



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

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

In Re: 15745430

Date: APR. 21, 2021

Appeal of Texas Service Center Decision

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

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

The Director of the Texas Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to individuals 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 international 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 criteria 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).

## II. ANALYSIS

The Petitioner previously held lecturer positions at the University of [redacted] and [redacted] International University of Science and Technology [redacted]. Since 2018, he has worked at [redacted] University [redacted] under a contract as a “Temporary Faculty Member.”

### A. Evidentiary Criteria

The Petitioner initially claimed a one-time achievement, in the form of a plaque from [redacted] recognizing his contributions to organizing a conference there. The Director concluded that the Petitioner did not establish that a recognition plaque from his employer is a major, internationally recognized award. The Petitioner does not dispute the Director’s conclusion or pursue this claim on appeal, and therefore we consider this issue to be waived.<sup>1</sup>

Because the Petitioner has not shown that he 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 Petitioner initially claimed to have satisfied eight of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;

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<sup>1</sup> *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal to the AAO).

- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met three of the criteria, numbered (iv), (vi), and (viii). On appeal, the Petitioner asserts that he also meets two other criteria, numbered (ii) and (v). The Petitioner does not dispute the Director's conclusions regarding the criteria numbered (i), (iii), and (ix), and therefore we consider the Petitioner to have waived those claims.

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criteria numbered (iv) and (vi). We will discuss the other claimed criteria below.

*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 Director determined that the Petitioner had satisfied this criterion, but we disagree.

Initially, the Petitioner stated that he “has played a leadership and critical role in several tertiary institutions,” which is not the regulatory standard. No institution of any kind is presumed to have a distinguished reputation simply because of the type of institution that it is. The burden is on the Petitioner to submit evidence to establish that reputation.

The Petitioner states that he “taught several courses” at universities in [redacted] and the United States. Universities, however, employ many teachers at several organizational levels, even relying on graduate students to teach some undergraduate courses. The Petitioner does not establish that his roles, in particular, were leading or critical. We note that the Petitioner does not establish that he has held a high rank, such as the leader of an academic department. Rather, he was an exchange scholar at the University [redacted] and a lecturer at the other universities, including at [redacted] where he currently works under a short-term contract.

The Petitioner also points to his work with numerous professional institutions and societies, the most prominent of which appears to be his role as international coordinator of the [redacted]. He has served other organizations in roles he describes as “workshop coordinator,” “regular international speaker,” and “conference coordinator.” Some of these roles appear to be incidental rather than leading or critical at the organizational level. Furthermore, regarding his most significant roles, the Petitioner did not identify any supporting evidence to establish that the organizations or establishments have distinguished reputations in comparison to other entities of the same type. Reputation, defined as “a place in public esteem or regard,” or “overall quality or character as seen or judged by people in general,” is a function of “recognition by other people” rather than self-description.<sup>2</sup> As a result, the Petitioner cannot establish an organization's distinguished reputation by submitting statements and promotional materials from within that organization.

The Petitioner has not established that he meets the requirements of this criterion.

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<sup>2</sup> See <https://www.merriam-webster.com/dictionary/reputation> (last visited Apr. 5, 2021).

*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)*

The Petitioner claims six qualifying memberships:

- American Society of Civil Engineers (ASCE);
- Botswana Engineers Registration Board (ERB);
- South African Institute of Civil Engineers (SAICE);
- Botswana Institution of Engineers (BIE);
- Counsel for Regulation of Engineering in Nigeria (COREN); and
- Nigerian Society of Engineers (NSE).

Two of the named entities (ERB and COREN) are not associations. Rather, they are registration boards. As such, the Petitioner does not hold memberships in these organizations. Rather, he holds professional credentials issued by those boards.

Copies of certificates document the Petitioner's membership in the ASCE, SAICE, BIE, and NSE, but these certificates do not establish the associations' membership requirements. The Petitioner has not submitted any information about the membership requirements for the BIE or NSE.

The Petitioner listed the membership requirements for the ASCE and SAICE, and identified the online sources for this information. ASCE membership requires various combinations of academic degrees, experience, and licensure, or membership in another engineering society that has a reciprocal agreement with the ASCE. Associate membership in the SAICE requires either a graduate degree in civil engineering or "status in a profession which is comparable to that of a Member of the Institution." The Petitioner does not explain how these qualifications amount to outstanding achievements, nor does the Petitioner demonstrate that recognized national or international experts judge candidates for membership.

The Petitioner has not established that his memberships satisfy the regulatory requirements.

*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)*

[redacted] faculty members state that the Petitioner's doctoral research led to [redacted] [redacted]" and other "innovative tools" used to maintain the [redacted] in Botswana, and that this work "has drawn attention in academic circles" and "is used to bridge the gap created by experimental limitations." The Petitioner does not submit first-hand evidence to show the extent of the model's implementation, and the extent of its impact on the [redacted]

Another [redacted] faculty member states that the Petitioner "directed and supervised more than ten senior research [projects] that addressed and proffer solutions to critical challenges in the transportation sector. The findings from these research projects have been recommended for implementation in the transportation industry in the United States of America." The letter includes no details about the projects, the challenges they address, or the solutions they propose. There is no evidence that the industry has

actually adopted the recommendations. Also, the projects in question were apparently student projects that the Petitioner supervised in his teaching role, rather than his own contributions.

After the Director requested evidence to show that the Petitioner's contributions have had an impact beyond benefit to his employers, the Petitioner submitted additional letters. An [redacted] faculty member asserts that the Petitioner "made several important, new recommendations to existing [redacted] standards and maintenance manuals," which "are being implemented in developing countries." This general assertion does not directly document the extent of the Petitioner's influence on his field.

The official also states: "Another project of [the Petitioner's] that received special attention is the first ever [redacted] ~~International~~ Conference on Transportation he organized and designed to advance knowledge as well as [redacted] networking." The record shows that the conference took place, but the major significance of the event is not self-evident. The conference was not a standalone event; it coincided with the [redacted] International Conference on Transportation, held at [redacted] in 2019. The record does not show "special attention" to the conference beyond its attendees.

A former dean at [redacted] who recruited the Petitioner for a lecturer position there, states:

[The Petitioner's] work that I am most familiar with, and that has drawn widespread attention in academic and industry circles, involves optimizing the maintenance of [redacted] using a predictive model he developed taking into account weather conditions, [redacted] capacity, previous maintenance history and quality of materials used. His original research also defined a new innovative approach that used a common set of [redacted] parameters and consistent methods to collect and record condition data. . . . [redacted] and [redacted] [redacted] have adopted his recommendations and are implementing them . . . .

His models were also used in Ethiopia by the academics and published by the [redacted] . . . His models are also used in India and Spain respectively to [redacted] performance index for rating of [redacted]

The letter quoted above does not cite or identify sources for these claims, and the individual who wrote the quoted letter has not established his authority to speak on behalf of those organizations.

First-hand corroboration from the named entities is necessary to establish the nature and extent of their reliance on the Petitioner's work. An emeritus member of the [redacted] states that he has "been associated with [the Petitioner] since 2015," but does not indicate how, or to what extent, the [redacted] has relied on the Petitioner's work. Instead, he offers the general assertions that the Petitioner "is highly regarded by his peers" and that "[h]is professional advice and recommendations are highly respected."

To establish his influence on the field, the Petitioner submits copies of published articles and unpublished student theses that cite his work. An [redacted] faculty member stated that the Petitioner's published work is

“widely cited” by researchers in five countries. A Google Scholar printout in the record shows that none of the Petitioner’s publications has been cited more than three times. These figures do not indicate that the Petitioner’s published work has been particularly influential in the field.

The submitted citations of the Petitioner’s work do not establish the significance of that work or demonstrate its widespread implementation as claimed. In some instances, the Petitioner submits only the bibliographies from the citing articles, which provide no context for the citations. Other citations simply describe the Petitioner’s methods or list figures from his research. One of the submitted citations relates to a general statement about the economic importance of local innovation. Another citation is a self-citation by the Petitioner. Self-citation is an accepted practice because researchers often build upon their own past work, but it is not evidence of wider influence.

While some of the submitted letters indicate that the Petitioner’s work has been widely influential, the record does not sufficiently corroborate these largely general claims. The Petitioner has not established that his original contributions are of major significance in the field.

## B. Final Merits Determination

Although we disagree with the Director’s determination that the Petitioner meets at least three of the underlying regulatory criteria, we will nevertheless briefly discuss the final merits determination because it was part of the Director’s decision. The purpose of a final merits determination is to evaluate whether a petitioner has demonstrated, by a preponderance of the evidence, sustained national or international acclaim and that he or she is one of the small percentage at the very top of the field of endeavor, and that his or her 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.<sup>3</sup> In this matter, we agree with the Director’s determination that the Petitioner has not established eligibility.

The Director concluded that “[t]he petitioner’s overall track record does not measure up to those of leading figures in the field.” The Director acknowledged the Petitioner’s publication of scholarly articles; his peer review of articles by others; and his activity as a judge of the work of graduate students working under his supervision. The Director determined, however, that this scholarly activity appears to be routine in the Petitioner’s field. The Director stated that the Petitioner did not show how his authorship and peer review work distinguish the Petitioner in the field.

We noted, above, the minimal citation of the Petitioner’s published work. In the context of the final merits determination, it is also significant that the most recent article to have any citations appeared in 2015. This indicates that the Petitioner’s more recent work has attracted even less attention, which is significant with regard to the issue of *sustained* acclaim.

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<sup>3</sup> *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/legal-resources/policy-memoranda> (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).

With respect to the Petitioner's review of graduate student work, the Petitioner has not established how this activity distinguishes him from other university-level faculty.

The Director stated that the Petitioner has not shown that his various university positions "resulted from or led to sustained national or international acclaim, or that these roles are indicative of a career of acclaimed work in the field." The record does not indicate that [ ] recruited the Petitioner based on his wider reputation in the field. Rather, the [ ] official who recommended the Petitioner's hiring states that he has known the Petitioner for 20 years, since they were both students. That same official asserts that the Petitioner's "continued work in the field would be of tremendous benefit to the United States and his services will be in high demand," but the only evidence of demand for the Petitioner's services in the United States is [ ]'s one-year contract to employ the Petitioner as a "Temporary Faculty Member."

On appeal, the Petitioner asserts that the Director did not give enough weight and consideration to the evidence, particularly letters describing the significance of the Petitioner's achievements. Those letters are primarily from [ ] faculty members and others who have worked directly with the Petitioner in various capacities. Their proximity to the Petitioner puts them in a position to provide details about the Petitioner's involvement in various projects, but their opinions about the Petitioner's work do not demonstrate sustained acclaim at the national or international level that this highly restrictive immigrant classification requires. A number of the letters contain general assertions about the Petitioner's standing in his field, but the record lacks consistent, objective evidence to support these claims.

The Petitioner has been internationally active in his field, organizing conferences, chairing committees, and performing other work outside of his university faculty positions, but the evidence of record does not show that this activity either resulted *in*, or resulted *from*, sustained national or international acclaim as an individual at the very top of his field.

### III. CONCLUSION

The record does not support a conclusion 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. U.S. Citizenship and Immigration Services 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 recognition of his work is indicative of the required sustained national or international acclaim or demonstrates 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 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).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.