



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

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

In Re: 22652791

Date: JAN. 3, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physician, 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 Petitioner did not establish that he received a one-time achievement or that he satisfied at least three of the initial evidentiary criteria. On appeal, the Petitioner submits a brief and contends that the Director incorrectly concluded that the Petitioner does not meet the high level of expertise required for this classification.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *See* Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See 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) 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

The Petitioner is a physician specializing in [redacted] medicine [redacted] medicine, and [redacted] [redacted] and previously worked for the [redacted] Hospital. The Petitioner has not indicated that he received a major, internationally recognized award. Therefore, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied six of these criteria, relating to membership in associations, judging, original scientific contributions of major significance, authorship of scholarly articles, a leading or critical role, and a high salary.

The Director concluded that the Petitioner met only two criteria, relating to authorship of scholarly articles and judging. On appeal, the Petitioner asserts that he meets three other claimed criteria, relating to a leading or critical role, membership in associations, and a high salary. Upon review of the record, we agree with the Director on the scholarly article and judging but conclude that the Petitioner has not satisfied the other claimed criteria.

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).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership.

The Petitioner contends that he satisfies this criterion based on being approved for the fellowship of the Academy of Physicians in Clinical Research (APCR). The Petitioner submitted a letter from the [redacted] of the APCR, which states that fellowship of the APCR is reserved for the APCR members who have demonstrated their commitment to the organization, achievements as researchers, and leadership in the field of clinical research. The letter indicates that accepted criteria includes: (1) academic degree in clinical research or medicines development; (2) clinical research training certificates; (3) other advanced degrees and the American Board of Medical Specialties Board Certification; (4) publications in peer reviewed journals; (5) contributions to national or international conferences; (6) leadership in professional association related to clinical research; (7) participation in phase I-IV clinical trials; (8) a member of a medicines development team or the Medical Director of a clinical research site; (9) fostering clinical research or medicines development in the community; (10) academic positions in clinical research; (11) work in regulatory agencies related to clinical research and medicines development; (12) awards and recognitions for contributions to clinical research; (13) innovation; and (14) membership at the APCR. The record does not reflect that the fellowship of the APCR requires outstanding achievements of its members. Instead, the fellowship of the APCR requires education, training, professional association, publications, contributions, professional experience, innovation, and membership at the APCR. Membership requirements based on employment or activity in a given field, education, professional experience, professional association, publications, participation in conferences, contributions to a given field, or payment of dues to be a member do not satisfy this criterion as such requirements do not constitute outstanding achievements.

Although the evidence in the record demonstrates the Petitioner's fellowship of the APCR and that the individuals responsible for judging the fellowship of APCR are comprised of recognized national experts consistent with this regulatory criterion, the record does not reflect that outstanding achievements are required for the fellowship of the APCR. Accordingly, the Petitioner 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).

The Director determined that the Petitioner did not establish eligibility for this criterion. On appeal, the Petitioner points out previously submitted documents to establish that he meets this criterion but does not provide additional arguments or additional documents. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal). Accordingly, the Petitioner does not meet 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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

The Petitioner claims that he has performed in a critical role for [redacted] Hospital. The Petitioner submitted a letter from a medical doctor for [redacted] Program at [redacted] Hospital, which states that the Petitioner is a leading physician who played a critical role for the hospital's success in treating patients with [redacted] diseases. The Petitioner also submitted a letter from the Director of [redacted] Services at [redacted] Hospital, which states that the Petitioner has participated in the [redacted] Steering Committee and in obtaining the [redacted] Accreditation for [redacted] Hospital. The Petitioner submitted documentary evidence from the [redacted] [redacted] Hospital website about its accreditation but did not submit any independent, objective evidence demonstrating that [redacted] Hospital has a distinguished reputation. For example, the record does not contain media coverage, evidence of significant awards, published ranking, or other sufficient evidence to establish that [redacted] Hospital has been very successful in its hospital business and has a good reputation or that [redacted] Hospital is an esteemed and renowned hospital in the United States for treating patients hospitalized with [redacted] diseases.

The Petitioner also claims that he has performed in a critical role for the Massachusetts Chapter of the American College of Physicians (ACP). The Petitioner submitted a letter from the [redacted] of the Massachusetts Chapter of the ACP, which states that the Petitioner served as the Co-Chair of the [redacted] [redacted] Committee; was involved with advocacy efforts as a member of the Health and Public Policy Committee; and was invited to represent the ACP at the [redacted] meetings to advocate in support of the [redacted] bills. The Petitioner submitted information about the ACP and the Massachusetts Chapter of the ACP from the ACP website but did not submit any independent, objective evidence demonstrating that the Massachusetts Chapter of the ACP has a distinguished reputation. For example, the Petitioner did not submit any documentary evidence that distinguishes the Massachusetts Chapter of the ACP from other highly regarded professional associations or medical-specialty societies.

Although the Petitioner demonstrated that he has performed in critical roles for [redacted] Hospital and the Massachusetts Chapter of the ACP, the Petitioner did not establish that they have a distinguished reputation. Accordingly, the Petitioner does not meet 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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires “[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.”

The Petitioner claims eligibility for this criterion based on his salary as a hospitalist at [redacted] [redacted] Hospital in [redacted] Massachusetts. The Petitioner submitted a letter from the Director of Human Resources Department of [redacted] Hospital, which confirms that the Petitioner was employed as a hospitalist and that his salary for clinical services was \$275,000 per year. The Petitioner also submitted Forms W-2 (wage and tax statements) for 2019 and 2020, which indicate that the Petitioner earned \$298,641.12 in 2019 and \$325,550.50 in 2020.

The Petitioner claims to meet this criterion based on his annual salary of \$275,000, which is more than \$37,194 above the yearly prevailing wage of physicians and surgeons in the [redacted] [redacted] Massachusetts and New Hampshire areas. The Petitioner submitted “Online Wage Library –

Foreign Labor Certification Data Center Wage Search Results” indicating that the prevailing wage for fully competent (level 4) physicians and surgeons in the [redacted] Massachusetts and New Hampshire areas was \$237,806 per year.¹ The Petitioner, however, must submit evidence showing that he has earned a high salary or other significantly high remuneration relative to others in the field, not a salary that is above the amount paid to the majority of fully competent physicians and surgeons in the [redacted] Massachusetts and New Hampshire areas.

The Petitioner also submitted salary information for general internal medicine physicians, hospitalists, and physicians in [redacted] Massachusetts, from various websites, including CareerOneStop, O*Net OnLine, Physician Compensation Report 2020, payscale, glassdoor, and salary.com. Regarding these various websites and report, these surveys measure the average statistics of general internal medicine physicians, hospitalists, or physicians in [redacted] Massachusetts. These surveys only provides average salary data for general internal medicine physicians, hospitalists, and physicians in [redacted] Massachusetts, and do not identify the high-end salaries for those performing work with similar responsibilities as the Petitioner. The plain language of the regulation requires the Petitioner to establish his salary is high when compared to others in the field. As such, average statistics do not meet this requirement.

The Petitioner compares his salary as a leading physician and the [redacted] Lead of Hospital Department at [redacted] Hospital to salaries of other physicians, surgeons, internists, and hospitalists in [redacted] Massachusetts. He did not establish that he commanded a high salary in relation to others as a leading physician and the [redacted] Lead. 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).

On appeal, the Petitioner asserts that he was not employed by [redacted] Hospital as a [redacted] or a lead physician and that the [redacted] Lead is a voluntary role that he accepted due to his experience as a physician-scientist focusing on the treatment of [redacted] in hospital settings. The Petitioner further asserts that this is not a compensated position within [redacted] Hospital and that all the salary he received during his tenure was based on his services as a hospitalist. The Petitioner submitted various documents to support the claim that he qualifies as an alien of extraordinary ability based on his roles, among other things, as a leading physician and the [redacted] Lead. Since the Petitioner claims that the [redacted] Lead is a voluntary role, which is not a compensated position within [redacted] Hospital, the record does not reflect that he has commanded a high salary for his services in relation to other leading physicians or the [redacted] Lead at other hospitals. Accordingly, the Petitioner does not meet this criterion.

¹ A “prevailing wage” is defined as “trade and public work wages paid to the majority of workers in a specific area.” *See* <http://www.businessdictionary.com/definition/prevailing-wage.html>, copy incorporated into the record of proceeding.

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 finding 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 shown that he is a talented and accomplished physician specializing in [] medicine, [] medicine, and [] but the record as a whole does not demonstrate a level of recognition that indicates 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 has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the reasons stated above.

ORDER: The appeal is dismissed.