



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

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

In Re: 7403421

Date: FEB. 13, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an e-commerce based gourmet food delivery company, seeks to classify the Beneficiary, its chief executive officer (CEO), as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner established that the Beneficiary meets only two of the ten initial evidentiary criteria for this classification, of which he must satisfy at least three.

On appeal, the Petitioner asserts that the Beneficiary meets up to three additional criteria and is otherwise qualified for the benefit sought.

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 a beneficiary’s 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 it must provide sufficient qualifying documentation on behalf of the beneficiary 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 beneficiary 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 operates an e-commerce based business that allows [redacted] customers to order individual gourmet meals prepared by private chefs for home delivery. The Beneficiary has been employed in the United States as the Petitioner’s CEO since 2016. He is also a founder of [redacted], [redacted], and [redacted] [redacted], as well as the founder and chairman of [redacted], a restaurant group that includes the aforementioned Argentina-based businesses.

### A. Evidentiary Criteria

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 Director found that the Beneficiary met two of the evidentiary criteria, relating to published materials and leading roles in organizations that have a distinguished reputation. The record reflects that the Beneficiary and his business partner were featured in a [redacted] issue of *Forbes* magazine (Argentina edition) and therefore we agree with the Director’s determination that the evidence satisfies the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii). In addition, we agree that the Petitioner provided sufficient evidence to establish that the Beneficiary served in a leading role for [redacted] and the other [redacted] companies, as well as evidence to establish that these businesses enjoy a distinguished reputation in Argentina. 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner asserts that the Beneficiary meets up to three additional criteria, discussed below. After reviewing all of the evidence in the record, we find the Petitioner has not established that the Beneficiary meets at least three criteria.

*Documentation of the individual’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)

In order to fulfill this criterion, the Petitioner must demonstrate the Beneficiary's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.<sup>1</sup> The description of this type of evidence in the regulation provides that the focus should be on "the alien's" receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes.<sup>2</sup>

The Petitioner initially claimed that the Beneficiary satisfied this criterion based on the following:

- CEO of the Year (2013), awarded by [redacted] Argentina
- *Forbes* Argentina – [redacted]
- Mobile Marketing Association's 2013 [redacted] Award awarded to [redacted] (Bronze award in mobile commerce)
- Golden Fork Award for "Best Restaurant with Delivery," awarded to [redacted]
- 2014 [redacted] Restaurant in [redacted] awarded to [redacted] by *Cuisine et Vins* magazine.

The Director determined that the Petitioner did not establish that the Beneficiary himself was the recipient of the awards issued to [redacted] and [redacted]. We agree with the Director's determination with respect to these awards and note that the Petitioner has not contested that determination on appeal.<sup>3</sup>

In regard to the 2013 CEO of the Year award from [redacted] Argentina, the Director acknowledged that the Petitioner provided evidence that the Beneficiary, as opposed to his company or employer, was the recipient of the award. However, the Director determined that the Petitioner did not provide sufficient supporting evidence to demonstrate that the Beneficiary received a nationally or internationally recognized award for excellence. Specifically, the Director noted that the record lacked evidence from the awarding entity demonstrating the criteria used to grant the award, information regarding the number of prizes awarded, or other information, such as public announcements or media announcing the award winners.

On appeal, the Petitioner asserts that the Director "misapplied the regulations" by requiring a public award announcement, and emphasizes that "the regulations only require that the award be of national or international recognition." In addition, the Petitioner maintains that the award was accompanied by a blog post published on [redacted] Argentina's website, which served as public announcement of the Beneficiary's receipt of the award.<sup>4</sup>

We agree with the Director's determination that the Petitioner did not establish that the Beneficiary's [redacted] Argentina CEO of the Year award is a nationally or internationally recognized award for excellence. The Petitioner described [redacted] as "an invitation-only membership organization, which

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<sup>1</sup> 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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

<sup>2</sup> *Id.*

<sup>3</sup> We note, however, that we considered these awards in determining that the Beneficiary has held a leading role with organizations or establishments that have a distinguished reputation. See 8 C.F.R. § 204.5(h)(3)(viii).

<sup>4</sup> The Petitioner also submits new evidence demonstrating that the announcement appeared on [redacted] Argentina's Facebook page.

is highly selective and . . . is composed of multimillion dollar corporations, executive officers, and business owners,” with 20,000 members and affiliates in 16 countries. However, the fact that the organization is international is not sufficient to establish that any award granted by the organization (or one of its country affiliates) is a nationally or internationally recognized prize or award for excellence that meets the plain language of this criterion.

USCIS policy guidance provides that relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.<sup>5</sup> The Director did not misapply the regulation to the facts presented in determining that the award certificate, the blog post, and general information about the awarding entity were not sufficient to establish that all elements of the criterion were met.

The Beneficiary’s award certificate from [redacted] Argentina indicates that he was recognized “[f]or his outstanding contribution in [redacted] N° 51 coordinated by the Chair [redacted]” However, the record does not clarify to what “Group N° 51” refers or identify the Beneficiary’s “outstanding contribution” to this group. The evidence suggests that the awards granted by [redacted] Argentina were likely limited to members, but the record otherwise contains no information regarding how the award recipients were selected. Further, although the Petitioner provided evidence that [redacted] Argentina recognized the 2013 winners on its own website’s blog and on social media, the record does not demonstrate that the award is nationally recognized in the field, as opposed to recognized within the [redacted] Argentina organization. Therefore, we agree with the Director’s determination that the Petitioner did not establish that the Beneficiary’s [redacted] Argentina CEO of the Year award meets this criterion.

Finally, the Petitioner claims on appeal that the Director overlooked or disregarded evidence that the Beneficiary was recognized by *Forbes* magazine (Argentina) in its [redacted] issue published in [redacted] 2013. The Petitioner correctly notes that the Director did not discuss this evidence under the awards criterion.

However, the record does not establish that the Petitioner’s recognition by *Forbes* magazine is a “prize or award” as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). The Beneficiary and [redacted]’s chief financial officer were recognized in the magazine, which contains a full-page photograph of them and a brief article that discusses their success in growing the [redacted] [redacted] chain in the city.” The Petitioner did not provide evidence that the Beneficiary received an award or prize from *Forbes* Argentina, and did not respond to the Director’s request for evidence such as a photograph of the award or copy of the award certificate. Therefore, while we acknowledge that an appearance on a *Forbes* list such as this one provides notable publicity that satisfies the published materials criterion and would be weighed under a final merits determination, the record does not establish that it is a prize or award that satisfies all elements of this criterion.

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<sup>5</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra* at 6 (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance).

*Documentation of the individual'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 that the Beneficiary meets this criterion based on: (1) his membership in [redacted], in which he is also a founder of the [redacted] Argentina chapter; and (2) the Petitioner's acceptance as an [redacted] accelerator program participant. In order to satisfy this criterion, the Petitioner must show that the Beneficiary is a member of an association and that such membership is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.<sup>6</sup>

As it relates to [redacted] the Petitioner provided screenshots from the organization's website which describe [redacted] as "a [redacted] According to the website, a prospective member "must be the owner, founder or majority stakeholder of a business earning a minimum of [redacted] and "[redacted] companies must have either privately raised funds of at least [redacted], publically-raised finds of [redacted], and a minimum of 10 employees." According to the information published by [redacted] once a membership application is received, it "will be reviewed by your local chapter to ensure that all criteria is [sic] met."

The [redacted]'s website reflects that, after receipt and initial review of an application, the local chapter schedules an interview "to further explore [the applicant's] interest in [redacted]"<sup>7</sup> However, based on this limited description of the interview stage, it does not appear to involve additional requirements or substantive review by national or international experts to determine whether a given applicant has demonstrated outstanding achievements. Therefore, the record does not substantiate that [redacted]'s membership application extends beyond requiring that that an applicant be an owner, founder or majority stakeholder of a company that meets the stated income and financing requirements.

On appeal, the Petitioner maintains that satisfying [redacted]'s minimum income and financing requirements is in itself evidence of an outstanding achievement. It submits an article published by *Inc.* magazine, which mentions [redacted] as an organization "that maintains a [redacted] level of peer qualifications for entry," and an article from *Fundera*, which states that "[redacted]" While the record reflects that [redacted] sets what appears to be a fairly high bar for membership, the fact remains that it is an objective, bright-line threshold. Based on the information provided regarding the membership requirements, it is reasonable to conclude that an applicant who meets this

<sup>6</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (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>7</sup> We note that former counsel stated that the interview with the [redacted] local chapter involves "further scrutinizing [an applicant's] talents and entrepreneurial spirit and extraordinary ability before approving the applicant for membership," but this statement was not supported by the information provided on the [redacted] website, and this claim has not been repeated on appeal. Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence.

threshold and pays the membership dues will be granted membership. The Petitioner did not establish that [redacted] requires outstanding achievements of their members, *as judged by recognized national or international experts in their disciplines or fields* (emphasis added). 8 C.F.R. § 204.5(h)(3)(ii).

The record also establishes that the Beneficiary is one of eight founding board members of [redacted]'s Argentina chapter. The Petitioner provided a partial copy of [redacted]'s *Chapter Formation Guidebook*, and asserted that “not every [redacted] member is qualified and capable of leading a group of officers in creating a local chapter in their community.” The “Chapter Launch Application” found in this guidebook requires basic information regarding the proposed chapter, the name of the “Chapter Champion,” and the names of eight founding board members. However, the Petitioner did not establish that the founding members are required to meet membership requirements other than those applicable to regular members, despite taking on additional responsibilities. Further, the record does not establish that founding board members for a new chapter undergo a process in which they are judged by national or international experts based on their outstanding individual achievements. Therefore, the record does not establish that the Beneficiary’s membership on the [redacted] Argentina board satisfies this criterion.

The Petitioner also maintains that the Beneficiary satisfies this criterion based on his association with [redacted] a [redacted]. The record contains media coverage of [redacted] that establishes that the program is both highly-regarded and very competitive. The program has two application cycles annually which typically draw applications from approximately 2000 companies, with only 12 or so companies accepted. The Petitioner submitted an article published by *StrictlyVC*, which indicates that program applicants “are asked to submit a two-minute video, along with an essay, about their company.” Based on these materials, [redacted]'s two co-founders choose between 100 and 200 teams for interviews, and eventually “choose a dozen of them to coach over the following 10 to 12 weeks.” The teams selected receive [redacted] from [redacted] in exchange for a [redacted] share of their company, and at the end of the mentorship program, the company’s co-founders work with the startups for six additional weeks to secure [redacted]. After that, each company becomes an alumnus of the program and the cycle begins again.

The Petitioner submitted a [redacted] 2015 letter from [redacted] founder and managing director, [redacted] who addresses the highly competitive nature of the program and notes that it makes “the endorsement from [redacted] a highly elite and prestigious international membership and award.” [redacted] explains that [redacted] chooses start-ups with “company founders who already have a history of extraordinary entrepreneurial and leadership accomplishments,” noting that they consider “the potential for the business to generate a massive impact, as well as the personal qualifications of the founders and their ability to lead a company from inception along the critical trajectory towards success.”

However, the totality of the evidence provided regarding [redacted] and its activities does not establish that its start-up incubator program is an “association” in the Beneficiary’s field or that it admits individuals as “members” as required by the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(ii). For example, the announcement of new program participants on [redacted]'s website lists company names, not the names of the participating companies’ founders. While the evidence supports the Petitioner’s claim that it was accepted to this program, in part, based on the Beneficiary’s past business achievements and proven leadership abilities, the Beneficiary’s

membership as an individual in an association in accordance with the regulation at 8 C.F.R. § 204.5(h)(3)(ii) has not been established. For the foregoing reasons, the Petitioner has not met this burden.

*Evidence of the individual'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)

The Petitioner maintains that the Beneficiary has made original contributions of major significance in the food service industry based on his leadership of both [redacted] and the petitioning company. The Petitioner also asserts that the Director did not apply the preponderance of the evidence standard in determining that the Beneficiary's acknowledged original contributions were not shown to be of "major significance."

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that the beneficiary has made original contributions of major significance in the field.<sup>8</sup> The contributions must have already been realized, rather than being prospective possibilities. It must also establish that the Beneficiary's contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and thus has meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995), *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). 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 in the field.

With respect to [redacted] the Petitioner maintains that the Beneficiary made a contribution of major significance to the food delivery industry in Argentina. Specifically, it states that he [redacted] [redacted] food for all Argentinians" based on his "ingenious marriage of smartphone ordering and marketing a previously [redacted] food item to a mass audience at lower price points." The Petitioner asserts that the Beneficiary's selection for the *Forbes* [redacted] list, and [redacted]'s receipt of a Mobile Marketing Association [redacted] bronze award for mobile commerce, are strong evidence of the company's major impact on the industry. Upon review of this evidence, as well as testimonials and other media coverage regarding [redacted] the Petitioner has not established the major significance of the Beneficiary's contribution to Argentina's food industry.

A 2011 article published by *La Nacion*, [redacted] indicates that [redacted]'s original business model was to "[redacted] that could compete at the same price point as pizza and empanadas" and to spread the market beyond the existing dine-in [redacted] restaurants in [redacted]. Another 2011 article, titled [redacted], published by *Clarín*, includes quotes from the Beneficiary about [redacted] and its business model, but also quotes representatives from [redacted] and [redacted] which appear to operate similar [redacted] delivery businesses in the same geographic area in Argentina. The article acknowledges [redacted] as the "leading company in the delivery category," but does not support the Petitioner's claim that the company remarkably impacted the industry in which it operates. Similarly, an article published by *Brando* magazine, notes that [redacted]'s business has "modified the frequency and habit in the followers of this food," but it does not establish that the Beneficiary's business model rises to the level

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

of an original business contribution of major significance. On appeal, the Petitioner also re-submits and references an article in *PlanetaJoy*, “a prominent Argentinian food publication,” titled [REDACTED].” The article is about [REDACTED] restaurant, but mentions “the owners [REDACTED]” in its introduction to the restaurant. The passing reference to [REDACTED] as “revolutionary” in this article does not provide sufficient information to explain how the Beneficiary remarkably influenced his field by implementing the concept of a [REDACTED] delivery business.

The Petitioner also submitted testimonials from business experts and investors who highly praise the Beneficiary’s business acumen and the success he has achieved with [REDACTED].<sup>9</sup> For example, [REDACTED], Executive Chairman of [REDACTED], states that the Beneficiary, with little overhead, “was able to popularize and commodify [REDACTED] in a way that it had never been in Argentina, making the food into a cultural fad and elevating [REDACTED] into a multimillion dollar franchise.” [REDACTED] Chairman and Board Director with [REDACTED], notes that [REDACTED] “made an [REDACTED] food accessible to thousands of consumers by creating an e-commerce model with commissary kitchen and delivery messengers, which cut the costs associated with traditional brick and mortar [REDACTED] restaurants.” [REDACTED] states that the [REDACTED] business model, “which integrated technology, the current economic trends, and the consumer demand, provided a completely novel method of operating a business in the food industry, pushing the boundaries of traditional restaurants.” While he praises the originality of the Beneficiary’s idea, he does not describe in detail how the Beneficiary’s business model remarkably impacted the food industry in Argentina or beyond.

With respect to the petitioning company, the Petitioner states that, as of the date of the appeal, it has raised cumulative investments of nearly \$6.5 million, and emphasizes that “the brand is unique from competitors in the meal preparation delivery industry in that its meals come pre-made from private chefs, providing the work of accomplished chefs to consumers at affordable prices.” The Petitioner maintains that the concept behind the company is of major significance in the food industry “as the first affordable private chef-to-consumer service directly fulfilling a U.S. consumer need in the [REDACTED] market.” The supporting evidence reflects that the Petitioner’s business plan is based on a novel concept, has received considerable interest and funding from investors, and has achieved steady growth since the Petitioner relocated to the United States to direct the company as its CEO in 2016. However, the Petitioner has not articulated a claim that the company has had a wider impact on the food industry, as opposed to offering a well-received new food delivery option to consumers in some parts of [REDACTED].

The Petitioner provided a letter from [REDACTED] Vice President of [REDACTED] who praises the Petitioner’s creative business talent, notes that investors consider the petitioning company to be a “promising venture” expected to “grow aggressively,” and opines that the Beneficiary “will make a great contribution to the United States.” In addition, [REDACTED] expresses his opinion that the Beneficiary’s “innovative contributions and leadership acumen” will allow the Petitioner to “positively impact the restaurant industry and stimulate the local economy.” He further states that the Petitioner “will impact the way that brick and mortar business in the restaurant industry operate here in the United States” and refers to it as a “once-in-a-generation company.” But he does not explain how the Beneficiary has already made a contribution of major significance to the U.S. food

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<sup>9</sup> Although we discuss a sampling of the submitted letters, we have reviewed and considered each one.



industry or how it is expected to change the way traditional restaurants operate. Rather, he generally asserts that “this business model envisions a new food system that will reach out to millions of consumers.”

The record reflects that the Beneficiary has achieved considerable success as a food industry entrepreneur by developing novel concepts and successfully raising funds and implementing his business plans, first in Argentina and now in the United States. However, the submitted letters do not reflect detailed information explaining how the Beneficiary’s original contributions are tantamount to major significance in the field. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value.<sup>10</sup> On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.<sup>11</sup> Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that the Beneficiary has made original contributions of major significance in the field.

#### B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner 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 Petitioner, 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 correctly 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), *affd*, 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 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 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 Beneficiary has established the acclaim and recognition required for the classification sought.

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<sup>10</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

<sup>11</sup> *Id.* at 9.

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 the Petitioner’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.