



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

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

In Re: 19961825

Date: DEC. 29, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a doctoral student and teaching assistant, seeks classification as an alien of extraordinary ability in the field of mathematics. *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 met the initial evidence requirements of this immigrant visa classification through evidence meeting at least three of the criteria under 8 C.F.R. § 204.5(h)(3) or showing that he received a major, internationally-recognized award.

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

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 is currently a doctoral student and teaching assistant at the University of [redacted] [redacted] and has stated that he intends to pursue a teaching career at this or another institution. He holds a master of science degree in mathematics from [redacted] and another from the [redacted] University of Russia.

### 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 asserts that he meets the three evidentiary criteria discussed below. After reviewing all of the evidence in the record, we find that he does not meet the initial evidentiary requirement for the requested classification.

*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)

As evidence of meeting the requirements of this criterion, the Petitioner submitted reference letters describing his activities as a teaching assistant and student mentor at [redacted] [redacted] the Petitioner's current advisor, states that the Petitioner mentors several undergraduate students, which he describes as "beyond the call of duty" and "an indication of [the Petitioner's] commitment to mentoring, teaching, and developing as a leader." Further details of the mentorship program in which the Petitioner participates, the [redacted] are provided by [redacted] a fellow doctoral candidate at [redacted] He notes that mentors and students spend several hours per week in researching an area of math, and that at the end of each academic quarter the students in the program give presentations.

On appeal, the Petitioner asserts that the presentations are a “competition-like element” of the [redacted] program, and that they are evaluated by a panel. However, neither the letter from [redacted] or the information from the [redacted] webpage in the record mention these evaluation panels described by the Petitioner, nor is there any indication that he served on such a panel. In addition, this evidence does not support the Petitioner’s assertion that his mentoring of students in the [redacted] program involves judging the work of others in the field. The information from [redacted] describes the program as a quarter-long reading project in which undergraduate student mentees meet with the graduate student mentors on a weekly basis to discuss readings. While his mentoring activity is not part of the Petitioner’s duties as a teaching assistant, the evidence does not demonstrate that it involves judging of the work of others in the field. We therefore agree with the Director’s conclusion that the Petitioner does not meet 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)

In his decision, the Director stated that the Petitioner’s papers in [redacted] could not be considered to have been published in professional or major trade publications or other major media, nor could unpublished conference papers. On appeal, the Petitioner asserts that the Director failed to consider the evidence of his publications in Russian journals, as well as a textbook “used by hundreds of students.” He notes that these journals include *Inverse Problems*, *Differential Equations*, and *SIAM Journal on Control and Optimization*. While the evidence shows that the Petitioner authored an article which was published in *Inverse Problems* in [redacted] 2015, there is no evidence of the publication of his work in the other two publications claimed. We further note the evidence shows that abstracts of papers presented by the Petitioner at several conferences were published in the proceedings of those conferences. As such, we disagree with the Director and find that the Petitioner has established that he meets this criterion.

## II. CONCLUSION

We conclude that the Petitioner meets the criterion relating to his authorship of scholarly articles, but does not satisfy the criterion regarding his service as a judge of the work of others. Although he also claims to meet an additional criterion relating to original scientific contributions of major significance, we need not reach this additional claim. Because the Petitioner cannot fulfill the initial evidentiary requirement for this classification by meeting at least three of the criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.<sup>1</sup>

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.

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<sup>1</sup> See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

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.