



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

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

In Re: 8638300

Date: JULY 21, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as an alien of extraordinary ability in biophysics and biomedicine. *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 had not satisfied any 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’s occupation.

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 that he is the founder and chief executive officer of [REDACTED]. Because the Petitioner has not claimed 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 did not fulfill any of the initial evidentiary criteria. On appeal, the Petitioner asserts that he meets five criteria, including through the submission of comparable evidence, discussed below. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

### A. Evidentiary Criteria

*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 claims eligibility for this criterion based on venture capital funding in his company. Specifically, he provided a letter from [REDACTED] president and chief executive officer for [REDACTED] who stated that “after a thorough due diligence, we decided to invest \$3M to fund his new company, [REDACTED] so it could start its operations in California.” In order to fulfill this criterion, the Petitioner must demonstrate that he received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.<sup>1</sup> Here, the Petitioner did not establish that he received the venture capital and that it qualifies as a nationally or internationally recognized prize or award for excellence in the biophysics or biomedicine field.

As indicated in [REDACTED]’s letter, [REDACTED] received the \$3 million venture capital rather than the Petitioner. 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

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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>.

prizes.<sup>2</sup> Accordingly, the Petitioner did not demonstrate that he received the venture capital funding consistent with this regulatory criterion.

Similarly, the Petitioner references screenshots entitled, “Understanding the EB-1 Requirements for Extraordinary Ability,” from uscis.gov stating under the awards criterion:

**Note:** If *you* have received venture capital funding or have been awarded a grant, *you* may submit evidence of the funding or grant awarded, including the amount of the funding or grant criteria used in awarding the funding or grant. Evidence of other investments, such as those from an accredited angel investor, may also be used.

(emphasis added).

Once more, the guidance instructs that the self-petitioner or beneficiary received the funding, grant, or other investment. In addition, the Petitioner did not establish that venture capital funding from [redacted] qualifies as a nationally or internationally recognized prize or award for excellence in the field. 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 awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize recipients as well as any limitations on competitors.<sup>3</sup> Moreover, as indicated above in the online guidance, the amount of the funding or grant criteria used in awarding the funding or grant may be submitted. Although [redacted] indicated that [redacted] conducted “a thorough due diligence,” he did not provide detailed, specific information explaining the criteria for the venture capital funding. Here, the Petitioner did not show the national or international significance of an [redacted] [redacted] venture capital investment, nor did he establish that his biophysics and biomedicine recognizes it as a national or international prizes or award for excellence.

Furthermore, the Petitioner argues that the [redacted] venture capital investment should also be considered as comparable evidence. The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation.<sup>4</sup> A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence he has included is comparable to that required under 8 C.F.R. § 204.5(h)(3).<sup>5</sup>

Again, the Petitioner claims a venture capital investment that he did not receive. Regardless, the Petitioner did not demonstrate that the awards criterion is not applicable to his occupation. General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted.<sup>6</sup> Furthermore, the fact that the Petitioner did not establish that he satisfies the awards criterion is not evidence that a biophysicist chief executive officer could not do so. In addition, the Petitioner did not show why he cannot offer evidence that meets at least three criteria,

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<sup>2</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.

<sup>3</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.

<sup>4</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

including this criterion. In fact, as indicative above, the Petitioner claims to meet four other criteria. Further, the Petitioner did not explain why the other criteria, such as judging and high salary, do not apply to his occupation.<sup>7</sup>

Accordingly, the Petitioner did not demonstrate that he fulfills this criterion, including through the submission of comparable evidence.

*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 argues that he satisfies this criterion based on articles posted on findbiometrics.com, biometricupdate.com, techworld.com, and digitaljournal.com. In order to meet 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>8</sup>

As it relates to the findbiometrics.com article, the Petitioner argues that it “is a transcript of an interview with [him], the [redacted] Chairman [redacted] and the interviewer,” and “[t]he interviewer was the Findbiometrics [redacted].” Although the article contains a transcription of the interview within the article, the Petitioner did not demonstrate the author of the material. In fact, while the article confirms that [redacted] “recently had the opportunity to speak with [them],” [redacted] is referenced in the third person, implying that he did not author it. Here, the Petitioner did not demonstrate the author of the article. The inclusion of the author is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii).

Moreover, the findbiometrics.com, biometricupdate.com, and techworld.com articles do not reflect published material about the Petitioner; instead, the articles are about [redacted] and biometric technology. Although the Petitioner is mentioned as the inventor of the technology or founder of [redacted] the articles discuss the technology. For instance, the Petitioner responds to questions regarding [redacted] in the findbiometrics.com article, such as: “[c]an you describe [redacted] for our readers, please?”; “how do you apply [redacted] to identify and authenticate?”; “[i]t is a very fascinating technology, where did the concept for the [redacted] come from?”; “What are the unique benefits of physiological biometrics?”; “[w]hat happens in case of a lost phone?”; and [w]hy is on-device authentication important for [redacted]’s solution?” Likewise, the articles from biometricupdate.com and techworld.com report on [redacted] with the Petitioner quoted regarding the technology, but are not about him. 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).

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<sup>7</sup> The Petitioner also argues that his “being an invited, main-stage speaker at prestigious conferences” is comparable to the display at artistic exhibitions and showcases criterion at 8 C.F.R. § 204.5(h)(3)(vii). Again, the Petitioner did not show that at least three of the listed criteria do not readily apply to his occupation, he did not explain why he has not submitted evidence that would satisfy at least three of the criteria, and he did not establish why the evidence he has included is truly comparable to that required under 8 C.F.R. § 204.5(h)(3). Therefore, the Petitioner did not demonstrate that he may use comparable evidence to demonstrate his eligibility.

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

Furthermore, the Petitioner did not establish that any of the websites represent professional or major trade publications or other major media. While he provided “About Us” and “Media Information” screenshots from the websites promoting themselves, the Petitioner did not present objective, probative evidence to corroborate the websites’ assertions. USCIS 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 reliant evidence of a major medium). Here, the Petitioner did not offer independent evidence, such as website traffic figures from third parties, demonstrating the websites’ standings as major media.<sup>9</sup>

Finally, the two digitaljournal.com articles are dated after the Petitioner filed his initial petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). Accordingly, we need not further address these articles on appeal.

For these reasons, the Petitioner did not show that he 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).

The Petitioner argues that he satisfies this criterion based on patents, research, innovation in building clinical studies, and founding of an international nonprofit organization. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.<sup>10</sup> 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.

The Petitioner argues that he provided patents to [redacted] and references his own previously submitted letter that states “[redacted] is currently in discussions with several large technology companies, and companies that contract with U.S. Government agencies, to license our patented technology” and “[d]iscussions with companies such as IBM, Dell, Google/Android, and Verizon, take several months of negotiations to work out Master Service Agreements.” (emphasis added). In addition, he references a letter from [redacted] general manager of [redacted], who indicated that the Petitioner’s “breakthroughs will strengthen America’s cyber security defenses and hardens our nation’s critical infrastructure,” and “[t]he [redacted] technology has been identified as a ‘security breakthrough’ that will protect consumer wireless commerce and finance transactions for over a billion mobile devices.” (emphasis added). Moreover, he references a letter from [redacted]

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<sup>9</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (providing that evidence of published material in professional or major trade publications or in other major media publications about the alien should establish that the circulation, on-line or in print, is high compared to other circulation publications statistics and show the intended audience of the publication).

<sup>10</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (finding that although funded and published work may be “original,” this fact alone is not sufficient to establish that the work is of major significance).

professor, who opined that “[t]his technology *will* impact sectors across a wide spectrum, from financial transactions, to personal mobile devices, to national security. (emphasis added).

In general, a patent generally recognizes the originality of an invention or idea but does not necessarily establish a contribution of major significance in the field. Although the Petitioner expresses optimism and others opine that his work shows promise, he did not demonstrate how his work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. Here, the significant nature of his patents resulting in [redacted] technology has yet to be determined.

Likewise, the Petitioner references two articles from pcmag.com and opusresearch.net. The pcmag.com article was published after the initial filing of the petition. See 8 C.F.R. § 103.2(b)(1). Regardless, the articles do not indicate that [redacted] technology has influenced the field in a significant manner to be considered a contribution of major significance in the field. Instead, the articles report on newly released technologies, such as [redacted] has developed a product called the [redacted] that can [redacted] identify and validate the person” and “[redacted] has patented a method to measure the user’s [redacted] by sensors [*sic*] that are already on smartphones,” without elaborating on its impact in the field. The articles, for example, do not discuss the effect of [redacted] in the field or whether it has been widely applied or used. Furthermore, the Petitioner did not demonstrate that the minimal reporting of two articles represents an original contribution of major significance consistent with this regulatory criterion.

Similarly, as it relates to his patents used by [redacted] the Petitioner references a letter from [redacted] an angel investor, who stated that the Petitioner “created an entirely new technology based on the mobile phone [redacted] sensor to monitor [redacted] changes,” and the U.S. Food and Drug Administration (FDA) approved the technology in [redacted] approximately six months prior to the filing of the petition. Although [redacted] indicated that “this product is now on the market,” she did not elaborate and discuss the extent of the usage in the field or how it has somehow impacted or influenced the overall field beyond [redacted]<sup>11</sup> In addition, the Petitioner did not demonstrate how FDA approval alone constitutes a contribution of major significance in the field. Moreover, the Petitioner argues that the product “*will* allow consumers to have direct access to their [redacted] and empower consumers to take control of [redacted]” (emphasis added). Again, the Petitioner speculates on the potential of the product rather than how it has already significantly impacted the field in a major way.

Furthermore, the Petitioner references three articles that reported on possible, upcoming technologies of [redacted] but did not indicate widespread usage in the field. For instance, “[t]he object [redacted] is working on is [redacted] “[o]ther sensors, some *still in development*, will measure [redacted] functions,” “[e]ventually, both theory and experience show, a product *can* become pretty good,” and “[the] company *hopes* to have the device available as a mass market consumer product” (bits.blogs.nytimes.com). (emphasis added). Moreover, “[redacted] is attempting to get its device approved as a [redacted]”

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<sup>11</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 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).

[redacted] *so far* has been approved by the [FDA] as an ‘investigative device, meaning it *can* be used in the context of a study,” and “[t]he company *is in the midst* of [redacted] trials with the [redacted] device, and has *longer term* regulatory path to get [redacted] cleared to analyze [redacted] (blogs.wsj.com) (emphasis added). In addition, [redacted] CEO . . . *expects* to begin shipping a \$199 consumer version of his [redacted] sometime next year, pending [FDA] approval,” “we’re in a transition period because we *still need* dedicated devices and sensors to bring [redacted] data to our phones,” “[t]he *possibilities* are incredibly powerful – especially as the device gets cheaper,” and [redacted] appears to be building not just a powerful [redacted] device but a platform of [redacted] data that has the *potential* to interest many industry players” (fortune.com). (emphasis added). Once again, the articles discuss the current development and potential of the technology at some point in the future; however, the articles do not reflect that [redacted] technology through the Petitioner’s patents have already been considered majorly significant in the field.

In addition, the Petitioner contends that he conducted original research into [redacted] drugs for cancer therapy and references letters from [redacted] professor, and [redacted]. Once more, the letters speculate on the potential and possibility without showing the past or present impact of his research. For example, “[h]is first application for this novel [redacted] platform is cancer, and I have heard that animal studies are *promising*” [redacted]. (emphasis added). Here, [redacted]’s letter indicates that the Petitioner’s research is ongoing and is at the animal study stage without explaining how the research has affected the field in a major way. Moreover, [redacted] speculated that “this opens the way for a truly novel class of drugs that *can* be applied to specific medical problems,” “[the Petitioner’s] work *will* have important impacts on a variety of research efforts,” and “I am confident that this work *will* revolutionize cancer therapy.” (emphasis added). [redacted] did not demonstrate that the Petitioner’s cancer research has already been applied to specific medical problems, has already important impacts on a variety of research efforts, or has already revolutionized cancer therapy.

Further, the Petitioner claims that he “presented a new and novel way to build clinical studies in biophysics, which has since been followed by other scientists” and references [redacted]’s letter. According to [redacted] the Petitioner “was so advanced in his reasoning, that even our Faculty Dean and most scientists around us, could not believe this” and “[n]ow scientists in various countries followed him in this, as he was right!” However, [redacted] did not further elaborate and explain the extent of other scientists following his work. Instead, [redacted] references the publication of his research in a journal. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115. In addition, the record reflects that the Petitioner provided citatory evidence from *Google Scholar* showing that this paper, published in 2009, has received only three citations. Generally, citations can serve as an indication that the field has taken interest in a petitioner’s research or written work. However, the Petitioner has not sufficiently shown that the three citations to his work are commensurate with contributions of major significance. Here, the Petitioner did not articulate the significance or relevance of the citations to his journal article. Although his citations indicate a few in the field cited to his article, the Petitioner did not establish that these citation numbers rise to the level of major significance consistent with this regulatory criterion.<sup>12</sup>

<sup>12</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (providing an example that peer-reviewed articles in

Moreover, the Petitioner argues that his “original research on [redacted] reversed the perception of [redacted] leading to Balkan Syndrome” and references letters from [redacted] professor, and [redacted] former [redacted] Minister of Defense. The letters, however, do not support the Petitioner’s assertions, nor do they explain how his contributions have been of major significance in the field. Although the letters mention “Balkan Syndrome,” they do not discuss that “[redacted] reversed the perception of [redacted] leading to Balkan Syndrome.” Instead, the letters contain vague and unclear statements. For example, [redacted] claimed that the Petitioner “could build the confidence of all external reviewers, so that the results of this study were well accepted by all politics and scientists concerned,” and [redacted] stated that the Petitioner “could stop and reverse a [redacted] campaign against [redacted] and against most [redacted] governments involved in the Balkans [sic]” and “[h]is contribution percolated throughout [redacted] and back then [redacted] was hailed as an example amongst other nations.” Here, the letters do not sufficiently explain how the Petitioner’s research reversed the perception of [redacted] bombing, nor do they contain detailed information establishing that his research resulted in a majorly significant contribution in the overall field. In addition, while the Petitioner indicated that he published an article entitled, [redacted] in *Health Physics*, the record reflects that it received 18 citations from others. Again, the Petitioner did not demonstrate that such citations are commensurate with an original contribution of major significance in the field.

Finally, the Petitioner contends that he “founded an international nonprofit organization to shift public health policy towards alternatives to [redacted].” Further, the Petitioner states that “[t]he international, non-profit organization that [he] founded to support [redacted] research and [redacted] therapy is called [redacted], and stands for [redacted].” He submits a screenshot from *YouTube* indicating that “[h]is widespread advocacy for the use of [redacted] is shown by his fairly recent Tedx talk.” Moreover, he refers to [redacted]’s letter:

[The Petitioner’s] earlier career also made tremendous advancements in the use of [redacted] to thwart the problem of [redacted] resistance. He conducted clinical trials on patients and created an international non-profit to raise the profile of [redacted] as a replacement for [redacted]. He have a keynote address on his work at the renowned Pasteur Institute in [redacted] and gave a [redacted] Ted talk on this topic, highlighting the work ahead. [redacted] is now a recognized approach at research agencies in both the EU and in the U.S. There is now a growing perception that this approach may be a solution for our [redacted] crisis.

Although the documentation indicates his involvement in research in [redacted] and [redacted] therapy, the Petitioner did not demonstrate that he has made original contributions of major significance in the field. Here, [redacted] did not elaborate on the Petitioner’s “tremendous advancements,” nor did he explain how [redacted] has impacted or influenced the field in a significant way. In addition, the Petitioner did not establish how speaking at the Pasteur Institute or

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scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the individual’s work as authoritative in the field, may be probative of the significance of the person’s contributions to the field of endeavor).



giving a Ted talk resulted in significant or widespread attention. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” *Kazarian*, 580 F.3d at 1036, *aff’d in part*, 596 F.3d at 1115.

In addition, the Petitioner argues that “[t]he Google Scholar listing of his work shows numerous articles with the words [redacted] or [redacted] in the title of the article,” and “[t]he first two pages of the Google Scholar listing show at least seven articles pertaining to [redacted] with citations per article ranging from 344 to 69.” Once again, the Petitioner did not articulate the significance or relevance of the citations to his articles. For example, he did not demonstrate that these citations are unusually high in his field or how they compare to other articles that the field views as having been majorly significant.

As discussed above, the Petitioner’s letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has had on the overall 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>13</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>14</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 he 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 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 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. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

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<sup>13</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

<sup>14</sup> *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, *aff’d in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

### III. CONCLUSION

We find that the Petitioner does not satisfy the criteria relating to awards, published material, and original contributions. Although he claims eligibility for two additional criteria on appeal, relating to scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi) and leading or critical role at 8 C.F.R. § 204.5(3)(3)(viii), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.<sup>15</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 documented his experience and conducted research, 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>15</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).