



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

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

In Re: 22678750

Date: OCT. 28, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a solution director, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose entry into the United States will substantially benefit prospectively the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement, that is, a major, internationally recognized award. If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles.

Where a petitioner meets the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, we then consider the totality of the material provided in a final merits

determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner states that he “is a world-renowned expert in developing and designing computer algorithms in [redacted] supply chain manufacturing processes.” In the past, the Petitioner has worked as an advisory consultant for [redacted] a business IT lead for [redacted] a manager of technology consulting advisory services for [redacted] and a senior product manager for [redacted]. Since 2018, the Petitioner has worked as a solution director for [redacted] in [redacted] New Jersey.

Because the Petitioner has not indicated or shown 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 Petitioner initially claimed to have satisfied four of these criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met two of the criteria, pertaining to judging the work of others and leading or critical roles. On appeal, the Petitioner asserts that he also meets the criterion pertaining to original contributions of major significance. The Petitioner does not contest the Director’s conclusions regarding authorship of scholarly articles, and therefore he has waived appeal on that issue.<sup>1</sup>

Upon review of the record, we conclude that the Petitioner has satisfied only one criterion, relating to participation as a judge of the work of others. We will discuss the other claimed criteria below.

*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).

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<sup>1</sup> *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal to the AAO).

In the denial notice, the Director concluded that the Petitioner's work has been lucrative for his employers and "useful to the [client] companies," but that the Petitioner had not shown "the major significance of the products or the widespread impact that the products have had on the field as a whole."

On appeal, the Petitioner quotes from previously submitted letters and asserts that he has met his burden of proof. We will discuss examples of the submitted evidence below.

The Petitioner devoted a substantial portion of his initial statement to this criterion, mostly relating to his "Original Scientific contributions in manufacturing engineering and supply chain automation for [redacted] and medical device and diagnostic business." The Petitioner also submitted thousands of pages of technical documentation. This evidence shows the work that the Petitioner has performed, but such documentation is not evidence of its own significance. The Petitioner asserted that he developed several projects that contributed to [redacted] "great commercial success," but the regulatory standard requires evidence of major significance in the field. The Petitioner has not established that "great commercial success" for his employer amounts to major significance in the field.

The Petitioner submitted several letters from [redacted] officials and others. Many of these letters, like the Petitioner's own statement, provide technical details about specific projects and assert *that* the Petitioner's work has major significance, without explaining *how* his contributions benefit the field as a whole, rather than individual employers or customers.

For example, a vice president at [redacted] who previously worked with the Petitioner at [redacted] and [redacted] stated that the Petitioner's work at [redacted] "will help to transform [redacted] companies to adopt Smart Manufacturing, Adaptive Plant and Digital Twins. This solution will have revolutionary impact [on the] [redacted] industry" and "will help the [redacted] industry to become resilient to any disruption." However, as phrased it appears that these products are still under development, and the letter discusses the *potential* future impact of the Petitioner's work rather than showing that such work is already a contribution of major significance.

A director of [redacted] stated that the Petitioner developed a [redacted] that "helps companies to deal with constantly changing prices of commodities have a real impact on bottom line [*sic*] and shift Global manufacturing and procurement to favorable markets." The same individual states that the Petitioner's "work are [*sic*] being used as reference template [*sic*] for supply chain integration." These assertions do not indicate the extent to which the Petitioner's products are used in the field, or the significance of their impact.

At the outset, we note some aspects that call into question some of the letters submitted. Where an opinion is in any way questionable, we may reject or give less weight to that evidence. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Letters attributed to different people contain identical wording. For example, two letters attributed to current or former officials at [redacted] contain the following nearly-identical passages (note: grammatical errors and unnecessary capitalizations have not been corrected):

[The Petitioner] has performed exceptionally well during his tenure of work in Product Development and clinical trial team. He has worked in 3 projects as follows:

1. Stability Study: [redacted] stability study and continuous validation and verification process is very critical and complex. The slightest variation of any stability parameter may have adverse impact on patient's life. He played a very critical role as subject matter expert and crafted all technical specification and validation scripts to ensures hundred percent compliance and accountability as per Q1A(R2) Stability Testing of New [redacted] and Products. [The Petitioner's] knowledge [redacted] management and [redacted] management helped in integration stability study with downstream logistics Supply chain processes.

[The Petitioner's] contribution was phenomenal during his tenure of work in Product Development and clinical trial team. He has worked and already in 3 projects as follows:

1. Stability Study: [redacted] stability study and continues validation and verification process is very critical and complex. The slightest variation of any stability parameter may have direct impact on patient. He played a very critical role as subject matter expert and crafted all technical specs and validation scripts to ensures hundred percent compliance and accountability as per Q1A(R2) Stability Testing of New [redacted] and Products. [The Petitioner's] knowledge [redacted] management and [redacted] management helped in integration stability study with downstream logistics Supply chain processes.

Two other letters attributed to current or former officials of [redacted] Clinical Diagnostics are, for the most part, nearly identical to one another.<sup>2</sup> The nearly identical language in the letters “suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters’ content.” *See Hamal v. U.S. Dep’t of Homeland Security*, No. 19-2534, slip op. at 8, n.3 (D.D.C. June 8, 2021).<sup>3</sup>

In a request for evidence (RFE), the Director stated that the Petitioner had not shown his contributions to be significant beyond his employers and their clients. The Director requested “[o]bjective, documentary evidence of the [Petitioner]’s contribution to the field.”

In response, the Petitioner stated that “each of the letters provided by [the Petitioner] went into great and specific detail about his contributions and how they improved the chances of wastage of expensive [redacted] raw materials that was [*sic*] instrumental in providing [redacted] to the patients at a

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<sup>2</sup> The letters are not only identical with regard to technical details but even in statements such as “Beyond that, as an ex-colleague, I have to say that his sense of humor and good nature make long nights and tough deadlines much easier.”

<sup>3</sup> Another shared characteristic of many of the letters is an unusually high number of grammatical errors and anomalous capitalizations, such as those seen in the examples quoted above.

reasonable cost.” The letters indicate that the Petitioner made useful contributions relating to the [redacted] supply chain, but in the absence of other documentation he has not shown the major significance of those contributions.

New letters, from some of the same individuals who signed earlier letters, include the assertion that the Petitioner optimized supply chain processes in a way that reduced waste and saved clients millions of dollars. While the letters and accompanying documents provide some technical details, they lack context to show that the Petitioner’s efforts have been not only useful for clients and profitable for his employers, but of major significance in the field. An official of [redacted] asserts that the Petitioner’s work “is a gift to the whole industry” that have “impacted the industry at large,” but the record does not show that the Petitioner’s work has “provoked widespread commentary” within the industry. *See 6 USCIS Policy Manual F.2 appendix*, <https://www.uscis.gov/policymanual>. The Petitioner bears the burden of proof to substantiate claims of this nature.

In addition to new letters, the Petitioner cited contracts and licenses as “objective and documentary evidence that the solutions developed by [the Petitioner] are original contribution[s] of major significance in the field.” Those documents show that the Petitioner’s work has been of use to customers, but the Petitioner has not established that such licenses and contracts are only seen in the [redacted] industry with respect to original contributions of major significance. Letters indicate that some of the Petitioner’s work is now proprietary for individual clients, which is not readily consistent with claims that his work has resulted in industry-wide improvements or savings.

The record indicates that the Petitioner has performed work for high-profile clients, but the Petitioner has not met his burden of proof to establish that his original contributions on behalf of those clients are of major significance in the field, recognized beyond those who have taught, employed, or worked with him. The Petitioner has described his work in dense technical detail, but implementation of his work, even by major manufacturers, does not inherently indicate major significance; the Petitioner has not established that his contributions to the pharmaceutical industry have major significance.

*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 concluded, without further comment, that the Petitioner had satisfied this criterion. As explained below, we disagree.

For a leading role, we 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. For a critical role, we 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 or establishment. *6 USCIS Policy Manual, supra*, at F.2 appendix.

Second, we determine 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. 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. Merriam-Webster's online dictionary defines distinguished as marked by eminence, distinction, or excellence or befitting an eminent person.<sup>4</sup> *Id.*

The Petitioner claimed that he meets this criterion through "Speaker Engagements and Invitations as [an] Expert," and through his work for his current employer. The speaking engagements described in the record were one-time engagements, such as a lecture at a "department technical fest" at the [redacted] Institute of Engineering Science and Technology and a monthly meeting of a local chapter of the Project Management Institute. The Petitioner did not establish that these short-term guest engagements amounted to leading or critical roles for the hosting organizations. Individual events such as conventions are not, themselves, organizations or establishments.

Regarding his work for his employer, the Petitioner stated that his "important and indispensable" work as architect of [redacted] products "has directly impacted [redacted] [sic] revenue growth by 8%." Company officials attested to the Petitioner's critical role with the company.

But the Petitioner has not established [redacted] distinguished reputation. The company's chief executive officer stated: "Our innovation has been recognized by respected external analysts such as [redacted] who named us a [redacted] in 2019. We have also been featured as a thought leader in *Silicon Review* and *Manufacturing Technology Insights* magazine."

The Petitioner submitted a report from [redacted] entitled [redacted] [redacted] The report names [redacted] as one of "four vendors [that] offer a diverse range of value propositions that make impacts across different industries and domains across the supply chain." Every page of the printout is marked: "This research note is restricted to the personal use of [redacted] chief executive officer. These proprietary markings appear to indicate that the report is not widely circulated or available to the public. The Petitioner has not demonstrated that [redacted] inclusion in this report indicates a distinguished reputation.

[redacted] was the subject of a cover story in *The Silicon Review* and named a [redacted] [redacted] by *Manufacturing Technology Insights*, as one of "10 companies that are at the forefront of providing Smart Factory solutions and impacting the industry," but the record does not shed further light on these publications, their own reputations, or the manner in which [redacted] was selected for inclusion. The Petitioner did not provide background evidence about *The Silicon Review* and *Manufacturing Technology Insights* to establish the significance of the coverage and recognition described above. As a result, the Petitioner has not established that those entities engage in objective journalism rather than promotion and marketing. The *Silicon Review* story, published without a byline, appears to be promotional in nature. The image of what appears to be an undated magazine cover includes the legend [redacted] This phrase could be either a headline or an advertising slogan.

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<sup>4</sup> See <https://www.merriam-webster.com/dictionary/distinguished>.

The Petitioner submitted an IRS Form 6765, Credit for Increasing Research Activities, filed with the company's 2020 income tax return. The Petitioner states that this document shows that [redacted] has been recognized as a research-based company qualified for R&D tax credit." The Petitioner does not explain how this tax credit is evidence of a distinguished reputation, rather than a reflection that the company engages in research and development.

In response to the RFE, the Petitioner asserted that he had also performed in leading and critical roles for [redacted] and [redacted]. The Petitioner cites a newly-submitted letter and previously submitted documents, such as performance awards. The Petitioner asserts, for instance, that his "techno-functional specification documents . . . establish that he indeed played a significant role in developing the solutions which were implemented by [redacted] clients at a large scale in their plants across the world."

The materials establish that the Petitioner helped individual projects come to successful completion, but these projects were not, themselves, divisions or departments of [redacted] or [redacted].

The Petitioner has not met his burden of proof to satisfy the requirements of 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 lesser 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 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 for individuals progressing toward the top. U.S. Citizenship and Immigration Services 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 recognition of his work is indicative of the required sustained national or international acclaim or demonstrates 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 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 Petitioner's reputation appears to be largely confined to his employers and collaborators.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.