



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

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

In Re: 8088205

Date: JUNE 2, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a business executive and entrepreneur in the industrial lubricants industry, seeks classification as an alien of extraordinary ability in the field of business. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner satisfied the initial evidence requirement of either receiving a major, internationally-recognized award or meeting at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

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); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is the founder and president of [redacted] Lubricants Technology [redacted], a producer of [redacted] lubricants based in [redacted] China. He earned a bachelor’s degree in economics from [redacted] College, and an executive master of business administration degree from [redacted] Graduate School of Business. He indicates that he intends to continue working “as a scientist, researcher, and entrepreneur in the [redacted] lubricants field in the United States.”

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his authorship of published scholarly articles and his leading role for organizations with a distinguished reputation. On appeal, the Petitioner asserts that he also meets four additional evidentiary criteria.

Upon review of the record, we agree with the Director that the Petitioner meets the two criteria he identified in his decision. Specifically, the record includes evidence that the Petitioner coauthored three articles which were published in professional journals, and that he served in a leading role for [redacted] as its founder and president since 2009. In addition, the record sufficiently establishes [redacted]’s distinguished reputation in the [redacted] lubrication industry.

However, we disagree with the Director regarding the evidence of the Petitioner's participation as a judge of the work of others under 8 C.F.R. § 204.5(h)(3)(iv). The Director found in his decision that "experience as a teacher/professor grading students" does not qualify under this criterion since such activity does not demonstrate that his achievements have been recognized in the field. As the Petitioner notes on appeal, the record does not contain evidence that he has worked as a professor, but was instead appointed to serve on committees evaluating thesis projects for students in the graduate chemical engineering program at the [redacted] University of Technology. This evidence satisfies the plain language requirements of this criterion, and whether it serves to demonstrate that the Petitioner has received sustained acclaim at the national or international level is an issue to be determined within a final merits determination.

We note that the Petitioner submits new evidence on appeal in support of the additional criteria he asserts that he meets, as well as his intentions to continue working in his field of endeavor in the United States. However, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Here, the Director notified the Petitioner of several deficiencies in the record in his request for evidence (RFE), and requested additional evidence of the type that the Petitioner now submits. We will therefore not consider this evidence when making our determination.

Because the Petitioner has established that he meets the requisite three evidentiary criteria, he has satisfied the initial evidence requirements, and we need not consider whether he meets the additional criteria as asserted in his appeal brief. Rather, we will consider the evidence submitted in support of those criteria, together with the balance of the record, to determine whether he possesses the level of sustained acclaim and standing in his field to establish his eligibility as an alien of extraordinary ability.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.¹ In this matter, we determine that the Petitioner has not shown his eligibility.

In the section of his appeal brief addressing the final merits determination, the Petitioner first focuses on his role as an innovator, stressing his leadership of the research and development team at [redacted] that developed lubricants and other products, some of which were patented in China. He asserts that

¹ See also 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 4* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

these products “perform better than competing products on many fronts,” and that these innovations have made the company a leader in the [redacted] lubricants sector in China. However, although the patents granted in China on these products confirm their originality on the national level, the Petitioner’s assertions regarding their performance and [redacted]’s leadership in the industry are not supported by the record. His initial filing included several reference letters from experts in the economics and chemical engineering fields.² For example, [redacted] of the Department of Economics at [redacted] University indicates in his letter that he knows the Petitioner through the [redacted] Chamber of Commerce, and that he is “a unique and highly skilled researcher and innovator.” Although [redacted] does not claim expertise regarding the industrial lubricant industry in China, he states that the Petitioner’s work “has ignited the [redacted] lubricant industry in China,” and that he “laid the foundation for a new [redacted] lubricant industry in China.”

Another reference letter was written by [redacted] of [redacted] University of Science and Technology, who describes the properties of a [redacted] grease and an oil for use in air compressors which were developed by the Petitioner and his company, and concludes that these products outperform competitors. He also states that due to the Petitioner’s efforts in forming partnerships with suppliers of raw materials, “China now has a growing industry of [redacted] lubricants.”

However, these statements regarding the Petitioner’s innovation and [redacted]’s industry leadership are not corroborated elsewhere in the record. For example, the Petitioner states in his appeal that when considering the significance of his original contributions to the field, the Director erred in finding that his innovations had not been implemented by scientists in the field. We agree that in the context of the [redacted] lubrication industry in which [redacted] competes, business-related factors such as market share would be a more appropriate gauge of the significance of the Petitioner’s innovations and business leadership. However, the record does not include evidence demonstrating that his contributions have led to the industry-wide impacts asserted in the letters. The Petitioner points to evidence that [redacted] was a qualified supplier of lubricants to [redacted] [redacted], which the record indicates is the energy provider for the [redacted] area, for the 2019 calendar year, as well as an approved supplier to [redacted]. Although the Petitioner submitted copies of announcements from both companies seeking bids for wind turbine [redacted] oil for a total of 170 wind turbines, the record does not include evidence that [redacted] won these bids, or that doing so would have placed it in a leading position in the [redacted] lubricant industry in terms of market share.

The Petitioner also submitted financial statements for [redacted] for 2017. We first note that although the evidence indicates that this information is taken from the company’s annual report, it does not include a statement concerning whether the statements were audited or reviewed, and therefore must be considered as the unverified statements of management. Further, a review of the figures represented in the statement shows that the company experienced a significant financial loss in that and the preceding year, and the record does not include comparative evidence to corroborate the assertions of [redacted]’s standing in the field in terms of product sales or market share.

² All reference letters in the record have been thoroughly reviewed and considered, including those not specifically mentioned in this decision.

Other evidence in the record regarding [redacted]'s place in the industry under the Petitioner's leadership include a self-generated list comparing the number of patents licensed by the company versus some of its competitors, and evidence of awards received by the company. Regarding the number of patents, although this evidence shows that [redacted] has been more active than some of its competitors in filing and securing patents, we note that this list does not include some of the company's traditional competitors named elsewhere in the record. Similar to the evidence reviewed above, and considered together with that evidence, it does not demonstrate that the Petitioner has lead his company to an industry-leading position as asserted, and therefore does not establish that the Petitioner is one of the very few entrepreneurs at the top of the business field.

As for the awards received by [redacted] these include nine certificates stating that specific products have been identified as "[redacted] High-Tech Achievements Transformation Project." Other evidence in the record indicates that the awarding of these certificates entitles [redacted] to financial support from a municipal fund, but does not otherwise suggest recognition for [redacted] or, by extension, the Petitioner as the company's leader.

The Petitioner also provided evidence of the Petitioner's position with an additional company, [redacted] Lubricants Material Technology Ltd. [redacted]. A letter from a human resources executive states that he has been employed with the company since 2009 as executive director, but then indicates somewhat confusingly that he has been employed "for at least one continuous year within the past 9 years." Also included is an extensive translation of the company's website, as well as copies of four sales contracts between North Europe and its clients. While this evidence indicates that the Petitioner "worked for at least one continuous year" for this company in a leadership position, and that the company was doing business in 2017, it does not show that his association with North Europe garnered acclaim for the Petitioner or places him as a leading entrepreneur.

Additional reference letters in the record indicate that the Petitioner has played a role in the development of two other companies in the industry through strategic business partnerships. For example [redacted] of [redacted] Institute of Technology writes that [redacted] entered into a strategic business partnership with these companies, helping one of them to establish its own research and development system and develop new lubricant products. However, the Petitioner did not submit documentary evidence about or from either of these companies to support these assertions about his company's partnership with them or any resulting success they have enjoyed.

The Petitioner also submitted evidence of a leadership role for a different type of entity, the [redacted] Graduate School of Business' [redacted] Alumni Association for the western United States. This includes a certificate showing his appointment as the "Joint Chairman of the first session of Service Team" of the association in December 2015. A letter from [redacted] describes the purpose the alumni association, and confirms the Petitioner's invitation to join the alumni council due to his "excellent personal reputation" and "great influence among alumni." Additional evidence also includes information about [redacted] and its reputation as a graduate business school, as well as meetings held by the alumni association co-chaired by the Petitioner. While this evidence demonstrates his leadership role for a chapter of the [redacted] alumni association, it does establish that he was invited to this position due to national or international acclaim as an innovator or entrepreneur, or that this activity places him as one of the few at the top of the field of business.

The record also includes evidence of awards the Petitioner has received for his work as an innovator and entrepreneur. In his decision, the Director found that the Petitioner did not meet the criterion at 8 C.F.R. § 204.5(h)(3)(i) because he did not submit national or international media coverage of the awards he received. Although such evidence is persuasive in documenting any national or international recognition of an award, as well showing that the Petitioner has earned national or international acclaim, we agree with the Petitioner that requiring that type of evidence goes beyond the plain language of the criterion. On appeal, the Petitioner refers to two articles he previously submitted which describe the events during which the awards were issued, and notes that they were attended by “distinguished national figures... from the highest levels of China’s government, business, and scientific communities.” The first of these awards appearing in the record is the “[redacted] Scientific and Technological Innovation Leading Figure” certificate received by the Petitioner at the “[redacted] Scientists Forum” in [redacted] 2018. According to the certificate and supporting documentation from the forum’s website, the awarding organizations included business associations and a national journal for business managers in the technology sector. Two articles posted on Chinese web portals, accompanied by incomplete English translations, confirm attendance by government officials and “more than 900 scientists, science and technology managers, science and technology experts, and entrepreneurs from all over the country...” However, neither article mentions any awards given at this event. In addition, the agenda for the forum mentions only one award specifically, the “Special Contribution Award,” and briefly mentions that “science and technology award activity will also be launched.” Absent additional information regarding the award received by the Petitioner, such as the number and level of awards granted at the forum, and the criteria for selecting the awardees, the record does not establish that the Petitioner garnered national or international acclaim through his receipt of this award.

The other award highlighted by the Petitioner in his initial submission is a certificate titled “Honorary Credential” which states that he is awarded the title of [redacted] [redacted] at the 2016 [redacted] Economic Summit Forum. An article posted on another web portal notes that several awards were given to entrepreneurs at this meeting, and includes the names of those who received the “Special Award” (four awardees) and “Economic Personages of the Year” (ten awardees). It then lists six categories of “other” awards, including the award received by the Petitioner, without listing the names of the awardees in the main text of the article.³ The Petitioner stresses that this article includes a list of Chinese government and industry officials who attended the awards ceremony, but we note that many of the individuals listed are current or former employees of the sponsoring organizations. In addition, although the Petitioner provides evidence about the portal on which this article is posted, sohu.com, which consists of the company’s own overview which is targeted toward potential investors, this evidence does not demonstrate that this single article posted on one of the portal’s many websites is indicative of widespread recognition of this award. The Petitioner has therefore not established that the award he received was recognized beyond the attendees of this event and the award sponsors.

The record also includes certificates showing that the Petitioner received two additional awards: the Invention and Entrepreneur Achievement Award [redacted] from the [redacted] Association of Inventions in [redacted] 2018, and the Excellent Project Award for [redacted] Industry-University-

³ The names of all 74 awardees, including the Petitioner’s, were attached as an appendix to the article. We note that the complete translation of this article was only submitted on appeal.

Research Cooperation [redacted] also in [redacted] 2018. Each certificate is accompanied by information about the awards from the issuing organizations' websites. The information from the [redacted] Association of Inventions describes the nomination procedure, but does not indicate the number of awards issues or explain the different levels of the award. Regarding the Excellent Project Award, the evidence indicates that it is limited to enterprises registered in [redacted] and that three [redacted] [redacted] were issued in 2018.⁴

The Petitioner also stresses on appeal that he has “proven his influence on the field” through his authorship of scholarly articles. The record includes two scholarly articles co-authored by the Petitioner which were published in the journal *Lubrication Engineering*, and another published in *Lubricating Oil*. He also submitted evidence showing that these three articles have been cited by others in their own published work on one occasion, and downloaded dozens of times. This evidence does not demonstrate that other innovators or entrepreneurs in the field of business have frequently applied or implemented the Petitioner's work, either in their own published research or in practice, or that this research has shown the Petitioner's influence or otherwise established him as one of the small percentage at the top of his field.

As noted above, the record establishes that the Petitioner has served as an “Enterprise Tutor” for students in the postgraduate chemical engineering department at [redacted] Institute of Technology [redacted] since December 2016, despite not having a degree in chemical engineering. In this role, he served on the dissertation defense committee for at least three students in 2019. This evidence shows that as a respected member of the business community, he has played a role in the development of individual students. However, the evidence does not establish that he has garnered acclaim through this activity due to the frequency or level at which he has performed this work, and/or the reputation of [redacted]

Also, the Petitioner submitted evidence regarding his role as an investment consultant for the government of [redacted] in the province of [redacted] China, which the evidence indicates included setting up an incubator and industrial park for technology companies. Although the Petitioner appears to have been given a large amount of responsibility by the [redacted] government to initiate and oversee this project, the evidence does not show that it had achieved a significant level of development or success at the time of filing, or that the project and the Petitioner's leadership of it had been acclaimed at the national or international level.

The Petitioner has submitted evidence that he has established and led [redacted] to successfully develop [redacted] grease and lubricant products, but the record does not support his assertions to have made an impact on the overall industry in China, or that he has otherwise achieved national or international acclaim for his work. While he has been recognized for his work as an innovator and businessperson through personal awards for entrepreneurship, and his reputation in his field has led to appointments with several local or regional organizations, the totality of the evidence does not establish that the Petitioner is one of the small percentage at the top of his field.

⁴ We note that while the certificate lists the Petitioner's name and does not mention [redacted], the list on the organization's website lists [redacted] as the winner and includes a blank field titled “Winning Individual.” This discrepancy should be addressed in any further proceedings in this matter.

III. CONCLUSION

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 that 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 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.