



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

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

In Re: 11211975

Date: JUN. 07, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a[n] media management expert, 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 of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met any of the ten 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

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 a media management expert residing in [redacted]. At the time of filing, he was a general manager for [redacted] and co-founder of the [redacted].

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 had not met 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 evidentiary criteria relating to judging, original contributions, leading or critical role, and salary. After reviewing all of the evidence in the record, we find that the Petitioner has established that he meets only one of the ten criteria, of which he must meet at least three.

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)

The Petitioner contends that he meets this criterion in part through his service as a judge for the [redacted] Award and submits evidence, such as documentation about the award, his invitation to participate as a judge of it, and confirmation that he completed his duties in that capacity. The documentation describes the [redacted] Award as “an industrial award for outstanding technology reports” whose purpose is “to find and encourage in-depth reports” and to “help outstanding technology news content creators.” This is sufficient to demonstrate that the award is more likely than not offered to others in the same or allied field of media management, the area of specialization for which the Petitioner seeks classification. The Petitioner’s invitation to judge the award and confirmation demonstrate that he

completed his duties as a judge for this award. Accordingly, the Petitioner has established that he meets this criterion, and we will withdraw the Director's finding to the contrary in this matter.¹

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 both that he played a leading or critical role, and that the organization or establishment for which he played that role is recognized as having a distinguished reputation. If in a leading role, the evidence must establish that the 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.²

In his decision, the Director determined that the Petitioner had not met this criterion as evidence in the record did not clearly distinguish between the multiple roles the Petitioner played in each company in a manner sufficient to establish that these roles were, in fact, leading. For the reasons discussed below, we agree with the Director that the Petitioner has not established his eligibility for this criterion.

The Petitioner asserts that he performed in a leading role for [redacted] as a management committee member and general manager. To establish this, he provides an organizational chart identifying him as general manager, one of six positions reporting directly to the [redacted] management committee, and indicating that he is responsible for advertising, marketing, the sales agency, and publication. The organization chart further shows that the Petitioner is a member of this management committee. The Petitioner further submits a translated document titled "Economic Responsibility Audit Report" describing his duties as general manager for [redacted] as being "fully responsible for [redacted]'s advertising, operation, and management." This is sufficient to show the Petitioner's leading role for [redacted]

However, the regulation also requires that the Petitioner submit evidence establishing that [redacted] has a distinguished reputation. To do so, the Petitioner submits articles from the *New York Times*, an article from [redacted].com, and a [redacted] 2015 *Foreign Policy* article. The *Foreign Policy* article states that although [redacted]

[redacted] The Petitioner must establish that all eligibility requirements for the benefit sought have been satisfied from the time of filing continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Here the Petitioner provides evidence indicating that although [redacted] may have enjoyed a distinguished reputation in the past, it does not continue to do so at present. Without evidence demonstrating that [redacted] currently holds a distinguished reputation, the Petitioner has not shown that he has satisfied this eligibility requirement continuing through adjudication, as required.

With regard to the *New York Times* articles, although they describe [redacted] briefly as [redacted] they primarily focus on actions at [redacted] to counter Chinese censorship. The Petitioner does not submit evidence demonstrating how these actions reflect [redacted]

¹ We acknowledge the Petitioner's argument on appeal that he also meets this criterion through his service as a judge of the [redacted] Award. However, as discussed, the Petitioner has already demonstrated he meets this criterion.

² See 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>.

[redacted]’s distinguished reputation. With respect to the [redacted].com article, while it indicates that [redacted] is one of the four most valuable newspapers, the article highlights the success of the [redacted], which owns [redacted] rather than [redacted] itself. For example, the [redacted].com article calls [redacted] “the most influential in China” and notes that the media group had been “selected as one of the [redacted] [redacted] for seven consecutive years.” The Petitioner does not submit evidence showing how the success of [redacted] demonstrates that [redacted] enjoys a distinguished reputation. It is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Absent evidence showing that either censorship actions or the reputation of [redacted] demonstrates that [redacted] enjoys a distinguished reputation, the Petitioner has not established that his leading role there meets this criterion.

The Petitioner also asserts that he serves in a leading role as [redacted] “co-founder, Publisher/Producer, Chairman and CEO.” He submits registration information for [redacted] [redacted]³ from the National Enterprise Credit Information Publicity System, a letter of recommendation from [redacted] chief editor of [redacted], [redacted]’s organizational structure, and media articles. The registration documentation lists the Petitioner as one of three shareholders in that entity, but the Petitioner does not provide evidence establishing the duties he performs in his role as a shareholder. As we note above, a title, with matching duties, may help to establish that a role is leading.⁴ Absent information on the duties the Petitioner performs as a shareholder, this evidence is insufficient to establish that the Petitioner’s role is a leading one.

[redacted]’s letter of recommendation describes the Petitioner as having as having “single-handedly founded the entire [redacted]” but lacks detailed examples of the duties the Petitioner performed in a leading role for [redacted]. Further, [redacted] did not indicate how he has personal knowledge of the significance of the Petitioner’s leading role or that the author employed the Petitioner. Letters from individuals with personal knowledge of the significance of the alien’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 alien’s role for the organization or establishment was leading or critical. Further, the regulation at 8 CFR 204.5(g)(1) provides, in relevant part, that evidence of experience “shall” consist of letters from employers. Absent detailed examples of the duties the Petitioner performed in founding [redacted] information regarding [redacted]’s personal knowledge of the Petitioner, and evidence that [redacted] employed the Petitioner, this letter is insufficient to establish that the Petitioner’s has performed in a leading role for [redacted].

With respect to the organizational chart, this document indicates that the Petitioner is [redacted]’s chairman, CEO, and publisher. However, one news article in the record identifies the Petitioner as [redacted]’s general manager and a second article in the record discusses [redacted]’s return to [redacted] as its chief executive officer. These articles are discrepant with the organizational

³ The Petitioner indicates in the brief accompanying the underlying petition that this is [redacted]’s registration documentation.

⁴ See 6 USCIS Policy Manual F.2(B)(2), *supra*.

chart above. The Petitioner must resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Absent evidence resolving the roles performed by the Petitioner for [redacted] the Petitioner has not shown that he has served in a leading role for that entity, as asserted.

In addition, the Petitioner does not submit evidence sufficient to demonstrate [redacted]'s distinguished reputation. For example, the Petitioner provides photographs and descriptions of awards received by magazines owned by [redacted] and media articles regarding these magazines' staffing selections. However, this regulation provides that the Petitioner must establish the distinguished reputation of the entity for which he claims to serve in a leading or critical role. Here, as discussed above, the Petitioner asserts that he meets this criterion through his leading role for [redacted]. Although the evidence regarding these magazines indicates that they enjoy a distinguished reputation, the Petitioner does not submit evidence showing how these magazines' reputations established that [redacted] enjoys a distinguished reputation. The Petitioner also provides evidence demonstrating that [redacted] invested in [redacted] but does not submit documentation showing how this investment demonstrates [redacted]'s distinguished reputation.

For the foregoing reasons, the Petitioner has not offered evidence demonstrating that he meets this criterion.

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)

In denying the petition, the Director determined that he was “unable to compare the evidence of earnings” in the record with that of others in the field in part because “it appears ... bonuses and other financial incentives are included” with the Petitioner’s salary.

On appeal, the Petitioner asserts that the Director is incorrect and that his base annual salary of Renminbi (RMB) 1,544,633.50 does not include a bonus or other financial incentives and also demonstrates his eligibility for the benefit sought. Here, the record includes the Petitioner’s certificate of income dated August 2019, his tax return dated October 2019, an updated December 2019 tax return, and evidence relating to the salaries commanded by others in his field.

Upon review, we first note that the Petitioner has not established that, at the time of filing, he had commanded a salary of RMB 1,544,633.50. Specifically, while the December 2019 income tax return submitted by the Petitioner corroborates this higher amount, the tax return includes income earned for the tax periods November 2019 and December 2019. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Without evidence establishing the Petitioner’s salary at the time of filing, the record is insufficient to demonstrate that this salary is high relative to that of others in the field.

This notwithstanding, we also consider evidence in the record relating to the Petitioner’s income prior to filing the instant petition. We note that the August 2019 income certificate reflects an income totaling RMB 1,517,226 at the time the instant petition was filed. However, as the Director noted in his decision, evidence in the record is insufficient to demonstrate whether this income reflects the

Petitioner's salary, his salary and a bonus, or other remuneration. Specifically, the August 2019 income certificate does not indicate whether this total income includes a bonus. The October 2019 tax return shows that on May 08, 2019, the Petitioner made two tax payments — one payment described as “Normal Salaries” and one with a translated description of “One-time Bonus Income for the Whole Year,” while the December 2019 tax return lists two tax payments on the same date in the same amount but attributes these items to payments for “Salary income.” The Petitioner must resolve these incongruities in the record with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. 582, at 591-92. Absent evidence resolving whether the Petitioner's reported income represents his salary, salary or bonus, or some other remuneration, the record is insufficient to establish the salary commanded by the Petitioner at the time of filing.⁵ As we note above, absent evidence establishing the Petitioner's salary at the time of filing, the record does not sufficiently demonstrate that the Petitioner commanded a high salary relative to that of others in his field.

For the foregoing reasons, the Petitioner has not demonstrated that he meets this criterion.

As discussed above, we find that the Petitioner does not meet the two criteria relating to leading or critical role or to high salary. Although he claims to meet an additional criterion on appeal relating to original contributions of major significance, we need not reach this issue. We will reserve the issue as the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3).⁶

For the reasons discussed above, the Petitioner has not established the Beneficiary's extraordinary ability under section 203(b)(1)(A)(i) of the Act. As such, we need not determine whether he is coming to “continue work in the area of extraordinary ability” under section 203(b)(1)(a)(ii).

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.

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

⁵ We note that the Petitioner has offered evidence of salaries from the U.S. Department of Labor's CareerOneStop website. However, these are wage statistics for the U.S., while the Petitioner is employed in China. Nonimmigrants working in different countries should be evaluated based on the wage statistics or comparable evidence in that country, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States. See 6 *USCIS Policy Manual* F.2(B)(2), *supra*.

⁶ 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); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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 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.

ORDER: The appeal is dismissed.