U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36121177

Date: FEB. 13, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a senior member technical staff information 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 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
>
> (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 scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi)) of the seven claimed evidentiary criteria. On appeal, the Petitioner maintains his qualification for three additional criteria.[1]

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." USCIS first determines if the person was the recipient of prizes or awards, and then decides whether the award is a lesser nationally or internationally recognized prize or award which the person received for excellence in the field of endeavor.[2]

The Petitioner argues eligibility for this criterion based on being "placed on [redacted] 'The Honor Roll' in the year 2016 for reporting a Security Vulnerability on [redacted]"[3] In support of this claim, the Petitioner references a letter from C-A-, an independent security researcher and contributor to [redacted], who stated:

> While all the security vulnerabilities (CVEs) reported by [the Petitioner] have their own security implications and high impact, I want to comment on the critically of CVE-[redacted] for which [the Petitioner] was placed on [redacted] Honor Roll for Security Researchers. [The Petitioner] reported a security vulnerability in [redacted] product, for which this CVE was assigned. The vulnerability was categorized as a content spoofing vulnerability by [redacted] There are multiple reasons that make

[1] 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)).

[2] *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policy-manual.

[3] *See* letter from M-E-, senior program manager for [redacted] Security Response Center.

> this security finding unique and why [redacted] has placed [the Petitioner] on the Honor Roll for this finding.

Although the evidence reflects why [redacted] placed the Petitioner on its "Honor Roll," the Petitioner did not demonstrate the honor's significance or relevance in the field so to show that it qualifies as a nationally or internationally recognized prize or award for excellence in the field. Moreover, the Petitioner did not establish the national or internation recognition of the honor for excellence in field outside of [redacted] Without further information or evidence, the Petitioner did not demonstrate that [redacted] "Honor Roll" is tantamount to a nationally or internationally recognized prize or award for excellence in the field consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(i).

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

B. Original Contributions

The regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." USCIS first determines whether the person has made original contributions in the field, and then decides whether the original contributions are of major significance to the field.[4] Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the persons original work; documentation that the person's original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.[5]

The Petitioner argues:

> [redacted] has utilized the petitioner's publicly available research in its patent findings, which reflets the high value of the petitioner's work but does not establish an employment relationship. Citations in patents are a recognition of an individual's expertise and contribution to the field, but they do not indicate that the individual works for or is employed by the company filing the patent.

The record reflects the Petitioner provided evidence showing that his 2010 conference paper was referenced by [redacted] in securing a 2016 U.S. patent. However, the Petitioner did not show the impact or effect of the patent in the field in order to demonstrate that his paper or research has been of major significance in the field. Although the reference and application by [redacted] indicates the originality of the Petitioner's work, it does not automatically establish a majorly significant contribution in the field consistent with this regulatory criterion. Evidence that the person developed a patented technology that has attracted significant attention or commercialization may establish the significance of the person's original contribution in the field.[6] Here, the Petitioner did not supplement the record showing if [redacted] developed any successful commercialization of technology, products, or other services from

[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).

the patent.[7] Without further information or evidence, the Petitioner did not demonstrate that the citation or usage of his work in [redacted] patent represents an original contribution of major significance in the field.

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

C. High Salary

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." USCIS determines whether the person's salary or remuneration is high relative to the compensation paid to others working in the field.[8]

At the outset, the Petitioner provides new evidence on appeal. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

The Petitioner argues his eligibility for this criterion based on his salary as a senior member technical staff information security engineer.[9] As evidence comparing his salary in relation to others in the field, the Petitioner submitted screenshots from salary.com, including the salaries and positions for Level I-V "Information Security Analyst." In addition, the Petitioner offered letters from J-C- and K-G- opining that the Petitioner earns among the "top level" for "a Level V Information Security Analyst." However, the Petitioner did not provide the proper comparable salary information for his particular occupation. Again, the Petitioner is a senior member technical staff information security engineer rather than a level V information security analyst. Further, the Petitioner did not demonstrate that a senior member technical staff information security engineer is comparable to a level V information security analyst. In fact, the Petitioner's position as a senior member technical staff information security engineer suggests a higher job classification than a level V information security analyst. "While they share many skills, experiences, education and sometimes even projects, there are some key differences between a security engineer and a security analyst."[10] Examples include security engineers focusing on designing and implementing their systems and security analysts monitoring the system once it's in place, and while security analysts monitor the system that security engineers create, they are not responsible for its compliance with government regulations.[11]

---

[7] Although not addressed on appeal, the record also contains evidence of the same 2010 conference paper referenced by [redacted] in securing a 2019 U.S. patent. Similarly, the Petitioner did not supplement the record with evidence showing the impact, influence, or effect of the patent or any resulting technology, products, or other services developed from the patent.

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

[9] The record contains job verification letters from [redacted] indicating the Petitioner's position as a "Sr. MTS Information Security Eng."

[10] *See* indeed.com/career-advice/finding-a-job/security-engineer-vs.security-analyst, accessed on February 13, 2025.

[11] *Id.*

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). Thus, in order to meet this criterion, the Petitioner must show that he received a high salary in relation to others in the field rather than to lower job classifications and pay. Because he did not provide sufficient evidence demonstrating the salaries of other senior member technical staff information security engineers, the Petitioner did not establish he commands a high salary in relation to others in his field.

The Petitioner also references one of our non-precedent decisions and claims this decision demonstrates that we have "previously recognized and corrected comparable errors related to job title/job role in the salary criterion." This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Moreover, this decision did not conclude that senior security analysts and senior security engineers are the same occupations with similar job responsibilities.

For the reasons discussed above, the Petitioner did not show he meets this criterion.

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 scholarly articles 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.[12]

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. *Price*, 20 I&N Dec. at 954 (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,

[12] *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).

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.