



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

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

In Re: 28511240

Date: NOV. 30, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a big data center consultant, seeks classification as an individual of extraordinary ability in business. 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 while the Petitioner met the initial evidentiary requirements for the requested classification, the record did not establish that he has sustained national or international acclaim and is one of that small percentage who have risen to the top of their field of endeavor. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will sustain the appeal.

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner

to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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).

The Petitioner seeks to work as a big data center consultant in the United States. The Director concluded that the provided evidence sufficed to meet three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)<sup>1</sup>:

- (iv) Participation as a judge of the work of others;
- (vi) Authorship of scholarly articles in the field; and
- (viii) Performed in a leading or critical role for organizations or establishments with distinguished reputations.

Because the Petitioner met the initial evidence requirements, the Director proceeded to conduct a final merits determination as described in *Kazarian*, 596 F.3d at 1119-20. Upon examining the petition in its entirety, the Director concluded that the Petitioner's documentation did not establish that he had sustained national or international acclaim and that his achievements had been recognized in his field of expertise, such that he was one of that small percentage who had risen to the very top of his field of endeavor. Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2)-(3); *see generally* 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policy-manual> (describing considerations for the final merits analysis).

On appeal, the Petitioner submits a brief stating that the Director erred in law and fact and failed to consider the totality of the evidence in their analysis. Upon review of the entire record, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that he is one of the few who has risen to the very top of his field of endeavor. The evidence indicates that the Petitioner has been responsible for the construction, operations, and maintenance of financial industry data centers which handle transactions of significant worth. The record also includes extensive documentation of the Petitioner's national recognition as an expert in his field, including his appointment to and leadership of various groups that set national technological standards for China. The totality of the record, including the Petitioner's achievements and earned recognition, establishes that the Petitioner is one of a small percentage at the very top of his field of endeavor and that he has the required sustained acclaim. *Id.*

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<sup>1</sup> The evidence does not indicate, and the Petitioner does not claim, that he has a one-time achievement under 8 C.F.R. § 204.5(h)(3).

Finally, the record indicates that the Petitioner intends to enter the United States to continue to work in his field of expertise and that his entry into the United States will prospectively substantially benefit the United States. As such, he has established his eligibility for the extraordinary ability classification.

**ORDER:** The appeal is sustained.