



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

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

In Re: 28559467

Date: OCT. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business sustainability specialist, 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 the Petitioner did not satisfy at least three of the initial evidentiary criteria. 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 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 achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or 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

Because the Petitioner has not indicated or established 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). In denying the petition, the Director determined the Petitioner fulfilled only two criteria – judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains he meets five additional evidentiary criteria.

Documentation of the alien'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).

The Petitioner argues:

... [He] submitted the International Award DAAD, and “best worker by [redacted] [redacted] The former, which USCIS confirmed to be an appreciable achievement for the [Petitioner], but erred in concluding that they both cannot be considered as a nationally or internationally recognized award. The letter from the Director of the [U]niversity [redacted] simply satisfied this criterion requirement

....

The [Petitioner] was one of five selected out of sixty-seven applicant[s] across Africa, meeting with a very strict selection criteria number of other candidates for the award. The selection criteria in awarding it is enough evidence showing the reputation of the award, and the [Petitioner] has proved this by the submission of a confirmation letter from Professor [P-Q] and the awarding organization.

First, USCIS determines if the person was the recipient of prizes or awards.¹ The description of this type of evidence in the regulation indicates that the focus should be on the person's receipt of the awards or prizes comma as opposed to the employer's receipt of the awards or prizes.²

Second, USCIS determines whether the award is a lesser nationally or internationally recognized prize or award which the person received for excellence in the field of endeavor.³ As indicated by the plain language of the regulation, this criterion does not require an award or prize to have the same level of recognition and prestige associated with the Nobel Prize or another award that would qualify as a one-time achievement.⁴

As it relates to the "Best Worker" from [redacted] the Petitioner presented a photograph of the Petitioner with a caption stating "2014 Best Worker" and "Senior Category" and a certificate. However, the Petitioner did not provide any supporting evidence regarding the award's national or international recognition for excellence in the field.

As it pertains to DAAD, the Petitioner submitted a letter from Professor P-Q- who stated:

[DAAD] provides scholarships and grants to young academics and scientists who have distinguished themselves through their study and research work through its partnership with Universities across the world.

.....

In 2017 [The Petitioner] was one of five selected out of sixty-seven applicants from across Africa. The scholarship financed his tuition in research work from 2017 to 2021. The selection criteria included scholarly and development relevance as well as excellent academic credentials. The program is directed at outstanding researchers, policymakers and practitioners that are working on pressing development issues.

The letter, however, does not discuss how the field views the scholarship or why the field considers the scholarship as a nationally or internationally prize or award for excellence. While many scholastic awards do not have the requisite level of recognition, there may be some that are nationally or internationally recognized as awards for excellence such that they may satisfy the requirements of this criterion.⁵ For example, an award available only to persons with a single locality, employer, or school may have little national or international recognition, while an award open to members of a well-known national institution (including an R1 or R2 doctoral university) or professional organization may be nationally recognized.⁶ In this case, although the letter provides some background information, the Petitioner did not establish the national or international recognition for excellence of the scholarship in the field.

¹ See generally 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policymanual>

² *Id.*

³ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

⁴ *Id.*

⁵ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

⁶ *Id.*

For the reasons discussed above, the Petitioner did not show that he meets this criterion.

Documentation of the alien'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).

USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field.⁷ The petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.⁸

The Petitioner contends that he “submitted evidence showing that he is a member of IASSIST [International Association for Social Science Information Services and Technology], [redacted] Committee and [redacted] Global [H]ealth Catalyst Summit Committee.” Although he indicates that he submitted evidence of membership, the Petitioner does not contest the Director’s decision, make further arguments, or claim that membership with the [redacted] committees requires outstanding achievements and is judged by recognized national or international experts as required under 8 C.F.R. § 204.5(h)(3)(ii). An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Thus, we need not address these previous claims.

Regarding IASSIST, the Petitioner references his submission of a letter from W-N-A- who stated:

[IASSIST] is a professional body focused on research data in the social sciences. Practitioners in the discipline may apply to become a member. Membership applications are reviewed by the membership committee. Current members are affiliated with academic, governmental, non-profit, and commercial institutions from around the world.

However, the Petitioner did not demonstrate that the letter shows that membership with IASSIST requires outstanding achievements and recognized national or international experts determine membership. In fact, based on the letter, membership requires practitioners in the discipline rather than outstanding achievements. Moreover, the letter does not explain whether the membership committee is comprised of recognized national or international experts.

Accordingly, the Petitioner did not establish that he fulfills this criterion.

⁷ *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

⁸ *Id.*

Evidence of the alien'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 satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), USCIS determines whether the person has made original contributions in the field.⁹ USCIS then determines whether the original contributions are of major significance to the field.¹⁰ Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the persons original work; documentation that the person's original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.¹¹

The Petitioner contends:

[He] submitted original contributions which is [sic] of major significance in the field of business sustainability – “The [redacted] implementing partners in Northern, upper east and upper west regions.” [The Petitioner] developed and implemented the [redacted] a custom web-based software which has been in use for the past 5 years. Over the years, [redacted] has been the medium of reporting for FSW and MSW activities. In the words of the [Petitioner] who develop [sic] [redacted] has the capability to determine the cost of reaching target population to build up the aggregate to plan appropriately.

The record contains [redacted] User Manual, a Training Report from the [redacted] and a recommendation letter.¹² According to the training report:

The [redacted] is a financial information system used by [redacted] to record and track receipts and payments of funds related to HIV and AIDS [program] implementation. [redacted] facilitates the collection, reporting and analysis of financial and [program] data for decision making.

[redacted] is a custom web-based software and has been in use for the past 5 years. Over the years, [redacted] has been the medium of reporting for FSW and MSM activities.

In addition, a letter from R-N-A-, stated that the Petitioner “has developed bespoke software [redacted] which optimi[z]ed HIV and AIDS project expenditure in Ghana through the automation of unit costs for HIV prevention, [behavior] change communication and mitigation expenditure” and “[t]hese interventions led to significant savings in the implementation of HIV grants in country.”

While the evidence reflects the Petitioner's original contribution, the Petitioner did not establish [redacted] qualification as a contribution of major significance in the field. Based on the documentation presented by the Petitioner, [redacted] usage and impact is limited to [redacted] Analysis under this criterion

⁹ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

¹⁰ *Id.*

¹¹ *Id.*

¹² Although the Petitioner submitted several other recommendation letters, only one discusses [redacted]

focuses on whether the person's original work constitutes major, significant contributions to the field.¹³ For example, published research that has provoked widespread commentary on its importance from others working in the field, and documentation that it has been highly cited relative to others work in that field, may be probative of the significance of the person's contributions to the field of endeavor.¹⁴ Similarly, evidence that the person developed a patented technology that has attracted significant attention or commercialization may establish the significance of the person's original contribution to the field.¹⁵ Here, the Petitioner did not demonstrate, for example, how [] has been widely implemented throughout the field, has remarkably impacted or influenced the field, or has otherwise risen to a level of major significance in the field.

Likewise, the letter from R-N-A- briefly indicates [] utilization and generally asserts to "significant savings" without further elaborating and providing specific details showing how [] impacted the field in a major way. Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.¹⁶ Submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.¹⁷ In this case, the letter lacks specific, detailed information explaining how [] "optimi[z]ed HIV and AIDS project expenditure" and "led to significant savings." USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

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)

USCIS first determines whether the person has performed in a leading or critical role for an organization, establishment, or division or department of an organization or establishment.¹⁸ Then, USCIS determines whether the organization or establishment, or the department or division for which the person holds or held a leading or critical role, has a distinguished reputation.¹⁹ The Petitioner claims eligibility for this criterion based on his role with [] and references a letter from Dr. A-E-A- and a certificate from [] for "Best Worker," discussed under the award criterion above.

¹³ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

¹⁷ *Id.*

¹⁸ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

¹⁹ *Id.*

In evaluating such evidence, officers examine whether the role is (or was) leading or critical.²⁰ Dr. A-E-A- stated:

Over the period, he has been a key member of the team developing and overseeing the successful implementation of four (4) strategic plans for HIV and AIDS in Ghana (2001 – 2005; 2006 – 2010); (2011 – 2015); 2016 – 2020).

[The Petitioner] has played a key role in the development and deployment of financial management systems to support interventions averaging over 100 million U.S. dollars per annum. His contributions to the national response include the development of an innovative remote financial management system to provide real time/live access to implementing partner data. The gains in time and financial resources of this online platform are ploughed back into programs to improve access to care and support for communities. He has also been pivotal in developing partnerships which sustain [redacted] as it coordinates a multi-sectoral national response to HIV and AIDS in Ghana.

For a leading role, officers look at whether the evidence establishes that the person is (or was) a leader within the organization or establishment or a division or department thereof.²¹ A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading. Here, the letter does not indicate that the Petitioner performed in a leading role with [redacted]. The letter, for instance, does not mention the Petitioner’s job title or otherwise describe duties indicative of a leading role.

For a critical role, officers look at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities or those of a division or department of the organization more establishment.²² It is not the title of the person’s role, but rather the person’s performance in the role that determines whether the role is or was critical.²³ Although the letter describes the Petitioner’s role as “Key” and briefly lists some of the Petitioner’s contributions, the letter does not further elaborate and explain how those contributions were significantly important to [redacted] activities. This is one criterion where letters from persons with personal knowledge of the significance of the person’s leading or critical role can be particularly helpful to officers in making this determination, so long as the letters contain detailed and probative information that specifically addresses how the person’s role for the organization, establishment, division, or department was leading or critical.²⁴ In addition, while the “Best Worker” certificate reflects presentation to the Petitioner “in recognition and appreciation for [his] relentless and dedicated service,” performing admirably in one’s work does not necessarily also mean performance in a critical capacity. The document, for example, broadly shows that the Petitioner “maintained excellence in the discharge of [his] duties and contributed significantly to the work of [redacted] for the year 2014] without indicating what duties he performed and how he contributed significantly.

Moreover, although the Petitioner claims that the submitted documentation “show[s] the reputation of the issuing organization,” neither the certificate nor the letter discusses or reflects the distinguished

²⁰ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

²¹ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

²² See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

²³ *Id.*

²⁴ *Id.*

reputation of [redacted] The relative size or longevity of an organization or establishment is not in and of itself a determining factor but is considered together with other information to determine whether a distinguished reputation exists.²⁵ Other relevant factors for evaluating the reputation of an organization or establishment can include the scale of its customer base or relevant media coverage.²⁶ Here, the Petitioner did not provide sufficient documentation establishing the distinguished reputation of [redacted].²⁷

Therefore, the Petitioner did not establish that he fulfills 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).

The Petitioner argues the submission of his earnings report, comparative table, and support letter demonstrates eligibility for this criterion. USCIS determines whether the person's salary or remuneration is high relative to the compensation paid to others working in the field.²⁸

The Petitioner submitted a document entitled, "Estimated Earnings Report and Comparative Table," claiming that the Petitioner received an annual income of \$56,087 in 2021. Further, the report/table also asserts that the average annual income for "Accountants & Finance Managers" from glassdoor.com and payscale.com is \$10,414 and \$9,964, respectively. In addition, the Petitioner provided a letter from J-O-D-, chartered accountant, who opined that "the declared annual earnings of [the Petitioner] exceed the income levels for equivalent levels of skill and experience in Ghana by a factor of 6."

Although the letter indicates the Petitioner's "income [w]as verified by supporting pay slips and contractual agreements," the Petitioner did not submit this evidence to substantiate his income, employer(s), and occupation. Evidence relevant to demonstrating high remuneration may include, but is not limited to: tax returns, pay statements, or other evidence of past salary or remuneration for services; contract job offer letter, or other evidence of prospective salary or remuneration for services; and comparative wage or remuneration data for the person's field, such as geographical or position-appropriate compensation surveys.²⁹

Moreover, the Petitioner did not provide the referenced evidence from glassdoor.com and payscale.com to corroborate the claims from the letter and the report/table. When evaluating whether a comparison between the beneficiary's documented remuneration and the remuneration in the survey is accurate, the following considerations, among others, may be relevant: the description of the occupation, the validity of the survey, location and currency, and salary rate being measured.³⁰

²⁵ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

²⁶ *Id.*

²⁷ Merriam-Webster's online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence" or "befitting an eminent person." *Id.*

²⁸ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

²⁹ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

³⁰ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

Furthermore, according to his resume, the Petitioner has been employed as a “Business Sustainability & Strategy Expert” since January 2021 and a “Disbursement Manager & Lead Investigator” since January 2009. Yet, the letter and report/table compare the Petitioner’s 2021 earnings to the earnings of “Accountants & Finance Managers.” The Petitioner did not show compare his income in relation to others in the field. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

In this case, the Petitioner did not offer sufficient evidence showing his earnings, nor did the Petitioner provide sufficient comparative salary data, with the appropriate occupation, establishing he commanded a high salary in relation to others in the field consistent with this regulatory criterion. As such, the Petitioner did not demonstrate that he meets this criterion.

III. CONCLUSION

The Petitioner did not establish he satisfies at least three evidentiary criteria. Therefore, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve this issues³¹

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion 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 those progressing toward the top. *Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability,”); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is “extremely restrictive by design,”); *Hamal v. Dep’t of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff’d*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are “reserved for a very small percentage of prospective immigrants”). *See also Hamal v. Dep’t of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that “[c]ourts have found that even highly accomplished individuals fail to win this designation”)); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that “arguably one of the most famous baseball players in Korean history” did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59

³¹ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).

(Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate 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). The record does not contain sufficient evidence establishing him among the upper echelon in his field.

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.