



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

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

In Re: 6371588

Date: MAR. 19, 2020

Appeal of Texas Service Center Decision

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

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

The Director denied the petition, concluding that the record did not establish that the Petitioner met any of the initial evidentiary criteria, of which three are required.¹

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

¹ The Director initially denied the petition on August 17, 2018, due to abandonment. He then reopened the petition on the Petitioner's motion, and issued two additional RFEs before ultimately denying on the merits.

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner obtained a Bachelor of Laws degree from the University of [redacted] in 1997 and a Master of Law degree from [redacted] University in 2001. He is a member of the [redacted] High Court Bar Association [redacted], and has practiced in the area of international tax law for more than 20 years. The Petitioner indicates that he intends to work as an advisor or consultant for Indian businesses seeking to invest in the United States, or for Americans interested in investing in India.²

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 did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner refers back to his response to the Director's third request for evidence (RFE) in which he claimed to meet six evidentiary criteria.³ After reviewing all of the evidence in the record, we find that he has not satisfied the requirements of the requisite three criteria.⁴

² In responding to the Director's third request for evidence, the Petitioner stated that he hopes "to attract investments from India and into the United States in the field of real estate and in other areas requiring business investment. For example, I have recently become involved in the marketing and distribution of natural and herbal personal care products (manufactured in India) and through [redacted], a Delaware Corporation, which I have formed." Because this statement indicates that he does not intend to continue working in in the United States in the area of his claimed extraordinary ability, international tax law, this issue must be addressed in any further proceedings in this matter.

³ We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

⁴ The Petitioner's brief mentions several attachments, but the record does not include the referenced attachments. Nevertheless, we have reviewed all of the evidence in the record, including evidence not specifically mentioned in this decision.

The Petitioner also mentions several instances in the Director's RFEs and in his decision where the Director refers to him by a different name, or indicates that his field of endeavor is something other than international tax law. We have reviewed this correspondence and determined that, taken within the entire context of this correspondence, these errors did not materially affect the decision or deprive the Petitioner of a meaningful opportunity to successfully appeal the decision.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

In his decision, the Director acknowledged evidence of the Petitioner's membership in the [redacted] but noted that the record lacked evidence to establish that this association requires outstanding achievements for membership. The Petitioner does not dispute the Director's finding regarding his membership in this association in his appeal brief.

The Petitioner also asserts that he meets this requirement based upon his status as one of four senior standing counsels representing the [redacted] of India⁵ before the [redacted] High Court, and refers to three reference letters. While the Petitioner does not indicate why his employment with this office should be considered to be membership in an association, and has not established that this evidence may be considered as comparable to that type of evidence under 8 C.F.R. § 204.5(h)(4), we consider this evidence below.

The first letter is from [redacted] one of the Petitioner's colleagues who served in the same position. Regarding the Petitioner's selection for this position, [redacted] states that "Based on his outstanding results in Litigation he was appointed to represent the [redacted] Government of India in the period from April 2012 to February 2016." Although this statement is included in the letter after a table listing several cases which he indicates that the Petitioner litigated, the citations to these cases indicate that they were decided after the Petitioner's selection as senior standing counsel in 2012. [redacted] does not further elaborate on any outstanding achievements by the Petitioner prior to his selection. He also indicates that this involved a "rigorous selection procedure where more than 100 lawyers applied for the coveted right to represent the Government of India," which included a panel consisting of five senior tax officials. However, [redacted] does not indicate whether this panel required outstanding achievements of the applicants when making their selection decisions, as opposed to looking for a certain set of skills and experience in tax litigation.

Another reference letter was submitted by [redacted] for the [redacted] [redacted] states that he became acquainted with the Petitioner in 2015, and that he was appointed to his position as a senior standing counsel "based on his excellent results in Tax Law and Corporate Law." He then provides a table of cases in which the Petitioner participated during this period, but provides no further information regarding his selection.

Finally, the third letter referenced by the Petitioner in relation to his employment with the [redacted] is written by [redacted] another colleague who served in the same position. Although [redacted] indicates that the Petitioner was "an asset" to the department and "successfully argued a large number of cases," he does not discuss any selection requirements for this entity or discuss specific outstanding achievements which might have led to the Petitioner's selection.

⁵ We note that the letter writers refer to this entity as the [redacted] not the Revenue Department as the Petitioner refers to it in his correspondence.

For all of the reasons stated above, the Petitioner has not established that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner refers to two types of evidence in his appeal brief which he asserts support his meeting the requirements of this criterion. He first notes that in his senior counsel position with the [redacted], he performed as lead counsel for more than 100 cases, and that the opinions in these cases were reported on [redacted] which is an online legal database. He further states that in three examples of these decisions included in the record, his name is mentioned as the counsel for the government and his legal argument presented. However, these court decisions are not about him, they are about the legal issue before the court. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).*

Similarly, the Petitioner submitted several articles about these and other cases on which he served as lead counsel which were printed in reports and on the websites of multinational consulting firms including [redacted], [redacted] and [redacted]. While these articles extensively cover the opinions in these cases and provide analysis of the legal issues surrounding them, none of the articles mention the Petitioner or focus on his contribution to these cases, and thus are not about him and his work.

In addition, we note that the Petitioner also included evidence of media coverage of another case in which he was prominently involved, which the Petitioner describes as involving the issue of "[redacted] [redacted]". This evidence includes screenshots from a video on the YouTube channel for [redacted] which show the Petitioner as one of four individuals taking part in a discussion on the topic, as well as an article from the website of *The Times of India* which discusses the case and names the Petitioner as one of two attorneys representing the plaintiff. Although these materials mention the Petitioner, and he presumably provides his opinion about the case in the video, this evidence is also not about him but about the particular legal issue being discussed.⁶ Therefore, the Petitioner has not established that he meets the requirements of this criterion.

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

In his decision, the Director states that he recognizes that the Petitioner judged the work of junior attorneys while employed as senior standing counsel for the [redacted]. However, we note that in his RFE responses regarding this criterion, the Petitioner points to the seven reference letters in the record as supporting evidence under this criterion. While several of these letters confirm his employment with the [redacted] in this role, none of the writers mention that he participated as a judge of the work of others in these four years, either individually or on a panel similar to the one that selected him for this employment. Similarly, the Petitioner's assertions regarding his supervision of associate attorneys

⁶ We note that transcripts of the video were not provided.

employed by his law firm, made in his responses to the Director's RFEs but lacking supporting documentation, are insufficient to establish that he judged the work of others in this capacity.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field. 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 his RFE responses and on appeal, the Petitioner asserts that five particular cases in which he argued on behalf of the government of India were "high profile" and "established new law in India." The record includes copies of these decisions, which confirm that he served as counsel in these cases. In addition, the record also includes the previously mentioned copies of reports from international tax consulting firms discussing these cases and the impact of their holdings on tax law and businesses. For example, regarding [redacted] in which the Petitioner argued for the [redacted] as senior standing counsel, the Petitioner submitted a copies of reports from [redacted] and [redacted] which describe the facts and ruling of the case. Another matter before the [redacted] High Court in which the Petitioner argued for the [redacted] is [redacted] [redacted] which is accompanied by an [redacted] [redacted] "Tax Alert" discussing the issues involved at length.

The record also includes the reference letters mentioned above, some of which attest to the impact of these decisions on Indian tax law. [redacted] states in his letter that while employed by [redacted] "the cases argued by him have led to increasing the jurisprudence of law and particularly banking and tax laws." [redacted] whose letter includes very similar structure, sentences and passages to that of [redacted] and others, indicates that the Petitioner's cases "have been reported in leading tax journals have gained substantial precedent value and also assisted in advancement of tax law on both domestic and international tax law front." Regarding the precedential value of these decisions, the Petitioner also submitted what is described as "a list of over 100 cases, which refer to or quote several of the Petitioner's leading cases." However, a review of this evidence shows that the Petitioner conducted a name search on the [redacted] database, and that these results simply show cases where he appeared as counsel, and thus do not support the assertion that they impacted decisions in future tax proceedings.

More importantly, the evidence does not establish that in his role in defending the government's position in these tax matters, the Petitioner made original contributions to the field of international tax law. While the rulings of the court in these decisions had an impact on the parties involved, as well as other companies facing similar tax issues in doing business in India, the evidence does not demonstrate the originality of the Petitioner's work in successfully arguing on behalf of an already established legal position. Accordingly, the evidence does not establish that the Petitioner meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner submitted evidence that he authored two scholarly articles, one regarding [redacted] taxation in India and another about [redacted] transactions, both of which were published on his law firm's website. As noted in the Director's decision, however, the Petitioner did not submit evidence to establish that his law firm's website qualifies as a professional or major trade publication or other major medium. While the Petitioner refers to his RFE responses, he does not specifically discuss this issue in either of those responses or on appeal. Accordingly, the Petitioner does not meet this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

In order to meet this criterion, the Petitioner must establish that he played either a leading or a critical role for a qualifying organization or establishment. If a leading role, the evidence must establish that he is or was a leader. A title, with appropriate matching duties, can help to establish if a role is, in fact, leading. If a critical role, the evidence must establish that he has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of his role, but rather his performance in it that determines whether the role is critical.⁷

With respect to the Petitioner's role as senior standing counsel for the [redacted] we acknowledge that the evidence demonstrates that the department enjoys a distinguished reputation. The Petitioner referred in his RFE responses to the reference letters submitted by his former colleagues within the department, as well as summaries of five cases in which he participated as counsel, and reports made concerning those cases. These reference letters, as described above in our analysis of the Petitioner's contributions to the field, do not suggest that the Petitioner acted as a leader while employed by the [redacted] and the record does not include evidence to establish his standing within the department's leadership structure. In addition, while the evidence indicates that some of the cases argued by the Petitioner on behalf of the department led to notable or precedential decisions in the [redacted] High Court, the Petitioner has not established that his contributions on these and other tax law cases were of significant importance to the department's activities, and how they affected its activities.

In addition, we agree with the Director that there is insufficient evidence in the record about the Petitioner's law firm to establish his role in it or its distinguished reputation. For the reasons stated above, we find that the Petitioner does not meet this criterion.

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 Petitioner has established the acclaim and recognition required for the classification sought.

⁷ See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*. (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

The Petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields. 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 and recognition 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 demonstrate that the Petitioner 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.