is tantamount to an outstanding achievement.<sup>4</sup> In addition, the Petitioner did not demonstrate that IACSIT requires that an alien has made outstanding achievements in the field. Although [redacted] asserted that IACSIT also requires “significant contributions,” the screenshots from [iacsit.org](http://iacsit.org) do not support his claim. Furthermore, the Petitioner did not establish that recognized national or international experts judge the outstanding achievements for membership with IACSIT.<sup>5</sup> Rather, as discussed, IACSIT solely grants senior membership if the applicant holds a doctoral degree.

Accordingly, the Petitioner did not show that he satisfies this criterion.

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*Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (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).*

<sup>4</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (instructing that relevant factors that may lead a conclusion that the alien’s memberships in the associations were not based on outstanding achievements in the field include, but are not limited to, instances where the alien’s membership was based solely on a level of education or years of experience in a particular field).

<sup>5</sup> *Id.* (stating that the level of membership afforded to the alien must show that in order to obtain that level of membership, the alien was judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought).

*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).

The Petitioner contends that he satisfies this criterion based on an article published in the *Simulia Community News*. Specifically, the Petitioner claims that “the SIMULIA company invited him to write an article for the Company Newsletter,” and the article “represents his work.” In order to satisfy 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>6</sup>

Although the article is about the Petitioner's research regarding the [REDACTED], the article is not about him. In fact, the Petitioner is never mentioned in the body of the article. Instead, the Petitioner is listed as a contact in the “For More Information” section. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material to be about the alien relating to his work rather than self-authored articles reporting his own work. Articles that are not about an alien do not fulfill this regulatory criterion. *See, 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). Further, while the Petitioner argues the influence of his research discussed in the article through reference letters, this criterion requires published material about the Petitioner relating to his work rather than the significance or impact of his work in the field. Here, the Petitioner provided an article only about his work instead of an article about him relating to his work.

The Petitioner also provides a letter from [REDACTED] research and development director for [REDACTED], who indicated that the article was “also made available as a digital version on our company's public website.” However, the Petitioner did not provide screenshots of the website supporting [REDACTED]'s claim. Regardless, the Petitioner did not establish that *Simulia Community News* or the company's public website is a professional or major trade publication or other major medium. The record contains an email from [REDACTED] who indicated that “[w]e are distributing the magazine to about 7000 per issue,” and “[t]he SIMULIA website gets about 25,000 visitors per month.”<sup>7</sup> Here, the Petitioner did not show the significance of the circulation figures or visits and how such data reflects status as a major medium.<sup>8</sup>

For these reasons, the Petitioner did not demonstrate that he fulfills this criterion.

<sup>6</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

<sup>7</sup> The record also contains screenshots from *SimilarWeb* regarding website traffic and rankings relating to [REDACTED] overall rather than to the digital version of the company newsletter.

<sup>8</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (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).

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

As discussed earlier, the Director found that the Petitioner satisfied this criterion. This regulatory criterion requires an alien to show that he has acted as a judge of the work of others in the same or an allied field of specialization.<sup>9</sup> For the reasons outlined below, the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that he meets this criterion, and the Director's determination on this issue will be withdrawn.

The record reflects that the Petitioner claimed eligibility for this criterion based on his review of papers at the 2010 Advances in Materials and Processing Technologies (AMPT2010). The Petitioner provided an email from [redacted] of AMPT2010, addressed to colleagues thanking them for participating and reminding them to complete their reviews for the conference. For instance, [redacted] stated that "prompt and accurate reviews are key elements to the conference," "commitment to timely conclusion of the reviewing process is helpful to boost attendance of authors for oral presentation," and "[m]any institutions will not support you [sic] author colleagues unless acceptance of the submitted work is finalized and notification takes place." Moreover, [redacted] indicated that "[t]his e-mail is to remind you of the necessity to conclude the review process in a timely manner," and "[i]t is imperative that we conclude the review process ASAP."

In order to meet this criterion, a petitioner must show that he has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization.<sup>10</sup> Here, the email does not demonstrate that the Petitioner actually completed the paper reviews for AMPT2010.<sup>11</sup> Instead, as indicated above, the email reflects a reminder to conduct the paper reviews. Moreover, the Petitioner did not present any supporting evidence establishing that he, in fact, performed the conference paper reviews. Further, the Petitioner did not submit corroborating documentation showing how many or which papers he reviewed at the conference.<sup>12</sup>

For the reasons discussed above, the Petitioner did not establish that he participated as a judge of the work of others consistent with this regulatory criterion. Accordingly, we withdraw the decision of the Director for this criterion.

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<sup>9</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

<sup>10</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

<sup>11</sup> *Id.* (proving an example of peer reviewing for a scholarly journal, as evidenced by a request from the journal to the alien to do the review, accompanied by proof that the alien actually completed the review).

<sup>12</sup> Similarly, the record contains a letter from [redacted] to the Petitioner inviting him "to act as a reviewer" for two journals. However, the Petitioner did not provide any documentary evidence establishing that he actually reviewed papers or manuscripts for the journals.

### III. CONCLUSION

We find that although the Petitioner satisfies the scholarly articles criterion, he does not meet any additional criteria on appeal regarding memberships, published material, and judging. While he argues and submits evidence for one additional criterion on appeal, relating to original contributions of major significance at C.F.R. § 204.5(h)(3)(v), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.<sup>13</sup> 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 finding 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. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). 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 conducted research and authored scholarly articles, 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.

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<sup>13</sup> *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).