U.S. Citizenship and Immigration Services

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

In Re: 37673032

Date: APR. 9, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as an alien with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 C.F.R. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate "sustained national or international acclaim" and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner met one of ten initial evidentiary requirements – two less than needed for a final merits determination. On appeal, the Petitioner asserts that he also submitted evidence of his:

- Original contributions of major significance in the field;
- Performance in a leading or critical role for organizations with distinguished reputations; and
- Commandment of a high salary or significantly high remuneration relative to others in his field.

8 C.F.R. § 204.5(h)(3)(v), (viii), (ix).

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he did not satisfy the evidentiary criteria regarding original contributions and performance in a leading or critical role. Because the Petitioner cannot meet the requisite minimum number of evidentiary requirements, we will dismiss the appeal.

## I. LAW

To qualify for this immigrant visa category, a petitioner must demonstrate that they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- Seek to continue work in their field of expertise in the United States; and
- Would substantially benefit the country as a permanent resident.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Unless a petitioner received "a major, international recognized award," they must satisfy at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3).[1]

If a petitioner meets either evidentiary standard and the requirements at section 203(b)(1)(A)(ii), (iii) of the Act, USCIS must make a final merits determination. To merit approval, the record – as a whole – must establish a petitioner's "sustained national or international acclaim" and recognized achievements placing them among the small percentage at their field's very top. *See Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step extraordinary ability analysis "consistent with the governing statute and regulation"); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual.

## II. ANALYSIS

### A. The Petitioner and His Field

The record shows that the Petitioner, a Brazilian native and citizen, earned a bachelor's degree in physical therapy and post-graduate diplomas in cardio-respiratory and manual/postural physiotherapy from schools in his home country. He has more than 20 years' experience in Brazil's healthcare sector, including work in administrative and management roles. He established and managed two healthcare companies in Brazil. Now in the United States, he states his intention to continue working as a physical therapist in this country.

The record does not indicate – nor does the Petitioner claim – his receipt of a major internationally recognized award. He must therefore meet at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i-x).

The record supports the Director's finding that the Petitioner submitted evidence of published material about him and his work. *See* 8 C.F.R. § 204.5(h)(3)(iii). The Director found that the Petitioner did not provide evidence of his memberships in associations in the field requiring outstanding achievements of their members or display of his work at artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(ii), (vii). But, because the Petitioner does not challenge those two findings on appeal, he has effectively "waived" the issues. *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)).

We will now review the Director's findings regarding the three evidentiary requirements that the Petitioner claims to have met. To satisfy these criteria, his evidence must objectively meet the parameters of the applicable regulatory descriptions. *See generally* 6 *USCIS Policy Manual* F.2(B). "[N]either USCIS nor [the] AAO may unilaterally impose novel substantive or evidentiary requirements beyond those set forth." *Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010).

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

B. Original Contributions of Major Significance

This criterion requires "[e]vidence 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).

When adjudicating this requirement, USCIS first determines whether a petitioner has made original contributions in their field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 5. If so, the Agency then determines whether the original contributions are of major significance to the field. *Id.*

The Petitioner submitted evidence that he developed a downloadable program for evaluating patients in home care. He claims that the tool "streamlines" patient assessments and increases clinics' efficiencies. He also cited to a newspaper article about the program and provided six recommendation letters on his behalf.

The Director found that the Petitioner's program constitutes an original contribution to his field. But the Director found insufficient evidence that the tool has major significance in the field.

On appeal, the Petitioner contends that his program has been "widely adopted" in his field. He states that one of his companies is integrating the tool into its information technology system and that physiotherapists across Brazil can obtain the tool. He claims that his program has been downloaded from four continents and that he holds its exclusive intellectual property rights.

Evidence that a petitioner developed a technology attracting attention or commercialization could establish the significance of their original contribution to their field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 5. Also, "[d]etailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance." *Id.*

The Petitioner's evidence, however, does not establish that his program has major significance in his field. *See Strategati, LLC v. Sessions*, No.: 3:18-cv-01200-H-AGS, 2019 WL 2330181, at *6 (S.D. Cal. May 31, 2019) (citations omitted) (stating that "major significance" means "substantial influence beyond one's employers, clients, or customers.") The three-paragraph, 2014 newspaper article describes the program, mentions the Petitioner, and states that the tool may save practitioners up to 30% in costs. But the article does not state the source of its information. As the Petitioner himself could have provided the article's information, we do not find it to constitute independent, unbiased, or reliable evidence. Also, the article casts doubt on the Petitioner's claimed sole development of the program. The article states: "*A multi-disciplinary team* formulated this groundbreaking program within 2 years of study." (emphasis added).

The Petitioner also submitted a data page regarding the program's number of "views." The page, entitled "All Time Statistics," appears to be a "screen shot" of a program part. The page indicates: 269 views in Brazil; 33 views in the United States; two views in Ireland; and one view each in Angola and Cape Verde. The page does not define the term "view." We therefore do not know whether a view indicates the program's use. The data therefore do not demonstrate widespread use of the Petitioner's program. Even if the page's "views" reflect the number of clinics around the world using

the Petitioner's program, the record would not demonstrate that it has major significance. Further, the recommendation letters discuss the Petitioner's accomplishments in his field. But none of the listed accomplishments include his development of the program.

The Petitioner has not demonstrated that his original contribution has major significance in his field. We will therefore affirm the Director's finding.

C. Performance in a Leading or Critical Role

To meet this requirement, a petitioner must submit "[e]vidence that [they] ha[ve] 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).

USCIS first determines whether a petitioner has performed in a leading or critical role for an organization, establishment, or a division or department of an organization or establishment. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8. A leading role means that a petitioner is (or was) a leader within the organization, establishment, division, or department. *Id.* In contrast, a critical role means that a petitioner "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." *Id.*

USCIS next determines whether the organization, establishment, department, or division for which a petitioner holds or held a leading or critical role has a distinguished reputation. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8. The word "distinguished" means "marked by eminence, distinction, or excellence" or "befitting an eminent person." *Merriam-Webster Online Dictionary*, www.merriam-webster.com. Relevant factors include not only the relative size or longevity of an organization but also other information such as the scale of its customer base or relevant media coverage. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8.

The Petitioner submitted the six recommendation letters, a letter from the company he founded where he served as a partner and physical therapist since 2009, and a copy of a 2014 newspaper article about him and the company.

The Director found insufficient evidence of both the Petitioner's performance in a leading or critical role and the distinguished reputation of an organization.

On appeal, the Petitioner contends that evidence of his work with the company met this criterion. He points to the letter from a company human resources representative (who is also his spouse), stating that, under the Petitioner's leadership, the firm expanded its physiotherapy services from one to 14 cities in Brazil and augmented its services to include speech therapy, occupational therapy, nutrition, and psychology.

"A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading." 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8. The Petitioner founded and owns the company, and its letter lists his duties as including: financial management; strategic planning; and development of

new products and services. Thus, contrary to the Director, we find that the Petitioner has submitted evidence of his performance in a leadership role at the firm.

But, like the Director, we find insufficient evidence that the company has a distinguished reputation. We acknowledge the company's growth over the years. But, founded in 2009, the firm is relatively young, and the record lacks media coverage of the company since 2014. The record therefore does not establish that the firm has a distinguished reputation. *See Branski v. Seng*, No. 24-CV-360, 2024 WL 4678939, at *8 (E.D. Wis. Nov. 4, 2024) ("Successful businesses can be expected to have satisfied customers and the positive esteem of peers. But it takes more to have a 'distinguished reputation.'")

The Petitioner's evidence demonstrated his performance in a leading role but not that his organization has a distinguished reputation. We will therefore affirm the Director's finding on this criterion.

D. The Remaining Evidentiary Requirement

The Petitioner has met one evidentiary criterion but claims satisfaction of only one more. Thus, he cannot meet the requisite minimum of three criteria. We therefore need not reach and hereby reserve consideration of whether he submitted evidence that he commanded a high salary or significantly high remuneration relative to others in his field. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

## III. CONCLUSION

The Petitioner did not satisfy two of three evidentiary requirements he claims to have met. He therefore cannot meet the minimum number required for a final merits determination. We will therefore affirm the petition's denial.

**ORDER:** The appeal is dismissed.