



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

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

In Re: 22645032

Date: OCT. 06, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a licensed professional 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 individuals 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 that the Petitioner meets the initial evidence requirements for this classification, either through a one-time achievement (a major, internationally recognized award), or by satisfying at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) 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 his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If a petitioner does not submit this evidence, then he or she 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) (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 record reflects that the Petitioner was employed as an HVAC Project Engineer with [REDACTED] [REDACTED] at the time of filing in January 2021, and that he joined [REDACTED] [REDACTED] in a similar role shortly thereafter. He earned his bachelor of engineering degree in polymer materials and engineering from [REDACTED] University [REDACTED] in China in 2012, and a master of science in mechanical engineering from [REDACTED] University in 2015. The Petitioner has completed additional specialized professional training and at the time of filing, he was enrolled in a graduate certificate program in nanotechnology at [REDACTED] University. The Petitioner is a licensed professional engineer in the states of Texas and California and indicates his intent to continue working in the engineering services field.

### 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 asserts that he can meet six of the ten criteria, summarized below:

- (i), Lesser nationally or international-recognized awards or prizes;
- (ii), Memberships in associations that require outstanding achievements;
- (iv), Participating as a judge of the work of others;
- (vi), Authorship of scholarly articles in professional journals;
- (vii), Display of work in artistic showcases or exhibitions; and
- (viii), Performance in a leading or critical role for an organization with a distinguished reputation.

The Director concluded that the Petitioner met only one of the claimed criteria. The record supports the Director's determination that the Petitioner has published scholarly articles in professional publications in his field, and therefore satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner asserts that the Director overlooked relevant evidence demonstrating that he meets the additional claimed criteria and is otherwise qualified for classification as an individual of extraordinary ability. After reviewing all the evidence, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria at 8 C.F.R. § 204.5(h)(3).

*Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

According to the plain language at 8 C.F.R. § 204.5(h)(3)(i), the evidence submitted in support of this criterion must establish that an individual is the recipient of a prize or award, that the award is nationally or internationally recognized, and that the prize or award is one for excellence in the field of endeavor.<sup>1</sup>

The Petitioner submitted evidence related to his participation in three competitions or "challenges" sponsored by [redacted] University, including a 2020 [redacted] Challenge, a 2021 [redacted] Challenge, and a 2022 [redacted] Competition. The record reflects that the latter two competitions took place after the filing of this petition in January 2021. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Therefore, we will limit our discussion to the award the Petitioner received in the 2020 [redacted] Challenge, which is the only documented prize or award that pre-dates the filing of the petition

The Petitioner's initial evidence included an e-mail from the [redacted] Team indicating that his team has "been selected to receive a [redacted] Challenge prize of \$375" as well as a copy of a check in that amount issued to him by [redacted] University. The Director advised the Petitioner that the submitted documentation was insufficient to demonstrate that he had received a nationally or internationally recognized award or prize for excellence in his field and requested additional evidence in support of his eligibility under this criterion.

The Director observed that the supplemental documentation submitted in response to the request for evidence (RFE) indicated that the 2020 [redacted] Challenge was a graduate-level college competition. The Director acknowledged that individuals who are not [redacted] students may participate but concluded that the evidence did not establish that the competition awards nationally or internationally recognized prizes for excellence. In this regard, the Director referenced evidence explaining that the competition is a project-based "challenge" organized at [redacted] in which students' projects are assessed based on "thoroughness; creativity; technical depth; flexibility and robustness; and readiness to deploy in a short timeframe." On appeal, the Petitioner asserts that the

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<sup>1</sup> See 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field.)

Director failed to consider all the evidence submitted in response to the RFE. He maintains that his 2020 [redacted] Challenge award meets all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(i). Upon review, we agree with the Director's determination that the Petitioner did not submit evidence that he meets this criterion.

The record reflects that individuals who wished to participate in the 2020 [redacted] Challenge were required to register for a noncredit [redacted] University engineering course during the 2020 [redacted] term which was graded on a pass/fail basis. A description that appeared on the [redacted] Engineering website states that "[e]ach design challenge promises to be an intense and fun, fast learning experience where students will take a deep dive into various subjects." As noted by the Director, while the record indicates that not all project team members are required to be [redacted] students, the description of the program indicates that it is intended for engineering students who are expected to work on their projects under the guidance of assigned faculty or mentors; it is not a competition designed for seasoned professional engineers and it is unclear whether the participating teams included non-student members. The criteria used to grant the award and any limitations on competitors may be considered in determining whether a given prize or award was based on "excellence in the field."<sup>2</sup>

The evidence indicates that 14 teams competed in the 2020 [redacted] Challenge during the [redacted] term in which the Petitioner was enrolled. His two-person team received a "mention" award as a top five finisher, but he did not win one of the top three prizes. Further, the record does not include evidence that the awards or prizes issued at the conclusion of the challenge were recognized outside of the awarding institution, as all submitted notices of the challenge results were reported in [redacted] own publications and in internal emails to participating students and [redacted] staff. This evidence is insufficient to demonstrate the national or international recognition associated with the award.

The Petitioner contends that the Director did not consider the international reputation enjoyed by [redacted] University and its engineering department. Further, he emphasizes that another winning team went on to receive \$6 million in funding for a project initiated as part of a [redacted] Challenge. However, neither the university's reputation nor the success enjoyed by a fellow competitor is sufficient to establish that the honorable mention award the Petitioner received in this student competition is a nationally or internationally recognized award for excellence in his field. For the reasons discussed, the Petitioner did not establish that he satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(i).

*Documentation of the individual'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)

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<sup>2</sup> See 6 USCIS Policy Manual, *supra*, at F.2 appendix (stating that relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include but are not limited to: the criteria used to grant the awards or prizes; the national or international significance of the awards or prizes in the field; and the number of awardees or prize recipients, as well as any limitations on competitors).

To satisfy this criterion, the Petitioner must show that he is a member of an association, and that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.<sup>3</sup>

The Petitioner claims that he meets this criterion based his membership in the ASM [redacted] [redacted] Committee. The Petitioner provided evidence that he served two three-year terms (from 2015 to 2021) as a member of this committee of ASM International, a professional association in the materials engineering field.<sup>4</sup> However, the Director determined that the supporting documentation, which included ASM International’s Constitution and Bylaws and evidence specific to the [redacted] [redacted] Committee, did not establish that admission as a member is conditioned on having outstanding achievements as judged by recognized national or international experts in the field.

On appeal, the Petitioner asserts that the Director erred by conflating the requirements for regular individual professional membership in ASM International with the requirements for committee membership appointment, noting that the latter “far exceeds the standard requirements for regular membership” referenced in the Director’s decision. In this regard, he notes the limited size of the ASM [redacted] committee (26 to 30 members) as “an extremely important factor.” In addition, he emphasizes that the previously submitted evidence establishes that committee appointments must ultimately be approved by members of the ASM Board, which is comprised of recognized experts in the field.

The Petitioner provided a published profile of the ASM [redacted] Committee, which describes qualifications for membership as follows: “ADP Committee members are experts in the field of [redacted] (most are PhD’s) and are typically [redacted] users and researchers.” It also identifies the committee size as “26-30 members.” The submitted Rules for Government of ASM International, at Article V, discuss “Society Committees and Councils,” and indicate that these committees are comprised of individual professional members of ASM, assembled for the purpose of conducting designated functions of the Society. Regarding committee appointments, the Rules for Government indicate that “[a]ll Society Committee appointments shall be reviewed and nominated by the Vice President . . . and shall be subject to approval by the Board.”

Based on this limited information, the record does not establish that the Petitioner’s appointment to the ASM [redacted] Committee required “outstanding achievements.” While the record indicates that the committee members are expected to be “experts” in the field of [redacted], there is insufficient information to support a determination that ASM equates expertise in a given field with “outstanding achievements.” The submitted evidence does not sufficiently explain what specific

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<sup>3</sup> See 6 USCIS Policy Manual, *supra*, at F.2 appendix (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

<sup>4</sup> In response to the Director’s request for evidence, the Petitioner also provided evidence of his membership in a standards committee of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE). He did not claim eligibility under 8 C.F.R. § 204.5(h)(3)(ii) based on this committee membership at the time of filing in January 2021. A submitted roster for the ASHRAE committee indicates that the Petitioner began his term as a non-voting member on March 20, 2021. As emphasized above, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing. 8 C.F.R. § 103.2(b)(1). The evidence does not demonstrate that he was a member in the ASHRAE committee when the petition was filed.

criteria are used to evaluate prospective members and as such, it does not establish whether outstanding achievements are required as a condition for membership.

We acknowledge the Petitioner's assertion that the ASM [redacted] Committee is limited to no more than 30 members, but he has not explained, and the record does not demonstrate, how the number of members admitted to the committee is relevant to an evaluation of whether the membership satisfies all requirements of 8 C.F.R. § 204.5(h)(3)(ii). While it is likely true that many ASM individual professional members do not serve on committees, it does not automatically follow that all committee members are appointed based on their outstanding achievements, as opposed to their specific research interests, educational and professional background, or other factors.

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

*Evidence of the individual'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)*

This regulatory criterion requires the Petitioner to show that he has participated as a judge of the work of others in the same or an allied field of specialization.

The Petitioner claims that he meets this criterion based on his activities as a member of the ASM [redacted] Committee.<sup>5</sup> The initial evidence included the meeting minutes of an October 2015 committee meeting, attended by the Petitioner, which listed "Nominations" as an agenda item. The meeting minutes indicate that there was a call for written nominations for the "[redacted] Industrial Award" and that no one made any suggestions during the meeting. In addition, the meeting minutes identify a nominee for the "[redacted] Award" but do not further elaborate or indicate that the nominee or his work were or would be reviewed by the committee. The Petitioner also submitted a screenshot from the website of ASM International which provides an overview of the ASM's *Journal of Phase Equilibria & Diffusion* (also referred to as JPED). This page lists the editors and associate editors of the journal and includes the names of the members of the [redacted] Committee.<sup>6</sup>

In the request for evidence, the Director acknowledged the submitted meeting minutes but advised the Petitioner that the initial evidence did not establish that he, individually or as a member of a panel, actually participated in judging of the work of others.

In response, the Petitioner explained that the ASM [redacted] Committee is responsible for reviewing nominees for the [redacted] Award. He submitted the minutes of a September 2019 committee meeting at which he was present. The meeting minutes reference the

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<sup>5</sup> In response to the Director's RFE, the Petitioner also provided evidence related to his committee activities with ASHRAE in support of this criterion. As discussed, the record reflects that the Petitioner did not become an ASHRAE committee member until after he filed this petition. His committee membership and any associated judging activities cannot establish his eligibility under the criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (iv) as of the date of filing. Therefore, we limit our discussion to evidence that pre-dated the filing of the petition.

<sup>6</sup> A description of the key responsibilities of the ASM [redacted] Committee indicates that it maintains "continual surveillance of the technical quality of JPED," including responsibility for advising the editor and staff on technical matters.

[redacted] Award” and state: [redacted] is the recipient of the 2020 award. The committee was reminded to be mindful of the February 1 deadline for nominations for the [redacted] Award.” The Petitioner also provided a copy of an article published in the *Journal of Phase Equilibria and Diffusion* titled [redacted] [redacted] which announces [redacted] receipt of the award. The article briefly discusses the history of the award and indicates that it was first proposed by the ASM [redacted] Committee in 2007.

The Director determined that none of the submitted evidence corroborated the Petitioner’s claim that his committee membership or his presence at committee meetings entailed judging the work of others. Specifically, the Director observed that the record lacked detailed information regarding the specific responsibilities of ASM [redacted] committee members and meeting attendees with respect to evaluating nominations for awards.

On appeal, the Petitioner maintains that the Director did not carefully review the evidence, noting that the previously submitted documentation demonstrates his participation as a judge in the committee panel that reviewed the [redacted] Award candidates. He states that the ASM [redacted] Committee “has the ability to nominate award candidates and review and discuss the nominator [*sic*] during the [redacted] annual meeting.” The Petitioner indicates that his presence at an annual meeting in which nominations and awards were on the agenda shows that he was part of the committee panel during the [redacted] Award nomination process. Finally, he indicates that “the submitted documents do not include more confidential nomination process related to the ASM committee panel, because the disclosure of those confidential information to USCIS might break some security policy between the petitioner and the ASM.”

Upon review, the evidence does not sufficiently document the role of the ASM [redacted] committee in general, or the Petitioner’s role specifically, in judging the work of others in connection with the [redacted] Award or any other ASM award program. The [redacted] committee profile the Petitioner provided from ASM International’s website contains no specific information regarding this committee’s role in reviewing the work of award nominees or determining winners of ASM awards.<sup>7</sup> Further, the record does not include evidence such as the rules governing the nomination and selection process for the [redacted] award for which the Petitioner claims he acted as a judge. The record establishes that award nominations and the announcement of [redacted] Award winners are an agenda item at the [redacted] Committee’s semi-annual meetings. However, it does not corroborate the Petitioner’s assertion that his presence at such meetings alone serves as sufficient evidence that he was part of a committee panel that reviewed the work of nominees and selected the winners of the awards, or otherwise performed activities that meet the requirements of 8 C.F.R. § 204.5(h)(3)(iv).

We have also considered evidence that the ASM [redacted] committee members are listed along with editorial staff in *Journal of Phase Equilibria and Diffusion* and note that the Director did not specifically address this evidence. The record reflects that the [redacted] committee is responsible for “surveillance of the technical quality” of the journal and may consult with the editorial

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<sup>7</sup> According to ASM’s public website (<https://www.asminternational.org/committees-and-councils>), it has an “Awards Policy Committee” that is “responsible for the awards activity of the Society. It recommends to the Board suitably chosen and properly qualified nominees for the various awards and honors of the Society.”

and technical staff. However, the limited evidence submitted does not establish that the committee's members are responsible for reviewing, editing, or recommending manuscripts for publication or performing other peer review activities that would constitute judging the work of others in the field.

Overall, based on the evidence submitted, the Petitioner has not established his participation as a judge of the work of others in the same or allied field, as required by 8 C.F.R. § 204.5(h)(3)(iv).

*Evidence of the display of the individual's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii)

At the time of filing, the Petitioner indicated he was submitting evidence of his presentation of a conference paper at the 2015 ASHRAE [redacted] Conference and evidence of a speaking engagement at the [redacted] Trade Show under this criterion. In the RFE, the Director acknowledged this evidence, noting that it showed that he displayed his research work at scientific conferences or symposia. The Director advised the Petitioner that such venues could not be considered "artistic exhibitions or showcases" as required by the plain language of the regulation. In the denial, the Director determined that the Petitioner provided no additional evidence in support of this criterion.

On appeal, the Petitioner acknowledges that he did not pursue his initial claim that his conference presentations meet this criterion. However, he asserts that the Director overlooked evidence that he participated in an "artistic music showcase." The record includes an online article titled [redacted] [redacted] published by the newsroom of the [redacted] University [redacted] in May 2020. The article discusses efforts by alumni and current students, who worked together with medical centers to fund, obtain and distribute shipments of personal protective equipment from China during the early months of the COVID-19 pandemic. The article indicates that some of the students and alumni arranged a virtual concert [redacted] to "bring comfort to the community through music." The concert featured [redacted] students, alumni and their families, and the Petitioner is named among the students who participated.

The Petitioner asserts that his participation in the concert demonstrates "his engineering determination to build a better world by all his skills and talents with his effort to unify people against the COVID-19 pandemic." However, even if this concert could be considered an artistic showcase of the Petitioner's work, it did not showcase his "work in the field" in which he seeks classification as an individual of extraordinary ability. It appears that he intended to connect this artistic endeavor to the 2020 [redacted] Challenge in which he participated. While both projects were initiated in response to the COVID-19 pandemic, the concert is unrelated to his field of engineering, his research interests, and his professional duties and cannot be deemed to be in his field. Therefore, while we have considered evidence of his participation in the [redacted] virtual concert, he has not shown that it satisfies this criterion.

## B. Summary and Reserved Issue

We conclude that the Petitioner has not established that he meets the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iv) or (vii). As noted, he must demonstrate that he meets at least three criteria to satisfy the initial evidence requirement for this classification. While the Petitioner claims to meet one additional criterion at 8 C.F.R. § 204.5(h)(3)(vii), our determination that he does not any of the criteria



discussed above is dispositive of the appeal. Accordingly, we reserve and will not address the Director's separate determination that the Petitioner did not demonstrate that he has performed in a leading or critical role for an organization or establishment with a distinguished reputation, or his appellate claims relating to this criterion.<sup>8</sup>

### 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. 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 and recognition 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 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.

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<sup>8</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).