



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

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

In Re: 23078392

Date: FEB. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a senior director, seeks classification as an individual of extraordinary ability in business. 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 record did not establish the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). 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.

I. LAW

Section 203(b)(1) 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 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 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

A. Evidentiary Criteria

Because 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). While we do not discuss each piece of evidence individually, we have reviewed and considered each one. The Petitioner claimed he met six criteria, summarized below:

- (iii), Published material about the foreign national in professional or major media;
- (v), Original contributions of major significance in the field;
- (vi), Authorship of scholarly articles in major media;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments;
- (ix), High salary or remuneration for services

The Director found the Petitioner met the criteria relating to authorship of scholarly articles and performing in a leading or critical role, but that he had not satisfied the criteria associated with published material about the foreign national, original contributions of major significance, display at artistic exhibitions or showcases, and high salary or remuneration. On appeal, the Petitioner asserts that he meets each of the criteria in which the Director found in the negative. We agree with the Director that the Petitioner satisfied the leading or critical role and the authorship of scholarly articles criteria. Additionally, we conclude that the Petitioner has also satisfied the high salary or remuneration 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).

In order to meet this criterion, a petitioner must demonstrate that his salary or remuneration is high relative to the compensation paid to others working in the field.¹ The Petitioner provided his 2020 W-2 statement showing that he earned \$494,749. On the Form I-140A, the Petitioner describes his position as “[w]orks with companies on political & economic risk and market access overseas and assists with high-level commercial and political negotiations.” The Petitioner’s employer further described the Petitioner’s work as “advising U.S. companies with investments in [Mexico and . . . to help them navigate sensitive cultural issues and assess risk in changing economic and political frameworks.” His employer also stated that the Petitioner offers the media “commentary on matters related to and its commercial and diplomatic relations or with respect to the US-Mexico bilateral relationship and the complex issues it encompasses.”

The U.S. Department of Labor’s (DOL) Occupational Outlook Handbook (Handbook) states that economists “evaluate economic issues for resources, goods, and services . . . [r]esearch in economic issues . . . [i]nterpret and forecast market trends . . . [r]ecommend solutions to economic problems . . . [and] [w]rite for academic journals or other media.”² The Handbook also states that:

Economists working for corporations help managers and decisionmakers understand how the economy will affect their business. Specifically, economists may analyze issues . . . to help a company maximize its profits . . . Economists also work for international organizations, research firms, and think tanks, where they study and analyze a variety of economic issues. Their analyses and forecasts are frequently published in newspapers and journals.

Based on the evidence provided, we agree that the Petitioner’s position can be accurately described as an “economist.”³ The record demonstrates that the Petitioner also has relevant experience in trade, politics, foreign policy, and diplomacy; however, this additional experience does not detract from or lessen his role as an economist at a private international organization. We conclude that the Petitioner provided sufficient evidence and analysis to support a finding that his position most closely approximates an “economist.”

The Petitioner provided evidence that his earnings were more than three times the amount of a Level IV economist’s wage in the Petitioner’s geographical area for the year 2020.⁴ Therefore, we conclude

¹ See generally USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

² The Handbook is an informative source on the duties and educational requirements of the wide variety of occupations. The Bureau of Labor Statistics, U.S. Dep’t of Labor, Occupational Outlook Handbook, may be accessed at <https://www.bls.gov>. We do not, however, maintain that the Handbook is the exclusive source of relevant information.

³ In addition to “economist,” the Petitioner’s position also appears to have overlap with the Handbook occupation of “political scientist.” However, the DOL’s Foreign Labor Certification Online Wage Library reflects that the higher prevailing wage in the Petitioner’s geographical area corresponds to the “economist” occupation. For more information, visit <https://flcdatacenter.com/OESWizardStart.aspx>.

⁴ A wage determination starts with an entry-level wage (Level I) and progresses to a higher wage level (up to Level IV) after considering the experience, education, and skill requirements of the job opportunity. U.S. Dep’t of Labor, Emp’t & Training Admin., Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

that by a preponderance of the evidence, the Petitioner has established he meets the basic parameters of the evidence applicable to this criterion.⁵ As the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary that we discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)–(x).

B. Final Merits Determination

The Petitioner has submitted the requisite initial evidence. Accordingly, we will evaluate whether he has demonstrated, by a preponderance of the evidence, that he sustained national or international acclaim, is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor.⁶ In this matter, we determine that the Petitioner has sufficiently shown his eligibility.

The Petitioner earned a bachelor's degree in foreign service from [redacted] University and a master's degree in public policy from [redacted] University. He served as Mexico's [redacted] [redacted] for six years and prior to that, as Mexico's Consul General in [redacted] Texas. The record reflects various media, such as The New Yorker and The Wall Street Journal, have consulted him for his perspective on trade and politics between the United States, Mexico, and [redacted]. The Petitioner provided testimonial letters from Mexico's former president, Felipe Calderon, a former Secretary of Foreign Affairs, and multiple retired high-ranking U.S. diplomats. The authors of the letters provided sufficient detail concerning his knowledge, experience, reputation, and skill in the field. They highlighted the success of various trade deals executed between [redacted] and Mexico during the Petitioner's tenure as Mexico's [redacted] and attributed these successful outcomes to the Petitioner's expertise. The Petitioner published articles concerning foreign policy, politics, and trade in media such as The Atlantic, Politico, and Foreign Policy Magazine, as well as a chapter in a book the Brookings Institute published. The evidence further reflects that the Petitioner spoke at conferences and events for well reputed organizations and universities.

His employer describes him as a "highly esteemed authority on trade and diplomacy" and explained that he has "profound understanding of [redacted] foreign policy and trade relationships with the United States." His employer wrote that:

[O]ur firm was able to secure important contracts with major [redacted] multinational corporations. He has provided their leadership with a nuanced understanding of the

⁵ The regulatory language requires that the salary must be high, or the remuneration must be significantly high in relation to others in the field. Whether the Petitioner's W-2 earnings are categorized as a straight salary or in terms of a base salary with bonuses, we conclude that the evidence supports a finding that the Petitioner earns a high salary or significantly high remuneration in relation to others in the field.

⁶ See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also Kazarian, 596 F.3d at 1119–20. See also U.S. Citizenship and Immigration Services (USCIS) Policy Memorandum PM 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 4 (Dec. 22, 2010) (Policy Memo), <https://www.uscis.gov/legal-resources/policy-memoranda> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

various cultural, regulatory, and communications challenges they face in the U.S. market and has been key in facilitating their multi-billion dollar investments in the logistics and tourism sectors in the United States, including in a Fortune 500 company.

Accordingly, the evidence supports a finding that the Petitioner's personal and professional achievements rise to the level of a "career of acclaimed work in the field" as contemplated by Congress.⁷ Considering the Petitioner's ability and achievements, the level of his national and international acclaim, and the extent to which his achievements have been recognized in the field, the record reflects that he has attained a level of expertise placing him among that small percentage that has risen to the very top of the field of endeavor. In addition, the totality of the evidence reflects that the Petitioner has sustained acclaim for many years and across employment in multiple positions.

III. CONCLUSION

The Petitioner established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). He also demonstrated his sustained national and international acclaim and that his achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that he intends to continue working in his area of expertise and that his work will substantially benefit prospectively the United States. The Petitioner therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.

⁷ H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).