



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

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

In Re: 30556469

Date: APR. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a professor in the field of urban and regional planning, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements of this classification through evidence of a major, internationally recognized award or by meeting at least three of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 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

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that 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.” It also sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *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 has been working as a professor and administrator, primarily at the [redacted] [redacted] in Brazil, since 2010. He holds a Ph.D. in transportation from the same institution. He states that he intends to pursue employment as a an urban and transportation planner in the United States.

Together with his appeal brief, the Petitioner also submits copies of previously submitted evidence, as well as evidence submitted for the first time on appeal. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). Because the Director notified the Petitioner in his request for evidence of the deficiencies in the record, and provided not only the opportunity to respond but examples of the types of evidence which could be submitted, only evidence present in the record at the time of the Director’s decision will be considered.

A. Evidentiary Criteria

As the Petitioner has not indicated or established that he 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 met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his participation as a judge of the work of others in his field. Based upon the evidence of his participation as an examiner of doctoral theses, we agree with this conclusion. On appeal, the Petitioner asserts that he also meets eight additional evidentiary criteria. After reviewing all of the evidence in the record, we conclude that he has not established that he meets at least three of the 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)

This criterion requires that a petitioner show that they have received a prize or award, that the prize or award was granted for excellence in their field of endeavor, and that it is nationally or internationally recognized in the field of endeavor. Here, the Petitioner asserts that his role in a design team which succeeded in a competitive bidding process for the restoration of part of the city of [REDACTED] Brazil meets this criterion, as does his receipt of the title of "Autodesk Expert Elite."

In support of his claim regarding the restoration project, the Petitioner submitted an article from the website of *CREA-BA Magazine* which names him as part of the design team that submitted the winning proposal. The article also describes the scope of the project and further explains the role of other members of the winning team. Also submitted were pages from the 2002 Annual Report of the Municipal Secretariat for Planning, Urbanism and Environment of the city of [REDACTED] which indicate that the city held a "National Public Urban Design Contest, under the organization of [REDACTED] to seek proposals to improve the area known as [REDACTED]. The Petitioner asserts that this evidence shows that this contest was national in scope, and that "large architecture offices from all over Brazil competed." But this assertion is essentially moot, since as noted by the Director, the evidence does not show that the Petitioner actually received a prize or award as part of the team that successfully competed in the public tender process. While the article verifies that the Petitioner's team submitted the winning bid, there is no mention of a prize or award given to the group or to individual members of the team.

As for the Petitioner's title of "Autodesk Expert Elite," this is evidenced by a certificate stating that it was bestowed "to acknowledge [the Petitioner's] contributions to the global Autodesk community." The certificate goes on to state that it recognizes those "who have made great contributions with helping customers by sharing knowledge, providing community leadership, and exemplifying an engaging style of collaboration..." A letter dated October 6, 2014 includes similar language, welcoming the Petitioner to the Expert Elite program and noting that it recognizes "a select group of our customers for their leadership and contributions made in the Autodesk customer support communities." Although the certificate can be considered evidence of an award, neither it nor the letter indicate that the Petitioner was awarded for excellence in the field of urban and regional planning. Rather, the evidence shows that the Petitioner was recognized for contributing, as a customer and user of a software product, to helping other customers. The Petitioner's assertion on appeal that, because Autodesk software is used by those engaged in the Petitioner's field, the Expert Elite certificate recognizes experts in that field, is not supported by the evidence of record.

For the reasons discussed above, the Petitioner has not established that he has received a prize or award for excellence in his field of endeavor. We therefore need not consider his assertions on appeal regarding the national or international recognition of either of his claimed awards, and we conclude that he does not meet 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)

In order to meet this criterion, a petitioner must establish that they are a member of associations in their field of endeavor, that the associations require outstanding achievements of their members, and that that determination is made by recognized national or international experts in their fields.

The Director determined that the Petitioner's memberships in the National Association for Research and Education in Transportation (ANPET) in Brazil and the American Planning Association (APA) did not qualify under this criterion, as the materials submitted did not demonstrate that these associations require outstanding achievements as a condition for membership. On appeal, the Petitioner points out that he has served as a peer reviewer for ANPET conferences, and refers to letter from the association's president. That letter acknowledges his service, and states that acting as a peer reviewer is "recognized by the academic community for the specific knowledge necessary for the development of the position." This is an acknowledgment that the role of a peer reviewer requires a certain level of expertise, not that the Petitioner's level of membership in ANPET requires outstanding achievements. While the bylaws of this association indicate that individual partners such as the Petitioner may apply for membership, and that application is reviewed by an executive board, there is no mention of any outstanding achievements required.

Regarding the APA, the Petitioner does not challenge the Director's determination that it does not require outstanding achievements as a requirement for membership, stating only that it is "a prestigious organization dedicated to the urban planning sector in the United States." Therefore, the Petitioner has not established that his memberships in either of these professional associations meet the requirements of this criterion.

The Petitioner also renews his claim that his participation in the Autodesk Expert Elite program qualifies under this criterion, as do his memberships in governmental, university, and union committees. But the evidence does not show that the Autodesk Expert Elite program is an "association," or even if it is that it is an association in the field of urban and regional planning. Similarly, even if we were to consider the various committees to which the Petitioner was appointed as associations, on appeal the Petitioner does not point to evidence in the record showing that they require outstanding achievements of their members, nor has our review found such evidence. Accordingly, the Petitioner has not established that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

To meet this criterion, a petitioner must establish that material has been published about them and their work in the field of endeavor, and that the medium in which the material was published was a professional or major trade publication or other major medium. In his appeal brief, the Petitioner asserts that the record includes six examples of published materials meeting these requirements.

Several of the materials include either a mention of the Petitioner's name and/or a brief quotation from him discussing an aspect of urban planning or transportation. For example, an article about motorcycle accidents in Brazil's [redacted] published on the website of *Correio Braziliense*, mentions the Petitioner and provides a brief analysis of the problem which it attributes to him. But this does not represent a substantial discussion of the Petitioner's work as an urban and regional planner. See generally 6 USCIS Policy Manual F.2(B)(1), www.uscis.gov/policy-manual. The same is true of an article posted to a blog site which also briefly quotes him, and an article in *CREA-BA Magazine* which mentions the Petitioner as part of team which will lead a restoration project in the city of [redacted] Brazil. See *Noroozi v. Napolitano*, 905 F.Supp.2d 535 (2012) (articles about the Iranian Table Tennis Team which only briefly mentioned the person were not about him.)

Two of the published materials in the record are about the Petitioner and his work in the field of urban and regional planning. These are an article about new board members for the school of architecture and urbanism at the [redacted] posted to the institution's website, and an article about planning and transportation issues in [redacted] on the website of Agencia Brazil. However, while the Petitioner asserts that both of these websites are qualifying media, the record does not support these assertions. In his appeal brief, he provides information about the entities on whose websites these articles appear, and provides links to other websites in support of this information. But as we noted above, it is the Petitioner that bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Chawathe*, 25 I&N Dec. at 375-76. Here, the record does not include documentary evidence to show that the websites that published the articles are professional or major trade publications or other major media. While it does include information about the educational ranking of the [redacted] by a third party, this evidence does not show that its website has as its intended audience professionals in the Petitioner's field or has sufficient viewership relative to other websites to be qualify as a "major" medium. See generally 6 USCIS Policy Manual F.2(B)(1), www.uscis.gov/policy-manual. Further, even if we were to consider information on the websites regarding [redacted] via the addresses provided, those addresses link to materials in the Portuguese language.

As the Petitioner has not demonstrated that the submitted published material is both about him and his work and appeared in one of the qualifying types of media, we conclude that he does not meet this criterion.

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 this criterion, a petitioner must establish that not only have they made original contributions, but that the contributions have been of major significance in the field. For example, a petitioner may show that the 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. See *Visinscaia*, 4 F. Supp. 3d at 134-35.

The Director concluded that while the evidence, including published papers, technical reports, and acknowledgments of his work on projects, shows that the Petitioner has been active in his field, it does not establish that his contributions have been of major significance in the field of urban and regional

planning. On appeal, the Petitioner initially focuses on his record of articles published in scientific journals and presentations at scientific conferences, as well the number of times his research has been cited by others in his field. In particular, the Petitioner's counsel counters what she terms as the Director's "assertion" regarding the significance of the number of citations with one of her own, stating that the "volume and depth of these citations is remarkable and unequivocally attest to [the Petitioner's] extraordinary contributions in the field." But counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Further, this criterion focuses on the significance of individual original contributions made by a petitioner, not the significance of their overall body of work. The record lacks evidence showing that the number of citations to a particular paper, or group of papers and presentations stemming from the same research project, shows that that paper or research has remarkably impacted the work of other researchers in the field.

The Petitioner next focuses on the impact his doctoral dissertation has had on the field of urban and regional planning in Brazil, as shown by its citation or reference in planning documents and supported by reference letters from those who supervised or worked with him on the implementation of this work. One of the letters was written by Mr. D-, who notes that that the Petitioner has collaborated with his research group for over 20 years. Mr. D- states that the Petitioner's doctoral thesis "has the potential to inform policy making, computational modelling, and information systems design," and has "served as a foundation for reviewing, building, and upgrading transport engineering bachelor courses." Similarly, a letter from Dr. Y-, who describes herself as the Petitioner's "MSc advisor, employer, project manager, R&D project partner, and colleague," states that the Petitioner's "Integrated Planning Model, theory, and methodology of indicator development have changed how we approach planning on multiple levels." She also writes that the his Ph.D. dissertation "has been a key piece of work in the academic systematization of knowledge related to transport research."

While both of these letters were written by experts in the field who have worked closely with the Petitioner through much of his career, the supporting evidence in the record suggests that they overstate the significance of the Petitioner's original contributions. Regarding his academic contributions in the area of transport research, the Petitioner submitted pages of a document titled [REDACTED]

[REDACTED] Other than the title page and index, the evidence consists only of certain pages from an appendix titled "Syllabus and Bibliographies of the Disciplines of the Course of Transportation Engineering/UFG." This syllabus shows that the Petitioner's dissertation and two other papers are listed in the bibliography for "Discipline No. 36: Theory and Technique of Integrated Planning in Transportation," which appears to be a part of a compulsory course in the program. Under elective courses, "Discipline No. 93: Special Topics 2" also lists the Petitioner's dissertation, as well as another paper he authored, in the bibliography. While this evidence shows that the Petitioner's dissertation has had some influence in adding to the content of the undergraduate program in transportation engineering at a university in Brazil, this does not demonstrate that this work was a key or foundational piece in the widespread teaching in this field.

The evidence regarding the impact of the Petitioner's work on an integrated planning model for transportation and the development of transportation indicators, discussed in the above reference letters and others written by experts who have worked with the Petitioner, consists of pages from several government reports. This includes the [REDACTED] from the Brazilian Ministry of

Transport, Ports and Civil Aviation, which includes a citation to the Petitioner's dissertation, among papers from other researchers, when discussing planning objectives. Another document concerning transportation planning from the [redacted] cites to three of the Petitioner's papers five times in its opening section when broadly discussing the goals and methodology of transportation planning. And the [redacted] from the same agency cites the Petitioner's work as one of several bases of the methodology it employs. This evidence shows that the Petitioner's original contributions have been of some significance, as they have influenced policy in the area of transportation planning at the national level. However, it does not establish that his work has been of major significance in the broader field of urban and regional planning beyond the borders of his own country. In addition, we note that the reference letters, while generous in their praise of the Petitioner's skills and accomplishments, were written solely by those who have taught, supervised, or collaborated with the Petitioner, and thus do not evidence the influence of his work beyond this group.

For all of the reasons discussed above, we conclude that the Petitioner has not established that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner bases his claim to meeting this criterion on his authorship of journal articles, book chapters, and conference presentations. In his decision, the Director determined that while the evidence shows that the Petitioner has authored scholarly articles, it does not establish that the journals and books in which those articles and chapters were published were professional or major trade publications or other major media. To determine whether a publication qualifies as a professional publication, we consider the intended audience of the publication among other factors. *See generally* 6 USCIS Policy Manual F.2(B)(1), www.uscis.gov/policy-manual. Here, the evidence shows that the Petitioner's work was published in scientific journals such as *Journal of Transport Geography* and *Transportes*, as well as in the proceedings of international scientific conferences such as the *World Conference on Transportation Research*. Because these publications are intended for researchers and professionals in the Petitioner's field, we withdraw the Director's determination regarding this criterion and conclude that he has met its requirements.

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

In order to meet this criterion, a petitioner must establish that their work has been displayed at an exhibition or showcase, and that the exhibition or showcase was artistic in nature. The Director concluded that, in this case, the Petitioner had not established that his work was displayed, or that the conferences and symposiums were artistic in nature.

On appeal, the Petitioner first asserts that the fact that articles he authored were published in the proceedings of conferences establishes that his work was displayed at those conferences. We agree, and withdraw that portion of the Director's conclusion.

Next, the Petitioner refers to the regulation at 8 C.F.R. § 204.5(h)(4), which allows for comparable evidence to be submitted if the criteria do not readily apply to a petitioner's occupation. The Petitioner

asserts that since this criterion applies only to artistic fields, USCIS has “already recognized” that the display of work at scholarly exhibitions is comparable to the type of evidence required under this criterion.

However, the Petitioner’s assertion does not recognize that the burden of proof remains with him to show, by a preponderance of the evidence, both that this criterion does not apply to his occupation and that the evidence he has submitted is comparable to the type of evidence called for under this criterion. An unsupported assertion that an evidentiary criterion does not apply to a petitioner’s occupation is not probative. *See generally 6 USCIS Policy Manual F.2(B)(1)*, www.uscis.gov/policy-manual. The Petitioner provides no basis for his statement that USCIS has already determined that scholarly conferences are comparable to artistic exhibitions or showcases.¹ As the Petitioner has not established that his work has been displayed at artistic exhibitions or showcases, or that this criterion does not apply to his occupation and the evidence he has submitted is comparable, he has not demonstrated that he meets this criterion.

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)

The Director determined in their decision that the Petitioner’s role as dean of the Faculty of Architecture and Urbanism at the [redacted] was a leading role. While we agree that the record sufficiently shows that this was a leading role, it does not show that it was leading for the overall university, but only for the Faculty of Architecture and Urbanism.² The Director ultimately concluded that the Petitioner does not meet this criterion, as he did not submit evidence to show that the university has a distinguished reputation. Because we partially withdraw the Director’s conclusion regarding this criterion, we will review this second element as it pertains to the Faculty of Architecture and Urbanism.

On appeal, the Petitioner references information from Times Higher Education regarding the ranking of the [redacted] and provides the internet address of that organization’s homepage. Again, it is the Petitioner’s burden to produce evidence to establish that he meets this criterion by a preponderance of the evidence, and he has not done so here. Other evidence regarding the ranking of the [redacted] is submitted for the first time on appeal, but as we noted above, since the Director specifically requested such evidence and provided the Petitioner with an opportunity to respond, it will not be considered. In addition, we note that even if we were to consider it, this new evidence relates to the ranking of the overall university, and does not address the reputation of the Faculty of Architecture and Urbanism. The Petitioner has therefore not established that this department of the [redacted] has a distinguished reputation.

¹ We note that the Petitioner references USCIS Policy Memorandum 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, in making this assertion. But this memorandum makes no such statement. In addition, the update to the AFM sections included with this memorandum have since been incorporated into the USCIS Policy Manual and revised. The relevant section of the USCIS Policy Manual also does not support this assertion. www.uscis.gov/policy-manual.

² The university’s website indicates that the Faculty of Architecture and Urbanism is one of fourteen colleges and schools, and the evidence does not show that the Petitioner had any leadership authority at the overall university level. [https://\[redacted\]](https://[redacted])

Another organization for which the Petitioner claims to have held a leading or critical role include the

[REDACTED]
where he served as a project manager and worked on the development of planning methodology using outcome indicators. As evidence of his role for this organization, he refers to two of the reference letters in the record. Mr. Z-, who states that he was the Director of the Development and Logistics Department of the [REDACTED] when he met the Petitioner in 2005, describes the indicator project that the Petitioner began in 2010. He states that the Petitioner “met all project goals using outstanding planning skills and strong leadership qualities,” and that he achieved “relevant results within the scheduled deadlines.” Dr. Y-, who was the Petitioner’s supervisor during this project, confirms his role as project manager for the indicator system project with the [REDACTED]. While these letters, and other evidence in the record, confirm his employment in this role and that it was leading in terms of the project, they do not sufficiently describe how it was leading or critical for the [REDACTED].

Other roles held by the Petitioner which he asserts meet this criterion include his membership on the [REDACTED] and his role as a technical coordinator for on projects for the Brazilian government. However, the evidence supporting these roles is insufficient to show how he played a leading or critical role on these projects, as they do not provide any details about his leadership of the projects or how his role was critical. More importantly, as with the project discussed above, the Petitioner has not explained how his leadership of a project is leading or critical for the overall organization or establishment under whose authority the project was conducted. Also, he has not established that the projects themselves can be considered to be organizations or establishments, or if they are that the individual projects themselves have distinguished reputations.

For all of the reasons discussed above, the Petitioner has not established 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)

To meet this criterion, a petitioner must demonstrate their receipt of a salary other remuneration through documentary evidence, and they must establish that in comparison to the salary or remuneration of others in their field, that salary or remuneration was high or significantly high, respectively.

Here, the Petitioner submitted tax evidence showing the gross salary he earned in the years 2019, 2020, and 2021, ranging from BRL 290,521 in 2019 to BRL 311,544 in 2020. In responding to the Director’s RFE, he also submitted from the website of Salary Explorer showing average monthly salaries in Brazil for 2023 for a variety of positions, including college dean at BRL 16,600 (BRL 199,200 on an annual basis) and faculty dean at BRL 15,600 (BRL 187,200 on an annual basis). In their decision, the Director determined that the Petitioner’s tax information was insufficient to demonstrate his salary, and that the salary data pertained to urban planners and city planners. While we withdraw those aspects of the Director’s decision, the Petitioner has nor established that his salary is high compared to others in his field.

The salaries earned by the Petitioner are significantly higher than those reported in the salary data provided. However, there are several issues with the salary data that make it less probative as a basis for comparison to the salaries of others in the Petitioner’s field. First, these are only average salaries,

and as such do not provide a clear picture of the range of salaries earned by other deans in Brazil. Second, the average salaries provided consider positions across Brazil, and thus do not reflect any regional differences that may make salaries in the Petitioner's location higher. Third, the information from Salary Explorer does not indicate whether the "13th salary" is included in these figures, which is listed on the Petitioner's tax forms. Finally, the evidence provides no information on the source of the data provided. All of these factors lower the reliability of this evidence as an accurate source of comparative salary information. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

We also note in addition to his duties as college dean, the Petitioner was also serving as the editor of [redacted] a scientific journal published by the Department of Architecture and Urbanism at the [redacted]. The evidence does not indicate whether this and other duties the Petitioner held beyond his role as a dean accounted for additional salary. Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. Rather, the petitioner must submit documentary evidence of the earnings of those in his/her occupation performing similar work at the top level of the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also 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). We note that in *Matter of Racine*, 1995 WL 153319 at *1, *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Because of the deficiencies in the salary evidence provided, the Petitioner has not demonstrated that his salary is high when compared to others in his field who are similarly situated. We note that the Petitioner submitted new evidence on appeal, including additional salary surveys regarding the position of college dean in Brazil. As previously stated, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Soriano*, 19 I&N Dec. 764; *Obaighena*, 19 I&N Dec. 533. Further, we note that this new evidence has many of the same deficiencies as the evidence submitted in response to the Director's RFE. Accordingly, we conclude that the Petitioner has not established that he meets this criterion.

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 have reviewed the entire record and conclude that it does not establish that the Petitioner has 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 those 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. *Price*, 20 I&N Dec. at 954. 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 that he is one of the small percentage who have 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).

ORDER: The appeal is dismissed.