



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

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

In Re: 8640867

Date: MAY 29, 2020

Appeal of Nebraska Service Center Decision

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

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

The Director of the Nebraska Service Center denied the petition, concluding that the Beneficiary had satisfied only two 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 a beneficiary's 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 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 submitted a letter from the Beneficiary indicating that he is an “Advisory FSO SAP for [redacted] in New Jersey.” Because the Petitioner has not claimed 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).

In denying the petition, the Director determined that the Beneficiary fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Beneficiary reviewed papers for journals. In addition, he authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Beneficiary satisfied the judging and scholarly articles criteria.

On appeal, the Petitioner asserts that the Beneficiary meets three additional criteria, discussed below. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Beneficiary satisfies the requirements of at least three criteria.

*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 the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has the beneficiary made original contributions but that they have been of major significance in the field.<sup>1</sup> For example, a petitioner may show that the beneficiary’s 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 contends that the Beneficiary “has written an *Amazon Best Seller*, [redacted] [redacted]” (emphasis in original). Moreover, the Petitioner argues that “becoming a Best Seller for a major retailer like Amazon shows that the book has sold more than most publications in its category.” The record reflects that the Petitioner submitted a screenshot from amazon.com showing that the book was ranked [redacted] [redacted]. However, the Petitioner did not demonstrate the relevance or scope of the ranking.

<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 8-9* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (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).

The Petitioner did not, for example, provide sales figures of the book, as well as the figures for the other books posted on the screenshot, to explain the book's ranking. Furthermore, the screenshot reflects that the book garnered only one review, which does not establish that the field has been significantly impacted or influenced.<sup>2</sup> Here, the Petitioner did not show the significance of the book in the overall field beyond one person who wrote a review.<sup>3</sup>

Similarly, the Petitioner provided an unidentified screenshot indicating that the book received "199 Reads." However, the Petitioner did not demonstrate that these readership figures reflect that the book has been majorly significant in the field. Again, the Petitioner did not establish the relevance or significance of the readership numbers to show that the book rises to the level of major significance consistent with this regulatory criterion.

In addition, the record contains a letter from [redacted], senior specialist at [redacted], who praised the book for being "well-written" and having "well-paced chapters." However, [redacted] did not explain the influence of the book in the field. Instead, [redacted] speculates that "[redacted] will be in the top of the preferred books list for learning [redacted] and the tools used in educational institutions across the country." Here, [redacted]'s letter does not demonstrate how the Beneficiary's book already qualifies as a contribution of major significance in the field, rather than a prospective, potential impact. Further, the letter does not contain specific, detailed information explaining the unusual influence or high impact the book has had on the overall field. Letters that specifically articulate how a beneficiary's contributions are of major significance in the field and its impact on subsequent work add value.<sup>4</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>5</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).

Furthermore, the Petitioner argues that the Director erroneously "compared [26 citations to his written work] with 'the leading scientists in the field, whose publications (according to Google Scholar) have garnered citations numbered well in the thousands.'" In general, the comparison of the Beneficiary's cumulative citations to others in the field is often more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor in a final merits determination if the Director determined he met at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115. However, the comparison of citations to a particular scientific article may be relevant for this criterion in order to establish the overall field's general view of a contribution of major significance.

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<sup>2</sup> In addition, a search of amazon.com reveals that the book is "[c]urrently unavailable" and "[w]e don't know when or if this item will be back in stock" (accessed on May 12, 2020).

<sup>3</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (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).

<sup>4</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

<sup>5</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).

The record reflects that the Petitioner submitted evidence from Google Scholar reflecting that three of the Beneficiary's papers received 10, 8, and 8 citations, respectively. Again, this criterion requires the Petitioner to establish that the Beneficiary has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify the original contributions and explain why they are of major significance in the field. 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 Beneficiary's citations for any of his published articles are commensurate with contributions of major significance. Here, the Petitioner did not articulate the significance or relevance of the citations to the articles. Although the Beneficiary's citations are indicative that his research has received some attention from the field, the Petitioner did not demonstrate that the citation numbers to the Beneficiary's individual articles represent majorly significant contributions in the field.<sup>6</sup> Moreover, 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.

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.

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

The Petitioner contends that the Beneficiary qualifies for this criterion based on his employment with [redacted], [redacted], and [redacted]. As it relates to a leading role, the evidence must establish that an alien is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.<sup>7</sup> Regarding a critical role, the evidence must demonstrate that an alien 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 an alien's role, but rather the performance in the role that determines whether the role is or was critical.<sup>8</sup>

The record reflects that the Petitioner submitted reference letters from [redacted], [redacted], [redacted], and [redacted]. We note that the Director indicated that although the letters from [redacted] were written on behalf of their capacities at [redacted] and [redacted], respectively, the letters were not written on company letterhead; and therefore, lacked probative value. On appeal, the Petitioner argues that the Director should have considered the content of the letters rather than the format. Here, we agree with the Director's assessment that the missing letterheads diminish the credibility and reliability of the evidence. Furthermore, the Petitioner does not explain on appeal why the authors, who wrote letters using their positions for the companies, did not provide official documentation from their respective companies. In addition, the Petitioner does not offer revised letters on appeal, correcting the previous inconsistencies. The petitioner must resolve inconsistencies in the record with independent, objective

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<sup>6</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (providing an example that peer-reviewed articles in 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).

<sup>7</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

<sup>8</sup> *Id.*

evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Notwithstanding the above, although the Petitioner claimed that the Beneficiary serves as an “Advisory FSO SAP” for [redacted] and previously served as an “Associate Director” for [redacted] and “SAP Technical Architect” for [redacted], none of the letters corroborate its assertions. Specifically, none of the letters mention the Beneficiary’s job titles or positions. Instead, the letters generally described the Beneficiary as having “been the leader of the data integration project for our practice” [redacted] “[a]s the lead reporting architect on [the Business Intelligence and Analytics Reporting], he ensured the successful go-live of the new reporting solution” [redacted], and he “managed a portfolio of techno-functional projects for [redacted]’s [redacted] product” [redacted]. Here, the letters do not show that the Beneficiary held a leading position for the companies overall rather than working on projects within the companies.

Furthermore, the letters do not contain sufficient, detailed information establishing that the Beneficiary performed in critical roles.<sup>9</sup> Instead, the letters make broad assertions without showing that his role was crucial to the companies. For example, “[the Beneficiary] stepped in to help the teams optimize the solution which resulted in 85% reduction in data processing time” [redacted], “[h]is efficient use of technology infrastructure lead to an 80% improvement in data processing time and hence in report generation time” [redacted], and “[the Beneficiary’s] contribution was crucial in our quest to become the largest SAP SRM Cloud platform in the world.” While the letters reflect various statistics and figures, they do not explain how the Beneficiary’s contributions resulted in successes to the companies overall activities.

Finally, this regulatory criterion requires the Petitioner to demonstrate that the Beneficiary performed in leading or critical roles for organizations or establishments with distinguished reputations.<sup>10</sup> While we are familiar with the names of [redacted] and [redacted], the Petitioner did not offer any documentation relating to the distinguished reputations for any of the companies. Instead, the record reflects that in response to the Director’s request for evidence, the Petitioner provided various website addresses without submitting screenshots or other evidence showing the content from the websites.

Accordingly, the Petitioner did not demonstrate that the Beneficiary fulfills this criterion.

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<sup>9</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner’s leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

<sup>10</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (providing that *Webster’s* online dictionary defines distinguished as marked by eminence, distinction, or excellence).

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner claims eligibility for this criterion based on the Beneficiary's salary with [redacted]. In order to meet this criterion, a petitioner must demonstrate that the alien's salary or remuneration is high relative to the compensation paid to others working in the field.<sup>11</sup>

The record reflects that the Petitioner initially claimed that “[a]ccording to the U.S. Bureau of Labor Statistics [BLS] website, the median salary for a Mathematician and Statistician, the overarching category of [his] specialty in [redacted] is \$84,760.” Although it provided a website address, the Petitioner did not submit screenshots or other evidence to support its assertions.

Moreover, the Petitioner further claimed that “[t]he position for Data Scientist is not yet listed on [BLS] website, because it is fairly new.” Again, the Petitioner did not submit documentary evidence to support its assertion regarding the website. Further, the Petitioner presented BLS’ Occupational Quarterly entitled, “Working with big data,” which indicated that “BLS does not collect data specifically about data scientists” and referenced median annual wages for statisticians and computer programmers. However, the BLS’ Occupational Quarterly is dated Fall 2013 and used 2012 wage data. Here, the Petitioner did not demonstrate that at the time it filed the petition in June 2019, BLS did not collect salary information from data scientists, nor did the Petitioner show current wage history for statisticians and computer programmers.

Furthermore, the Petitioner submitted four 2018 paystubs from [redacted] and his 2017 IRS Form W-2 from [redacted]. In addition, the Petitioner offered screenshots from glassdoor.com regarding “[redacted] Salaries in [redacted] NY Area.”<sup>12</sup> Although the paystubs reflect the Beneficiary’s employment and earnings from [redacted], the Petitioner did not establish that the Beneficiary commands a high salary “in relation to others in the field.” As discussed under the leading or critical role criterion, the Petitioner did not show which position the Beneficiary holds with [redacted]. Specifically, the Petitioner did not demonstrate that the Beneficiary is employed as a “[redacted]” [redacted]. In addition, as previously mentioned, the Petitioner claimed that the Beneficiary was working for [redacted] as an “Advisory FSO SAP.” Even if the paystubs are based on the Beneficiary’s employment as an “Advisory FSO SAP,” the Petitioner did not establish how an “Advisory FSO SAP” is in relation to the salaries of big data analysts. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

For the reasons discussed above, the Petitioner did not show that the Beneficiary meets this criterion.

<sup>11</sup> *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

<sup>12</sup> The Petitioner did not demonstrate his position with [redacted] and his earnings from IRS Form W-2 does not establish that he commanded a high salary based on the wage data from glassdoor.com.

### 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 Beneficiary's acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Price*, 20 I&N Dec. at 954. Here, the Petitioner has not shown that the significance of the Beneficiary's work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Beneficiary has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Beneficiary has reviewed papers and authored scholarly articles, 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 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.