



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

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

In Re: 35932700

Date: FEB. 13, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a senior security engineer, 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 Nebraska Service Center denied the petition, concluding the Petitioner did not satisfy at least three of the initial evidentiary criteria. The Director dismissed a subsequently filed motion.¹ 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

¹ The Petitioner incorrectly asserts that we dismissed his motion throughout his brief. The record reflects that the Director, the official who had jurisdiction, issued both the initial and motion decisions. *See* 8 C.F.R. § 103.5(a)(1)(ii). We have jurisdiction over the appeal and will review the record for the first time on appeal. *See* 8 C.F.R. § 103.3(a)(iv).

- (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 claimed or established his receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria under 8 C.F.R. § 204.5(3)(i)-(x). The Director determined the Petitioner met only two (judging under 8 C.F.R. § 204.5(h)(3)(iv) and high salary under 8 C.F.R. § 204.5(h)(3)(ix)) of the seven claimed evidentiary criteria. On appeal, the Petitioner maintains his qualification for five additional criteria.²

A. Awards

The regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The Petitioner argues eligibility for this criterion based on his receipt of [REDACTED] in 2013. As described in a supporting letter from A-S-, co-founder of [REDACTED] Conference:

[REDACTED] is an IT security conference in multiple countries which is organized and owned by [REDACTED]. It showcases top professionals and the new frontier of offensive and defensive secure technology, prototypes, exhibitions, seminars, workshops, and networking within the cohesive IT security ecosystem.

[REDACTED] welcomes thousands of CXOs, IT security researchers, experts at major IT organizations, senior government officials, and other SMEs each year which also features national-level skill challenges, including [REDACTED] – as

² Any ground of ineligibility that is not raised on appeal is waived. *See 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)).

well as the [] competition, the particular venue of [the Petitioner's] prized technical performance in 2013.

[] challenges contestants to identify IT security vulnerabilities regarding software, or social media, or online security risks under a high-pressure time hackathon environment. This 36-hour contest also enlisted respected IT security experts to evaluate the technical complexity and significance of vulnerabilities as presented by competing teams to be awarded and recognized for their merits.

[The Petitioner] was an awarded winner of [] which in 2013 was sponsored by Red Bull, which notably profiled the rigorous 36-hour challenge, picturing [the Petitioner] and the impressive outcomes of this technical competition as determined by [] panel of experts to determine the prize winners. [The Petitioner] with his teammate . . . were awarded for uncovering a [] security vulnerability.

In addition, the Petitioner provided screenshots from redbull.com advertising [] [] 2013," screenshots from [] "recogniz[ing] the security researchers who have helped make [] online services safer by finding and reporting security vulnerabilities," and screenshots from [] listing the Petitioner as a winner of the [] 2013 as part of his speaker biography.

Although he established his receipt of the award, the Petitioner did not show [] national or international recognition for excellence in the field.³ The evidence reflects background information about the contest, including A-S-'s letter, rather than demonstrating the national or international recognition for excellence in the field of [] Moreover, while the Petitioner discovered a vulnerability with [] online services, as well as the event sponsored by Red Bull, the Petitioner did not show the recognition of the award in the field beyond [] [] Simply presenting an award garnered in the field is insufficient to meet this criterion without establishing the national or international recognition for excellence in the field of such award.

Accordingly, the Petitioner did not demonstrate he satisfies this criterion.

B. Memberships

The Petitioner claims eligibility for this criterion based on his senior membership with the Institute of Electrical and Electronics Engineers (IEEE). 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 classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as

³ See generally 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policymanual> (instructing that 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).

judged by recognized experts in that field.⁴ 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.⁵

The Petitioner presented a congratulatory letter from K-J-R-L-, IEEE president, indicating that “[o]nly 10% of IEEE’s more than 400,000 members hold this grade, which requires extensive experience, and reflects professional maturity and documented achievements of significance.” According to the submitted constitution and bylaws, senior membership requires: 1) candidates shall be engineers, scientists, educators, technical executives, or originators in IEEE-designated fields, 2) candidates shall have been in professional practice for at least ten years, 3) candidates shall have shown significant performance over a period of at least five of those years, and 4) candidates must supply three references from current IEEE members holding the grade of Fellow, Senior Member, or Honorary Member. In further explaining five years of significant performance, the constitution and bylaws indicate:

“Significant performance” does not require special awards, patents, or other sophisticated technical accomplishment. Indications of significant performance are substantial job responsibilities such as team leader, task supervisor, engineer in charge of a program or project; engineer or scientist performing research with some measure of success (papers); or faculty developing and teaching courses with research and publications, as well as the following:

- Substantial engineering, responsibility or achievement.
- Publication or engineering or scientific papers, books, or inventions.
- Technical direction or management of important scientific or engineering work with evidence of accomplishment.
- Recognized contributions to the welfare of the scientific or engineering profession.
- Development or furtherance of important scientific or engineering courses that fall within the IEEE designated fields of interest.
- Contributions equivalent to those of the above in such areas as technical editing, patent prosecution or patent law, provided these contributions serve to advance progress substantially in IEEE designated fields.

The Petitioner has not shown the requirements for senior membership with IEEE reflect outstanding achievements. Specifically, the Petitioner did not establish that attaining a particular professional occupation, accumulating years of experience, and obtaining reference letters from other senior members represent outstanding achievements.⁶ Similarly, the Petitioner has not demonstrated that the “significant performance” clause necessitates outstanding achievements. For example, the Petitioner

⁴ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

⁵ *Id.*

⁶ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (indicating that relevant factors that may lead to a conclusion that the person’s membership in the association(s) was not based on outstanding achievements in the field include, but are not limited to, instances where the person’s membership was based solely on the following factors (by themselves or in the aggregate): a level of education or years of experience in a particular field; the payment of a fee or by subscribing to an association’s publications; and a requirement, compulsory or otherwise, for employment in certain occupations, as commonly seen with union membership or guild affiliation for actors).

did not establish that “substantial job responsibilities,” “performing research with some measure of success,” or “faculty developing and teaching courses with research and publications” signifies outstanding achievements consistent with this regulatory criterion. Without further explanation and information relating to some of the other examples, the Petitioner has not established that senior membership with IEEE requires outstanding achievements.⁷

Moreover, the Petitioner did not demonstrate that recognized national or international experts judge senior membership for IEEE. The Petitioner’s initial cover letter claimed:

IEEE Senior Members are accepted after objective and qualitative outstanding merits by IEEE leadership whose bylaws also explicitly require independent validation by 3 high-level IEEE references, [] in a multi-stage review – which we note parallel’s USCIS’ two-part review of extraordinary ability – which concludes with a totality decision by IEEE as to one’s outstanding merits to gain IEEE Senior Membership.

[The Petitioner’s] Senior Member application material identifies three recognized experts at IEEE . . . , who evaluated [the Petitioner’s] outstanding achievements through significant career performance, outcomes, and industry recognition, the basis of his membership.

Here, the Petitioner conflates IEEE’s reference requirement with the judging requirement under 8 C.F.R. § 204.5(h)(3)(ii). IEEE requires the submission of three references from current IEEE members holding the grade of Fellow, Senior Member, or Honorary Member, which is different than recognized national or international experts in their disciplines or fields judging membership, as required under the regulation. While the Petitioner’s senior membership application shows his references, the Petitioner did not establish that these individuals actually judged his senior membership, nor did he demonstrate that IEEE requires national or international experts to judge senior membership.⁸

For the reasons discussed above, the Petitioner did not establish he fulfills this criterion.

C. Published Materials

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.”

The Petitioner claims eligibility for this criterion based on an article, [] [] dated on [] 2017, and posted on medicaleconomics.com. However, the article does not include an author, as required under 8 C.F.R. § 204.5(h)(3)(iii). Although the

⁷ We note that we have recognized fellow membership with IEEE to meet this regulatory criterion. IEEE fellow membership requires, in part, that a nominee have “accomplishments that have contributed importantly to the advancement or application or engineering, science and technology, bringing the realization of significant value to society.” See IEEE’s Steps to Become an IEEE Fellow, www.ieee.org.

⁸ Compare to the fellow level, which nominations are judged by an IEEE council of experts and a committee of current IEEE fellows, www.ieee.org.

Petitioner provided an editorial board screenshot for the website, the Petitioner did not show who authored the material. Because the regulation requires the Petitioner to include the author of the material, the Petitioner did not establish eligibility for this portion of the criterion.

Moreover, the article does not reflect published material about the Petitioner relating to his work. Instead, the article is about hackers and medical practices, in which the Petitioner supplied a quote for article's topic. The article does not report, discuss, or cover him or otherwise reflect published material about him. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the alien."⁹ We consider the term "published material about the alien" using its ordinary, common meaning. *See, e.g., Perrin v. United States*, 444 U.S. 37, 42 (1979) ("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning . . ."). In this case, the article his about hacking into medical practices rather than about the Petitioner and his work. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

As such, the Petitioner did not show he meets this criterion.

D. Scholarly Articles

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." The Petitioner argues that his presentations, such as [REDACTED] 2017," qualify for this criterion. Examples of scholarly article authorship include publications in professionally-relevant peer-reviewed journals and published conference presentations at conferences.¹⁰

In this case, the Petitioner did not demonstrate that his presentations were actually published in publications or other major media. Specifically, the Petitioner submitted screenshots of synopses or announcements of his presentations without establishing their publications. The Petitioner, for example, did not provide transcripts of his presentations and show they were published in professional or major trade material or posted in major media. Moreover, although some of the screenshots contain links to the presentations, the Petitioner did not offer the actual material or transcripts from the links. In addition, the Petitioner submitted examples of others referencing his presentations in their own works. However, without documentation of his actual published presentations, the Petitioner did not show that his talks and speeches qualify as evidence of his authorship of scholarly articles in professional or major trade publications or other major media consistent with this regulatory criterion.

Accordingly, the Petitioner did not establish he satisfies this criterion.

⁹ *See also generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (indicating that USCIS determines whether the published material was related to the person and the person's specific work in the field for which classification is sought).

¹⁰ *See also generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

E. Leading or Critical Roles

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.” 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.¹¹ 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 or establishment.¹²

The Petitioner claims eligibility for his criterion based on his leading and critical roles as a senior security specialist at [REDACTED] and references a letter from M-M-, product security director at [REDACTED]. However, the letter does not contain detailed, specific information evidencing the Petitioner’s leading or critical role. Instead, the letter makes broad statements without further elaborating and explaining how the Petitioner performed in a leading or critical role, discussed further below.

At the outset, the letter briefly indicates the Petitioner’s “leadership researching threats” and “critical leadership.” However, M-M- does not further discuss or indicate how the Petitioner’s role as a senior security specialist somehow resulted in the Petitioner serving in a leading role or performing in a leadership capacity.

Likewise, M-M- made general claims regarding the Petitioner’s critical roles without justifying her assertions. For instance, the letter claimed that the Petitioner “was key to ensuring medical security by conducting intensive review and penetration testing,” “[h]is extraordinary ability for addressing security issues has materially supported [REDACTED] prosperity and the scaling of its innovations in health-tech,” and “[the Petitioner’s] impactful work has materially elevated and is still instructive to global peers, for its vital importance on personal human levels and its large-scale security infrastructure context.” M-M- did not explain the effect of the Petitioner’s review and penetration testing, how the Petitioner has materially supported [REDACTED] prosperity, or the significance of the Petitioner’s work on personal human levels and large-scale security infrastructure.

Without specific, detailed information, M-M-’s general letter does not show the Petitioner’s leading or critical role.¹³ Moreover, Repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

For these reasons, the Petitioner did not show he fulfills this criterion.

¹¹ See also generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

¹² *Id.*

¹³ See also generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (indicating that this is one criterion where letters from persons with 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).

III. CONCLUSION

The Petitioner did not establish eligibility for any of the categories of evidence discussed above. Because the Petitioner cannot fulfill the initial evidentiary requirement of three under 8 C.F.R. § 204.5(h)(3), we need not decide on the Director's favorable conclusions for the judging and high salary criteria. We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.¹⁴

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. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (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 (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 the Petitioner among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an alien 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.

¹⁴ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).