



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 55822191

Date: MAR. 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a consultant, 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 the record did not establish, as required, that the Petitioner satisfies at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

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 conclude that the Petitioner has not met this burden. Accordingly, 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 states that he “is extremely well-known” among charitable organizations in the United States, Israel, Europe and the countries of the former Soviet Union for his fundraising, consulting and project management work with the [redacted] and the [redacted]. The Petitioner’s resume reflects that, after graduating from [redacted] University with degrees in geography and African history, he worked for the [redacted] from 2002 until 2015, initially as a representative in Ukraine and [redacted]. Later, he served as the donor relations and development coordinator the [redacted]’s organizational headquarters in [redacted] as its country representative in Ukraine, as the regional director for Central Asia (based in Uzbekistan), and, most recently, as the Director General of the [redacted] Russia representative office.

The Petitioner indicates that he has been self-employed as a consultant in Florida since 2016, and has been and will be working as a fundraiser and [redacted] consultant for the southeast office of the [redacted] American Section in [redacted] as the director of [redacted] for the non-profit [redacted] and as a consultant and fundraiser for [redacted] an organization that supports underprivileged youth and single parent families.

### 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 Petitioner has claimed to meet three of the ten criteria, summarized below:

- ∑ (v), Original contributions of major significance;
- ∑ (viii), Leading or critical roles for organizations with a distinguished reputation; and
- ∑ (ix), High salary or other significantly high remuneration in relation to others.

The Director determined that the Petitioner did not meet any of the claimed criteria. On appeal, the Petitioner asserts that he submitted sufficient evidence to establish that he meets the three claimed criteria and is otherwise eligible for classification as an individual of extraordinary ability.

After reviewing all the evidence in the record, we conclude that the Petitioner meets only one criterion at 8 C.F.R. § 204.5(h)(3)(i)-(x), and therefore has not established that he satisfies the initial evidentiary requirements for this classification.

Evidence of the individual'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 meet this criterion, a petitioner must establish that he has made original contributions of major significance in the field. For example, a petitioner may show that his 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 Director acknowledged that the evidence establishes that the Petitioner is highly experienced as a fundraiser, consultant and project manager and has made contributions in his field. However, he determined that the record lacks evidence of the impact or influence of those contributions and does not establish their "major significance."

On appeal, counsel asserts that the Petitioner's contributions exceed the "major significance" standard required by this criterion, emphasizing that "his contributions were life saving and life altering." He further explains:

[The Petitioner] made and continues to make significant contributions of major significance in his field of endeavor – the very special and unique field of [redacted], the [redacted] . . . The evidence provided . . . is very clear about what he did to bring [redacted] people and especially young people who, for various reasons lost their parents and support of their countries, [redacted]. In many instances he was the only one who would be working to [redacted] these kids from [redacted] and war-torn nations to the [redacted] . . . His contribution only can be measured in the human lives he saved and the futures that he was able to secure for the persecuted and unfortunate.

We recognize that the nature of the work the Petitioner has performed for the [redacted] and other organizations has a significant impact on the lives of the individuals who receive support for their [redacted] and other humanitarian assistance. The Petitioner's work as an [redacted] consultant, fundraiser and project director is well documented in the record through reference letters and other evidence.<sup>1</sup> For example, [redacted] a Senior Representative of the [redacted] [redacted] in North America, confirms that the Petitioner "took a leading role in numerous international projects, among them rescue operation in war torn Georgia . . . helping to save lives of many [redacted] families fleeing of war mess and bringing them safely to [redacted] on special flights." [redacted]

<sup>1</sup> While we do not discuss all of the submitted reference letters and letters of gratitude submitted, we have reviewed and considered each one.

[redacted] also recognizes the Petitioner's successful involvement in "efforts to raise funds and humanitarian support for [redacted] people around the world, who seek assistance and humanitarian help." In addition, he credits the Petitioner's initiation and organization of projects in numerous countries as a regional director for [redacted] and praises his focus, determination, and dedication to humanitarian values.

[redacted] president of the [redacted] discusses the organization's [redacted] project and states that the Petitioner "remains the main driving force and the principal leader of this extremely special endeavor aiming to help secure a better future for underprivileged youth in distressed areas of the world." He praises the Petitioner's "enthusiasm, leadership, rich experience, world-wide connections and other talents that make our organization capable of helping and saving the most underprivileged and giving them the gift of a better future."

This criterion requires the Petitioner to establish that his contributions have significantly impacted or influenced the field in which he works. Letters that specifically articulate how a petitioner's contributions are of major significance in the field and his impact on subsequent work add value.<sup>2</sup> The letters submitted here are all comparable to [redacted]s and [redacted]s letter in content and do not discuss how the Petitioner's projects with [redacted] and other organizations have impacted the field, rather than individuals who have received assistance from his employers. The record documents the Petitioner's contributions to fulfilling [redacted]s mission and we recognize his critical role with the organization below, but it does not demonstrate the significance or influence of his work in the broader field.

In the appellate brief, counsel asserts that the Petitioner "was the first individual that was able to establish rules and procedures related to [redacted] children from dilapidated countries of Former Soviet Union [redacted]" noting "it was not done before in modern history, after WWII." However, he does not elaborate and his statement that the Petitioner was responsible for establishing the referenced "rules and procedures" is not adequately supported by other evidence in the record, or by evidence that such rules and procedures were adopted or implemented by other organizations in the field or otherwise recognized as influential or majorly significant in the field. Assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence.

For the reasons discussed, we conclude that the Petitioner has not satisfied this criterion.

Evidence that the individual 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)

For a leading role, the evidence must establish that a petitioner 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>3</sup> Regarding a

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<sup>2</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>

<sup>3</sup> Id. at 10.

critical role, the evidence must demonstrate that a petitioner 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 a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.<sup>4</sup>

The Director acknowledged that the Petitioner had submitted evidence related to his roles at the [redacted] [redacted] and the [redacted]. However, the Director determined that the evidence was insufficient to establish that he performed in leading or critical roles for either organization. He further found that the Petitioner did not demonstrate that either organization has a distinguished reputation. On appeal, the Petitioner asserts that the Director "made an error by not reading all the documents submitted."

While we agree with the Director that the record does not establish that the [redacted] a Florida non-profit company established in 2015, enjoys a distinguished reputation, the Petitioner submitted sufficient evidence to establish the distinguished reputation of the [redacted]. In addition, letters from persons familiar with his work with the [redacted], and other evidence in the record, provide sufficient explanation of the Petitioner's performance in senior roles to establish that those roles have been critical to the outcome of the organization's activities in several targeted regions. Accordingly, we conclude that the Petitioner has satisfied this criterion.

Evidence that the individual 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 a cover letter provided in support of the petition, the Petitioner indicates that "[a]s a professional fund raiser and activist [the Petitioner] was [a] highly paid professional averaging hundreds of thousands of dollars for his job through the years." His initial evidence in support of this criterion included an undated letter from the [redacted] summarizing the Petitioner's terms of service as a senior representative of the [redacted] in [redacted] Russia from August 2009 until August 2015.<sup>5</sup> According to this letter, his remuneration included monthly gross wages of \$6000, as well as monthly "representative fees," compensation for rent expenses, an "education fund," and "children education funding at the place of service."

The Petitioner provided evidence that the private school his children attended in [redacted] billed the [redacted] for their 2014-2015 school year tuition and fees. However, he did not document his actual salary earnings or total remuneration received during his period of employment for the [redacted] in [redacted]. The Petitioner also submitted data on "Average Russian NGO salaries" from SimplyHired, which indicates an average salary of \$25,000 but states that "average Russian NGO salaries can vary greatly due to company, location, industry, experience and benefits."

The Petitioner's initial evidence also included his 2017 IRS Form W-2 from [redacted] (his U.S.-based consulting company) indicating that he was paid \$12,000 in wages. He provided [redacted]

<sup>4</sup> Id.

<sup>5</sup> According to the Petitioner's résumé and the employment history he provided on his concurrently filed I-485, Application to Register Permanent Residence or Adjust Status, he worked for the [redacted] as its Regional Director in [redacted] from January 2014 until August 2015.

[redacted]'s 2017 corporate federal tax return, which reflects his receipt of \$13,389 in ordinary business income based on his 50% ownership interest in the company. He did not provide comparative evidence to demonstrate that he earned a high salary or significantly high remuneration in relation to others working in his occupation in the United States during that year.

In response to the Director's request for evidence (RFE), counsel for the Petitioner stated:

[The Petitioner] was dispatched and worked in mostly Former Soviet Union States . . . For his work he was paid significant amount of money, compared to local population and also he was provided with transportation, housing allowance, private school tuition for his children and other perks attributed to his position. It is not easy to compare his salary to the local population due to uniqueness of his job as [redacted] consultant, but due to deteriorating post-Soviet State financial system, he was making 10 to 20 times what any local person in the same or similar position would make. He was very well paid.

The Petitioner re-submitted the above-referenced letter from [redacted] confirming the financial terms of service for his posting in [redacted] and the private school tuition invoice from 2014. On appeal, counsel repeats the same passage from his letter in response to the RFE, already quoted above. The appeal does not otherwise address this criterion.

It is the Petitioner's burden to provide appropriate evidence in support of this criterion and we agree with the Director's determination that the evidence submitted here did not meet that burden. In order to establish that they have commanded a high salary or other significantly high remuneration, a petitioner should provide documentary evidence of their actual earnings. The undated letter setting forth the Petitioner's terms of payment from the [redacted] does not adequately document the Petitioner's salary and other remuneration earned during his period of employment in Russia.

In addition, while the Petitioner provided data regarding "average Russian NGO salaries" from SimplyHired, the publisher of this data acknowledges that such salaries "can vary greatly" and does not provide information regarding high salaries in the field as a point of comparison. It is not sufficient for the Petitioner to provide evidence that his salary was "above average." Although we acknowledge counsel's repeated assertion that the Petitioner earned "10 to 20 times what any local person . . . would make" we note that the assertions of counsel do not constitute evidence. *Obaigbena*, 19 I&N Dec. at 534 n.2 (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

Therefore, even if the Petitioner had adequately documented his total earnings from 2014 or 2015, additional comparative data would be needed to establish that he commanded a high salary or significantly high total remuneration.

As noted, the Petitioner also documented his earnings in the United States for 2017, but he has neither claimed nor submitted comparative salary data to establish that he commanded a high salary or other significantly high remuneration in that year.

Therefore, for the reasons discussed, the Petitioner has not established that he meets this criterion.

## B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner has been granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations, and case law. Further, it must be emphasized that each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii). We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); see also *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

Finally, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another petition. See *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

## 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 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.