



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

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

In Re: 33440983

Date: SEPT. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business development executive, 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 the Petitioner did not establish he satisfied at least three of the initial evidentiary criteria. The matter is now before us on appeal.

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 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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

The Petitioner serves as Vice President for Business Development at [REDACTED] a supplier of telecom engineering services and products.¹ Because the Petitioner has not indicated or established receipt of 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, but the Director determined the Petitioner fulfilled only the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner maintains that he meets three additional categories of evidence.

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)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field.² As evidence under this criterion, the Petitioner submitted documentation relating to his product development work for [REDACTED] and a guest lecture he provided for a [REDACTED] Extension virtual Zoom course, entitled [REDACTED].³ The record also includes evidence of contracts and licensing of products and services from [REDACTED].⁴ In addition, the Petitioner presented information about a book he coauthored, entitled [REDACTED] [REDACTED] as well as letters of support from colleagues in the field discussing his projects at multiple companies. The Director considered this documentation but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field.

In his appeal brief, the Petitioner does not contest the Director's findings under this criterion relating to his extension course guest lecture and book. He therefore has not overcome the Director's

¹ The Petitioner received a Master of Business Administration degree from [REDACTED] (2012) and a Certificate from the Product Management Program at [REDACTED] (2016).

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

³ The Petitioner completed the [REDACTED] Executive Education Product Management Program in 2016. He did not explain how providing a guest lecture at a university he previously attended is indicative of a business-related contribution of major significance in the field.

⁴ This documentation includes [REDACTED] proposals and contracts with [REDACTED] for radio frequency engineering and design, proposals and contracts with [REDACTED] for fiber construction, proposals and contracts with [REDACTED] and licenses sold to [REDACTED]. While the Petitioner helped determine clients' needs and effectively communicated their needs to [REDACTED] engineering team, he has not demonstrated that he originated the technologies used in products such as [REDACTED].

determination that they do not meet requirements of this criterion.⁵ We consider the Petitioner's prior eligibility claims not raised or contested on appeal to be abandoned. An issue not raised on appeal is waived. *See, e.g., 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)).

The Petitioner contends on appeal that the Director incorrectly concluded the testimonial evidence of his achievements in the field was insufficient. He asserts that the testimony of independent witnesses as well as corporate executives with direct knowledge of his original contributions was not properly considered as part of the record. The Petitioner's references discussed his product development projects at [] and financial work at other companies, but their statements do not demonstrate the originality of his work and its major significance in the field. As discussed below, the reference letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to show the nature of specific "original contributions" that the Petitioner has made to the field that have been considered to be of major significance.

Regarding the Petitioner's involvement in the development of the [] network test measurement tool for [] the company's CEO and Co-Founder, stated:

In the year 2013 we first started working on our automated drive test tool called [] [] was envisioned with two important benefits to the customer - to make data collection cheaper and error free.

....

[The Petitioner's] personal commitment to deliver this solution was commendable. Right from understanding the customer's problem to helping with the development of the solution he supported the Product team to an unimaginable length. Since he was also a part of the Business Development team, he was able to make this dream a possibility by getting [] its first-ever contracts from one of the big telecom operators the U.S. (which is [] to the tune of over 4 million dollars, which grew [] to different level. This activity not only helped the company grow in revenue, but we had to open a back-office operation to manage the projects that were awarded to us.

[The Petitioner] also came up with the idea of using Salesforce as a tool to manage the projects and used his analytical ability to visualize and guide the company various key performance indicators that we would need to monitor to make this program a success.

While [] indicated that the Petitioner's work "supported the Product team" and helped his company secure a contract with [] the Petitioner has not shown that his work for [] has been considered important at a level consistent with original contributions of major significance in the telecommunications, business development, or project management fields.

⁵ For example, the Petitioner has not demonstrated that his book and guest lecture have influenced the field in a major way, have been highly cited relative to others' work in the field, or have otherwise affected his field at level commensurate with original business-related contributions of major significance.

With respect to the Petitioner's involvement with the development of [REDACTED] President and CEO of [REDACTED] stated:

[The Petitioner] has a mindset to help clients build new products. He listens meticulously to his clients and helps his IT teams understand in a language they can understand. This has helped him to work with people from various engineering and development backgrounds and help [REDACTED] build products that have filled a lot of gaps that were in the telecom industry. Their latest product [REDACTED] . . . is a phenomenal idea of creating an AI based CRM tool for the telecom industry and help project managers get away from working and maintaining Excel sheets and instead get meaningful insights to their [REDACTED] but generating intelligent reports. This idea was floated by [the Petitioner] when [REDACTED] was awarded the biggest project on PIM modulation by one of their clients 3 years ago. Instead of managing the data on Excel sheets [the Petitioner] immediately understood the roadblocks in the system and started working with his development team to develop a cloud-based application to manage the whole program.

Mr. [REDACTED] further noted that [REDACTED] and used it in their national radio access network teams to manage their databases, but the Petitioner has not demonstrated that this tool has affected the field in a substantial way (beyond his company's clientele such as [REDACTED] or that his contribution to the product otherwise constitutes an original contribution of major significance in the telecommunications field.

In addition, [REDACTED] currently Vice President of Business Development at [REDACTED] and formerly coworker of Petitioner at [REDACTED] asserted that the Petitioner's "ability to analyze customer needs and data driven decision making approach always helped him and the team to come up with the most innovative solutions for our customers." Likewise, [REDACTED] formerly Vice President of Data Analytics at [REDACTED] stated that based on the Petitioner's regular interaction with various clients, [REDACTED] was able to understand that the biggest problem of the industry at one given moment was the need for an automated drive test tool which helps telecom operators to collect network data while driving between cell tower and other telecom sites." Mr. [REDACTED] also indicated that the Petitioner's "ability to analyze the problem and bring his unique solution to the engineering team to be brought to life was a great start to the development of our new product." While the Petitioner helped determine clients' needs and effectively communicated their needs to [REDACTED] engineering team, he has not demonstrated that he originated the underlying technologies used in products such as [REDACTED] [REDACTED] and that his work rises to the level of business-related contributions of major significance in the field.

Furthermore, Dr. [REDACTED] professor at [REDACTED] (the Petitioner's alma mater), stated that the Petitioner "put his finance and MBA skills to effective use by working with [REDACTED] technical professionals and major customers to identify financially valuable new products and services, leading to the introduction of successful telecommunications implementations." Dr. [REDACTED] however, does not offer specific examples of how the Petitioner's original work for [REDACTED] has influenced the telecommunications industry to the extent that it is of major significance in the field.

The record also includes letters of support discussing the Petitioner projects at other employers before he joined [redacted]. For example, [redacted] Chief Business Officer - Auto Loans, [redacted] [redacted] stated that he worked with the Petitioner at both [redacted] [redacted]. Regarding the Petitioner's work for [redacted] indicated that the Petitioner "launched multiple new branches for his region" and "helped the region reach record breaking numbers." With respect to the Petitioner's projects at [redacted] Mr. [redacted] asserted that the Petitioner headed "the consumer durables lending program in North India," "came up with the idea of Advance Dealer Disbursement that led to record breaking revenue for the whole company across India," and "won the award for the most Innovative regional manager in the entire company." The Petitioner, however, has not shown that his work for [redacted] [redacted] rises to the level of original business-related contributions of major significance in the field.

Additionally, [redacted] Senior Vice President, [redacted] indicated that the Petitioner worked under his supervision as Regional Sales Manager for North India. Mr. [redacted] stated:

[The Petitioner] built a strong and motivated sales team and a wide dealer distribution of 250+ dealers in North India and ensured that all major retailers worked with [redacted] [redacted] [The Petitioner] drove his team to adapt to the latest technology of cloud computing and leverage the new products and processes to create a WoW customer experience. Under his leadership, sales turnover doubled every year and we again started branch expansion in northern markets from 9 cities to 15 cities.

While the Petitioner improved sales and helped [redacted] expand its branch operations to new cities, Mr. [redacted] does not explain how the Petitioner's work for the company in North India is indicative of original business-related contributions of major significance in his field. Nor has the Petitioner demonstrated that the level of attention received by his work signifies that he has made original contributions of major significance in the field.

In this case, the Petitioner has not demonstrated that his specific work to improve his employers' sales, services, and new product offerings rises to the level of original business-related contributions of major significance in the field. Courts have routinely affirmed our decisions concluding that 8 C.F.R. § 204.5(h)(3)(v) "requires substantial influence beyond one's employers, clients, or customers." *Strategati, LLC v. Sessions*, 2019 WL 2330181, at *6 (S.D. Cal. May 31, 2019) (upholding an agency decision that held "[a] patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole."); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022) (upholding agency decision that held evidence insufficient "because it did not show widespread replication of [the petitioner's invention]"). Here, the Petitioner has not shown that his original work has affected his field at a level commensurate with contributions of major significance in the field.

For the reasons discussed above, the Petitioner has not established that he has made original contributions of major significance in his field.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

As evidence for this criterion, the Petitioner presented a book he coauthored, entitled [REDACTED]. The language of the criterion at 8 C.F.R. § 204.5(h)(3)(vi) requires “scholarly articles” and the Petitioner’s book does not equate to an article. An article is “a nonfictional prose composition usually forming an independent part of a publication (as a magazine).”⁶ On the other hand, a book is “a long written or printed literary composition.”⁷ Furthermore, the regulation requires that the articles be “in professional or major trade publications or other major media.” As books may be published independently or self-published, mere publication does not establish that a book is a professional or major trade publication or other type of major media.

As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse.⁸ It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution.⁹ Scholarly articles are also generally peer reviewed by other experts in the field of specialization.¹⁰ While [REDACTED] contains endnotes and a bibliography, the Petitioner has not shown that his book qualifies as a scholarly article within the purview of academia.¹¹

For other fields, a scholarly article should be written for learned persons in that field.¹² “Learned” is defined as having “profound knowledge gained by study.”¹³ Learned persons include all persons having profound knowledge of a field.¹⁴ Here, the Petitioner did not show that his book was written for learned persons in the field. For example, recommendations appearing in the initial part of the book state that [REDACTED] “would be useful to someone new to product management,” “is an essential read for anyone looking to bring a new disruptive product to market,” is “an essential reference for anyone who aspires to be a rock star product manager,” “is a must-read for everyone who cares about building the right products in the right way,” and “covers many ideas and frameworks, along with providing step-by-step instructions for aspiring innovators and product developers.” In addition, the record includes a quote from the Petitioner indicating that his book covers “the do’s and don’ts of successful product development for people wanting to be the next generation of product managers.” These statements do not necessarily indicate that the book was written for learned persons in the field.

Even if the Petitioner had demonstrated that [REDACTED] equates to a scholarly article, which it does not, he has not shown that his book is a professional or major trade publication or other form of major media. Accordingly, the Petitioner has not established that he meets the requirements of this criterion.

⁶ See <https://www.merriam-webster.com/dictionary/article>, accessed on September 9, 2024.

⁷ See <https://www.merriam-webster.com/dictionary/book>, accessed on September 9, 2024.

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

⁹ *Id.*

¹⁰ *Id.*

¹¹ The book’s inclusion as “recommended reading” for a virtual “extension” course at a university where the Petitioner pursued studies [REDACTED] and its coverage in a blog post on the website of the Petitioner’s alma mater [REDACTED] do not necessarily render it scholarly.

¹² See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

¹³ *Id.* (citing to the *Oxford English Dictionary*’s definition of “learned”).

¹⁴ *Id.*

III. CONCLUSION

The Petitioner meets the judging criterion but has not established he satisfies the criteria relating to contributions of major significance and authorship of scholarly articles. Although the Petitioner also claims eligibility for the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), we need not reach this additional ground because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Because the Petitioner's inability to meet three of the initial criteria is dispositive of his appeal, we also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. We therefore reserve these issues.¹⁵

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. at 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 eligibility as an individual 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.

¹⁵ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).