



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

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

In Re: 5061459

Date: FEB. 5, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an online marketplace for vacation home rentals, seeks to classify the Beneficiary, a software engineer, 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 denied the petition, concluding that the Beneficiary had satisfied only one of the ten 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) (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).

II. ANALYSIS

The Petitioner, an online marketplace for vacation home rentals, currently employs the Beneficiary as a software engineer in the area of risk engineering. The Beneficiary, a software engineer specializing in big data and machine learning, holds a master’s degree in engineering from the University of [REDACTED] and a bachelor of technology degree from the National Institute of Technology, [REDACTED]

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must show that the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Beneficiary met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to judging. The record contains evidence that the Beneficiary served as a judge for an engineering competition at the University of [REDACTED] and reviewed technical book chapters for software engineering texts. Accordingly, we agree with the Director.

On appeal, the Petitioner asserts that the Beneficiary also meets the evidentiary criteria relating to awards, membership, published materials, original contributions, leading or critical role, and salary. After reviewing all of the evidence in the record, we find that the Beneficiary meets an additional criteria relating to high salary or remuneration, but does not satisfy a third, as required.

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner asserts the Beneficiary’s eligibility through his receipt of numerous awards and scholarships. Specifically, it references the Beneficiary’s placement of second runner up at the 2017 [REDACTED] Hackathon, his fourth place win at the [REDACTED] Hackathon at Global Hack Week 2017, and his receipt of the [REDACTED] award at Hack Your Tomorrow 2017. It further argues he meets this criterion by virtue of his third place finish in the [REDACTED] Challenge on [REDACTED] and his 21st place finish in the [REDACTED] Hacks 2017: [REDACTED] [REDACTED] competition. The Petitioner also refers to the Beneficiary’s placement in the 2012 and 2013

Chartered Institute of Management Accountants' (CIMA) [redacted] as Runner-up, National Final [redacted] and winner [redacted] respectively, as well as his win of the 2012 [redacted] Challenge. It finally asserts that his scholarships from the [redacted] Foundation [redacted] and the [redacted] Education Trust, his qualification for the 2008 and 2009 [redacted] National Olympiad in [redacted], and his certificate of merit for his results in the [redacted] Association of Physics Teachers' National standard Examination in Physics demonstrate his eligibility for this criterion.

With respect to the Beneficiary's placement as second runner-up finalist for the grand prize at the 2017 [redacted] Hackathon, the Petitioner provides, in relevant part, an article titled [redacted] [redacted] and one titled [redacted] [redacted].¹ However, the Petitioner does not provide documentation sufficient to demonstrate that being named as the second runner-up finalist constitutes an award or prize. The first article mentioned above states [redacted] [redacted]. The record lacks documentation, such as award or prize certificates, or other materials showing that placing as the second runner up constitutes an award or prize in this competition. We note that the record includes the official rules for the 2018 [redacted] which lists prizes such as "Best in Show" or "Semi-Final Prize," and awards sponsored by entities such as [redacted] and [redacted]. However, the Petitioner does not demonstrate how this evidence establishes that the Beneficiary's placement at the 2017 [redacted] is indicative of a nationally or internationally recognized award.

Regarding the Beneficiary's [redacted] prize at Hack Your Tomorrow 2017, the Petitioner provides a printout about the competition from <http://hackyourtomorrow.com>. Here the criterion requires that the Petitioner provide documentation showing that the Beneficiary has received an award. However, the Petitioner has not done so. Specifically, the printout does not identify any winners, and the Petitioner provides no other documentation, such as media, a copy of the award, or other meaningful evidence, corroborating its assertion that the Beneficiary and his team were recipients of the referenced award. Moreover, the Petitioner does not submit evidence, such as media showing that the [redacted] award is nationally or internationally recognized for excellence in the field of software engineering.

As it relates to the Beneficiary's 4th place win in the [redacted] Hackathon at Global Hack Week 2017 competition, the Petitioner submits a document from medium.com titled [redacted] [redacted] Global HackWeek, 2017," information on the judges, and a letter of reference from the Beneficiary's teammate, [redacted] head of product and growth at [redacted]. The medium.com article confirms that the Beneficiary, [redacted] and a third team member received \$3,000 Google credits for placing fourth at the referenced competition with their application [redacted]. The article notes, [redacted] from which the judges selected five winners. [redacted] also describes the [redacted] application and the Petitioner's role in its development in his letter, stating, "[the Beneficiary] ingeniously came up with the technical architecture" and "identified the right components to use and was able to build a service oriented architecture for the application." A beneficiary may be considered to be a recipient of a group

¹ The Petitioner also includes the official rules for the 2018 [redacted] discussed below, a printout from [redacted] inviting participants to the 2018 [redacted] Hackathon, and Wikipedia article about [redacted]

award if they are integral to the group's winning of that award. Here the record reflects that the Beneficiary was integral to the winning application's development. Accordingly we consider him a recipient of the award. [redacted] also indicates that this work was mentioned several times in the press "including at [redacted] Sep 2017 in NDTV, and [redacted] Sep 2017 in [redacted]." While the Petitioner provides both a link to youtube.com for and screenshots of the first television program, we note that the evidence indicates this video was viewed less than 500 times at the time of filing. This evidence of a single television program about the award with relatively low viewership statistics does not support the Petitioner's assertion that it is nationally recognized. In addition, the record lacks evidence of the second interview beyond the second youtube.com link, and the Petitioner does not show how this second interview demonstrates the award is nationally recognized, as required.

The Petitioner further argues that the Beneficiary's third place win in the [redacted] [redacted] meets this criterion. Specifically, it argues that the fact that the competition "included some of the world's most recognized data science minds of their generations" and was "sponsored by highly reputable British governmental agencies" demonstrates the Beneficiary's receipt of an internationally recognized award. Here the record reflects the Beneficiary's receipt of this award, as it contains an e-mail confirming that the Beneficiary placed third and a printout from datascience.org corroborating his third place win. However, the Petitioner does not show that the third place award the Beneficiary received is nationally or internationally recognized for excellence in the field of software engineering. Specifically, the web printout identifies and provides a brief profile for the first and second place winners of the competition and indicates that the Defence Science and Technology Laboratory (DSTL) is involved with the competition.² However, the Petitioner does not demonstrate how the Beneficiary's competitors' backgrounds or DSTL's involvement with the competition are indicative of the award being internationally recognized for excellence in the field of software engineering.³ The Petitioner does not submit other evidence to support its assertion that this award is so recognized.

With respect to the [redacted] Hacks 2017: [redacted] Competition, the Petitioner submits an e-mail thanking the Beneficiary for his participation in the [redacted] Hacks [redacted] Challenging, and congratulating him for "being shortlisted in for [redacted] Hacks 2017 – [redacted] Zonals." The Petitioner also provides a printout from www.hackerearth.com titled [redacted] [redacted] listing the Beneficiary as being in 21st place. We note that this document indicates that this competition was a qualifying round, and "the top 20 participants (per zone) go to the next round." The document further indicates that there is a Final Hackathon. The Petitioner does not submit documentation to establish that the Beneficiary's 21st place finish in a qualifying round, or his being shortlisted for the second round of the [redacted] Hacks competition, equates to receipt of a nationally or internationally recognized prize or award in the field of software engineering.

The Petitioner also asserts the Beneficiary meets this criterion as he was the Runner-up, [redacted] [redacted] at CMIA's 2012 Global Challenge, and the winner for [redacted] at its 2013

² While the Petitioner asserts that this competition is sponsored by the United Kingdom's Security Service, Mi5, the record lacks evidence supporting this claim.

³ The Petitioner provides printouts from www.mi5.gov.uk describing the Security Service, Mi5, one of the competition's sponsors and from www.gov.uk discussing data scientist roles at the Defence Science and Technology Laboratory in the United Kingdom.

Global Challenge, and as winner of the 2012 [redacted] Challenge. It submits a copy of a certificate identifying the Beneficiary as a winner of the [redacted] Challenge, as well as provides certificates from the 2012 and 2013 CIMA challenges, and an article titled [redacted] published online at <http://blog.lboro.ac.uk>. This article describes the CIMA Global Business Challenge as “an international business competition” whose participants will “learn how to analyse and solve a real live business case study.” The Petitioner does not show that certificates from a business competition are the equivalent of nationally or internationally recognized award in the field of software engineering. Even had it done so, the Petitioner has not demonstrated that the Beneficiary played an integral role in these groups’ receipt of said certificates, and thus can be considered a recipient, or how placing as a runner up in a national final constitutes a nationally or internally recognized award. Regarding the [redacted] Challenge, the Petitioner does not provide documentation about this challenge to establish that this certificate constitutes a nationally or internationally recognized award for excellence in software engineering, as required.

Finally, the Petitioner asserts the Beneficiary’s eligibility for this criterion based upon his scholarships, his qualification for the 2008 and 2009 [redacted] National Olympiad in [redacted] and his certificate of merit for his results in the [redacted] Association of Physics Teachers’ National standard Examination in Physics. Regarding the Beneficiary’s scholarships from the [redacted] and the [redacted] Education Trust, the Petitioner submits an e-mail from [redacted] identifying him as a [redacted] Scholar for the year 2013 and a letter from the [redacted] Education Trust awarding him a loan scholarship for 2013. However, this documentation does not establish that these scholarships were granted for excellence in the field of software engineering. Specifically, the [redacted] e-mail provides that scholarship recipients are students who “exhibit scholastic excellence and demonstrate a strong sense of values, motivation and have the potential to become leaders in their chosen field” while the [redacted] Education Trust letter indicates that the scholarship is provided for post-graduate studies abroad. Even had these documents demonstrated that these scholarships are for excellence in the field of software engineering, the record lacks evidence showing that they are nationally or internationally recognized awards or prizes.

With respect to the 2008 and 2009 [redacted] National Olympiad in [redacted], the record contains letters stating that the Beneficiary qualified to participate in these events, but does not indicate that he received an award or prize at these events. The record lacks evidence establishing that qualifying for these events is, in and of itself, an award or prize that is nationally or internationally recognized for excellence in the field of software engineering. Similarly, the record contains a Certificate of Merit for the Beneficiary’s “Statewise Top 1 %” placement in the National Standard Examination in Physics, but lacks evidence showing this to be an award that is nationally or internationally recognized in the field of software engineering.

For the foregoing reasons, the Petitioner has not established the Beneficiary’s eligibility for this criterion.

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 asserts the Beneficiary's eligibility for this criterion through his memberships in IVY, the Founders Network, Hive Global, and the Harvard Project for Asian and International Relations (HPAIR.) As it relates to the Founders Network, the Petitioner submits an e-mail confirming the Beneficiary's membership and a document titled "About Founders Network." While the former confirms his membership, the latter is not sufficient to demonstrate that this entity requires outstanding achievements of its members, as judged by recognized national or international experts in their field. Specifically, the stated membership criteria do not reflect a requirement that its members have outstanding achievements in the field of software engineering. Rather, the criteria include having "a long-term vision of building a lifelong peer mentorship community" and shared "values of authenticity, reciprocity, humility, and respect." Further, applicants should be "building a tech startup"⁴ and "working on [their] start-up full-time" as well as "willing to pay annual membership dues." They must also "abide by our no selling policy" and be "a Native English speaker or a TOEFL score above 80." The Petitioner does not show how these requirements reflect outstanding achievements, nor does it provide other materials such as bylaws, organizational documents, or other relevant materials, demonstrating that membership in the Founders Network requires outstanding achievements of its members. Moreover, while the document states "[e]ach month our Membership Committee admits a new cohort of full-time tech founders who are nominated by an existing member," the Petitioner does not submit information on this committee, or otherwise demonstrate that it is comprised of nationally or internationally recognized experts in the field of software engineering, as required.

With respect to the Beneficiary's membership in IVY, the Petitioner submits an e-mail from the SF Community Manager at IVY congratulating him on his approval to "join the IVY Family" and a document titled "IVY The Social University." To establish eligibility for this criterion, the documentation must be of the Beneficiary's membership in an association in the field for which classification sought, in the instant case, software engineering. Here the aforementioned document describes IVY as an entity whose "mission is to spark world changing collaborations" with "curriculum areas" of "entrepreneurship, arts & culture, social impact, policy, wellness, philosophy and science." The Petitioner does not demonstrate how this shows IVY to be an association in the field of software engineering.

Even had it done so, we note that the Petitioner does not provide sufficient documentation to establish that membership in IVY is based upon the Beneficiary's outstanding achievements, as judged by recognized national or international experts in the field of software engineering. The aforementioned document states that the membership process consists of an application and interview, after which the IVY Membership Committee makes a decision on the member, and provides a list of the current committee members. A page titled "IVY Membership Process" states, "[t]he most important requirement to become a member is the intellectual curiosity and a commitment to making a positive impact." The Petitioner does not show how intellectual curiosity or a commitment to making a positive impact represent outstanding achievements in his field of endeavor. The record lacks other materials, such as IVY's bylaws or organizational documents that might demonstrate that IVY requires outstanding achievements of its members in software engineering.

⁴ The document provides examples of tech startups including such as "enterprise or consumer software, IoT, clean or health tech. etc."

The Petitioner also asserts the Beneficiary's eligibility through Hive Global and the Harvard Project for Asian and International Relations (HPAIR). However, the record lacks evidence of his membership in these organizations. As it relates to Hive Global, the Petitioner submits a letter confirming the Beneficiary's acceptance into Hive Global's "3-day leadership training program," and a printout titled "Hive Global Leaders Program" from hive.org. This printout describes the program as being for "mission-driven leaders, innovators, and entrepreneurs" and "designed as an entry into a lifelong community of leaders." The Petitioner does not provide evidence, such as bylaws or other documentation, showing that the program extends membership to individuals, or otherwise demonstrating that participation in Hive Global's leadership training program is the equivalent of such a membership.

With respect to the HPAIR Asia Conference, the Petitioner submits a letter inviting the Beneficiary to attend its Asia Conference. It also provides a printout from hpair.org titled "About HPAIR" describing the conference as a "5-day academic program" whose attendees will gain exposure to "issues spanning multiple arenas, including political, social, economic, cultural, and business." However, the Petitioner does not demonstrate that the conference is an entity that extends membership to individuals, nor does it show how the Beneficiary's attendance at the conference constitutes such a membership.

For the foregoing reasons, the Petitioner has not submitted documentation sufficient to establish that the Beneficiary meets 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)

To establish the Beneficiary's eligibility for this criterion, the Petitioner submits numerous articles that "highlight the significance and popularity of [the Beneficiary's] work" or mention "[the Beneficiary]'s other projects." One set of articles referenced by the Petitioner in its appellate brief discuss the Beneficiary's previous and current employers' business activities.⁵ For example, the article "[redacted]" published on bloomberg.com, discusses the Petitioner's acquisition of the Beneficiary's previous employer. Another article, "[redacted]" reprinted on medium.com from the *Wall Street Journal*, discusses the Beneficiary's previous employer and its work, and features quotes from its founder, [redacted]. However, in order to establish eligibility for this criterion, the published material should be about the Beneficiary relating to his work in the field, not just about his employer.⁶ Articles that are not about a petitioner do not meet 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).

⁵ While we discuss only a sampling of the articles here, we have reviewed all of the materials in the record.

⁶ *See* 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 7* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

As an additional matter, while we consider bloomberg.com and the *Wall Street Journal* to be major media, the remainder of the articles are published at techcrunch.com, siliconangle.com, medium.com, and inc42.com. However, the record lacks evidence, such as circulation statistics or other relevant data, establishing that the on-line circulation for siliconangle.com, medium.com, and inc42.com is high relative to that of other websites, or information about the websites demonstrating that they are professional or major trade publications.⁷ Regarding techcrunch.com, the Petitioner submits a *Wikipedia* article⁸ indicating that it is “an online publisher of technology industry news,” but does not include on-line circulation or other statistics, or other comparative evidence showing that its viewership is relatively high such that it qualifies as a major medium.

On appeal, the Petitioner identifies additional articles that it asserts are about the Beneficiary as they “mentioned [his] other projects.” Three of these, [redacted], [redacted], [redacted],” “ [redacted],” “ [redacted],” published on techcrunch.com, and [redacted] published on mobilesyrup.com, are about the Beneficiary and relate to his work. The Petitioner also submits a foreign language article, [redacted] published at latribuna.hn along with a certified, full English translation of this article, about the Beneficiary and relating to his work. However, as we note above, the Petitioner has not established that techcrunch.com is a professional or major trade publication or a major medium, and here the record lacks evidence demonstrating the same as it relates to mobilesyrup.com or to latribuna.hn. In addition, the article published on latribuna.hn does not include an author, as required per 8 C.F.R. § 204.5(h)(3)(iii),

A fourth article, [redacted] published on businesswire.com includes a list of teams and projects, including one titled [redacted] highlighted by the Petitioner. However, the article does not mention the Beneficiary or otherwise demonstrate that it is about him and related to his work. As we note above, articles that are not about a beneficiary do not meet this regulatory criterion. Moreover, the Petitioner does not provide evidence demonstrating that businesswire.com is a professional or major trade publication or major medium.

Finally, the Petitioner asserts that two articles about the Beneficiary’s work on [redacted], [redacted], [redacted] from ndtvprime.com and “ [redacted] establish his eligibility for this criterion. As we note above, the record includes a series of screenshots from youtube.com with a caption reading [redacted] and the logo for NDTV Prime. While this series of screenshots includes one titled [redacted] and one titled [redacted] it also includes shots with text reading [redacted] and [redacted].” While this is sufficient to show that the first interview is, in part, about the competition, it is not sufficient to establish that it is about the Beneficiary. In addition, the document from ndtv.com titled “About the Company,” does not include on-line circulation statistics or statistics for other websites establishing that ndtv.com is a major medium. Furthermore, USCIS

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

⁸ We note that Wikipedia is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. See *General Disclaimer, Wikipedia* (January 28, 2020) https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008).

need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliable evidence of major media). With respect to the second article, [REDACTED] the Petitioner provides a text link to youtube.com that does not identify the Beneficiary, and the record lacks sufficient evidence demonstrating that this television program is about him and related to his work, as required.

For the above stated reasons, the Petitioner has not submitted documentation that establishes that the Beneficiary meets this criterion.

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 a beneficiary made original contributions, but also that these contributions have been of major significance in the field. For example, a petitioner may show that a beneficiary's contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have risen to a level of major significance in the field. Here the Petitioner claims that the Beneficiary is eligible for this criterion based on his original work in the field of software engineering, as demonstrated through the filing of a provisional patent, articles he has written, and recommendation letters.

With respect to the patent, the Petitioner submits a provisional patent application titled [REDACTED] [REDACTED] identifying the Beneficiary as one of two the principal inventors.⁹ A patent may recognize the originality of an invention or idea, but does not necessarily establish it as a contribution of major significance in the field. The record includes a letter from [REDACTED] senior patent counsel for the Petitioner, noting that "developing an original innovation that provides sufficient value to [the Petitioner] to justify expending its resources to submit" the patent is "a testimony to the originality and innovative nature of [the Beneficiary]'s work." [REDACTED] head of trust platform and foundational modeling for the Petitioner, describes an [REDACTED] for which this patent has been filed and notes that he "strongly believes that [the Beneficiary]'s original work is extremely valuable intellectual property and has strong use cases and transformative value in the industry." In her letter, [REDACTED] global mobility and benefits manager for the Petitioner, also mentions that the Petitioner had filed this patent on behalf of the Beneficiary. However, these letters do not explain or demonstrate how the patent has already influenced or impacted the field or is otherwise considered an original contribution of major significance in the field.

With respect to documents authored by the Beneficiary, the record reflects that he has authored and had published original articles "pertaining to software engineering, machine learning, risk assessment and engineering, and building models for trust and risk" as the Petitioner argues on appeal. However, the Petitioner did not establish that the Beneficiary's authorship and publication of articles on websites such as medium.com, indeed.com, or in an alumnae magazine, show the major significance of his original contributions in software engineering. Publications are not sufficient under 8 C.F.R. §

⁹ We note that the Petitioner has not established that the United States Patent and Trademark Office has awarded this patent.

204.5(h)(3)(v) absent evidence that they are of “major significance.” *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). Further, the Petitioner does not provide evidence showing how the Beneficiary’s authorship of these articles were majorly significant in the field.¹⁰

The letters of recommendation in the record identify several of the Beneficiary’s original contributions in the field of software engineering.¹¹ [redacted]’s letter identifies the Beneficiary’s “development of a novel method to create probability distribution of a topic given the date” as part of his participation in the Data Science Challenge, but does not provide specific examples of how this method has been implemented widely in the field, or is otherwise majorly significant in the field. [redacted] managing director of [redacted] details how the Beneficiary’s developed “an algorithm for [redacted] attributes” for [redacted] and “extended [redacted]’s [redacted] algorithm to include [redacted] matching.” [redacted], chief executive officer at [redacted] notes, “when working as a Summer Analyst at [redacted] [the Beneficiary] built an alerting system which identified investments which were close to Value at [redacted]” However, the language of this regulatory criterion requires that the Beneficiary’s original contributions be “of major significance in the field” rather than mainly affecting his employer. *See Visinscaia v. Beers*, 4 F. Supp. 3d 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). These letters do not sufficiently illustrate how the Beneficiary’s contributions to these companies have been widely implemented throughout the field, or have remarkably impacted or influenced the field such that they rise to the level of “a contribution of major significance.”

For the foregoing reasons, the Petitioner does not show that the Beneficiary has met 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)

The Petitioner also asserts that the Beneficiary has served in a leading or critical role for organizations or establishments that have a distinguished reputation. As it relates to a leading role, the evidence must establish that a beneficiary is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.¹² Regarding a critical role, the evidence must demonstrate that a beneficiary has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. It is not the title of a beneficiary’s role, but rather the performance in the role that determines whether the role is or was critical.¹³ In addition, this criterion requires that the organization or establishment must be recognized as having a distinguished reputation, which is marked by

Regarding the Beneficiary’s critical role for the Petitioner, the record includes the aforementioned letter from [redacted] and one from [redacted], director of engineering and head of trust and safety

¹⁰ We note that one article identified on appeal, [redacted], is under review, and the record does not reflect that it had been published at the time that the Petitioner filed this petition on the Beneficiary’s behalf.

¹¹ While we discuss a sampling of letters, we have reviewed and considered each one.

¹² 8 C.F.R. § 204.5(h)(3)(viii); *see also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

¹³ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

operations for the Petitioner. [redacted] states that the Beneficiary “built a highly sophisticated machine learning model... to determine if the transaction is risky.” He continues, noting that the Petitioner led the development of “multiple iterations of the model” that is “deployed in the [redacted] of [the Petitioner.]” [redacted] asserts that this work resulted in a “0.51% improvement in [redacted] and \$11.8 million improvement in revenue” and that it “significantly influenced the strategy of the Identity team at [the Petitioner].” He identifies this as “one of the high impact works of software engineering” and that it was not possible without the Beneficiary’s “extraordinary aptitude and expertise.”

[redacted] also refers to this work done by the Beneficiary that “increased the company’s revenue by an estimated \$11.8 million a year.” His letter further states that the model described above “drove one of the largest improvements in the company’s primary metric by any individual project at [the Petitioner] in 2018.” He further states that this project was “critical to [the Petitioner]’s mission as it helps to keep [its] [redacted].” However, the Petitioner does not provide evidence corroborating either [redacted]’s or [redacted]’s assertions with regard to the Beneficiary’s direct impact on the Petitioner’s revenue. The record similarly lacks evidence establishing the impact on the Identity team’s strategy, as claimed by [redacted] or showing how the work drove the largest improvement by any individual project, as [redacted] states. These conclusory statements are insufficient to demonstrate that the Beneficiary meets this criterion. *See 1756, Inc. v. United States Att’y Gen.*, 745 F. Supp. 9, 17 (D.D.C. 1990) (noting that we need not accept primarily conclusory statements). Finally, the Petitioner does not submit documentation to establish that it enjoys a distinguished reputation, as required.

To further establish the Beneficiary’s eligibility for this criterion, the Petitioner provides letters of support from [redacted] co-founder and chief executive officer of [redacted] [redacted], engineering manager at the Petitioner [redacted], engineering manager for the [redacted] team, and [redacted] visiting scholar at [redacted] University.

[redacted] and [redacted] both assert that the Beneficiary played a critical role for [redacted] his prior employer. [redacted] notes that he “built the [redacted] model for [redacted] users,” a project that was “a key element in helping [redacted] acquire customers in the [redacted] industry such as [redacted]” while [redacted] states “[the Beneficiary] was fundamental in the creation... of codes and algorithms” used by [redacted]. However, these letters do not provide detailed explanations nor does the record contain evidence showing how the Beneficiary’s work resulted in these outcomes. Both [redacted] and [redacted] assert that the Beneficiary’s work contributed greatly to [redacted]’s financial success, and note that the company’s peak revenue was over \$3 million. Again, the Petitioner does not provide evidence corroborating these assertions. The record also lacks evidence establishing that [redacted] enjoys a distinguished reputation.

[redacted] describes the Beneficiary as “in the top 1%” of engineers” he has worked with and provides two examples of the Beneficiary’s work. He notes his work in building “a monitoring tool for the entire cluster” that was “extremely useful for maintaining the cluster, reducing the downtime and improving the efficiency of the team.” [redacted] also describes “a visualization dashboard” built by the Beneficiary that “allowed product and business users... to make data-driven decisions.” [redacted] opines that this work was “critical to operations.” Here these examples show the importance of the Beneficiary’s work to [redacted] team and to data and business users, but neither the letter nor

evidence in the record show that these projects were of significant importance to the outcome of the establishment's activities, as required. As we note above, we need not accept conclusory statements. Moreover, the record lacks evidence demonstrating that the [redacted] enjoys a distinguished reputation.

Finally, [redacted] focuses on the Beneficiary's work developing software applications for the [redacted] Technology to allow the project to "take information on public services in [redacted] that are available online, and share them with stakeholders living in rural areas, who do not have access to the internet." [redacted] describes these two applications and concludes that this work was "essential in promoting the main purpose of the Program," but does not provide detailed examples of how it was essential, or was otherwise significant to the Program's outcomes. Letters that lack specifics and make broad, unsupported assertions do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.¹⁴ As with the other organizations, we note that the Petitioner does not provide evidence showing that this Program has a distinguished reputation, as required.

The Petitioner therefore has not provided evidence sufficient to demonstrate 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)

The Petitioner submits its offer of employment to the Beneficiary, a printout providing the Beneficiary's salary as of February 2018, his paystubs, 2017 Form W-2, Wage and Tax Statement, and his 2017 Federal taxes. The record also includes geographical and position-appropriate compensation surveys, such as one from glassdoor.com titled "Software Engineer- Machine Learning Salaries in [redacted]" The evidence is sufficient to establish that the Beneficiary has commanded a high salary in relation to other software engineers.¹⁵ Accordingly, we find the record establishes that the Beneficiary meets this criterion and will withdraw the Director's findings to the contrary.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *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). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center

¹⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9.

¹⁵ We further note that the Petitioner submits evidence of the Beneficiary's remuneration in the form of held stock options, which we have reviewed but do not discuss here.

director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence establishing the Beneficiary's receipt 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 Beneficiary's acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, 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 the Beneficiary's 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 Beneficiary 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).

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.