U.S. Citizenship and Immigration Services

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

In Re: 37289544

Date: APR. 22, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive officer, seeks first preference immigrant 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 record did not establish that the Petitioner satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). The matter is now before us on appeal pursuant to 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).

## II. ANALYSIS

Because the Petitioner has not indicated or established his receipt of a major, internationally recognized award, he must satisfy at least three of the regulatory criteria. On appeal, the Petitioner claims that he meets six of the regulatory criteria, namely that he has published material about himself relating to his work, has participated as a judge of the work of others in the same or an allied field, has made original contributions of major significance in the field, has authored scholarly articles in the field, has performed in a leading or critical role for organizations that have a distinguished reputation, and has commanded a high salary in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(iii), (iv), (v), (vi), (viii), (ix).

The Director determined that the Petitioner established the published material and judging criteria, but did not meet the requirements for the other claimed criteria. Upon de novo review, we disagree with the Director regarding their determination on the published material and judging criteria and conclude that the Petitioner did not establish these criteria. Further, we determine that the Petitioner did supply sufficient evidence to establish the leading or critical role criterion. We agree that the Petitioner has not established the other claimed criteria.

### A. Evidentiary Criteria

1. "Published material about the alien in professional or major trade publications or other major media, relating to the alien" work in the field for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iii).

This criterion 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." 8 C.F.R. § 204.5(h)(3)(iii). "Such evidence shall include the title, date, and author of the material, and any necessary translation." *Id.*

When adjudicating this requirement, USCIS first determines whether the published material relates to a petitioner and their specific work in the field. 6 *USCIS Policy Manual* F.2(B), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. Evidence may include copies of print or online newspaper or magazine articles, popular or academic journal articles, books, textbooks,

similar publications, or a transcript of professional or major audio or video coverage of a petitioner and their work. *Id.* Marketing materials created for the purpose of selling the person's products or promoting the person's services are not generally considered to be published material about the person. *Id.* The Agency then determines whether a publication qualifies as a professional, major trade, or major media publication. *Id.* When evaluating professional, major trade, or major media publications, relevant factors include for professional and major trade publications, the intended audience; and, for major trade publications and other major media, the publications' relative circulation, readership, or viewership. *Id.*

The Petitioner submitted several articles in support of this criterion. The vast majority of these did not conform to the plain language requirements of the criterion as they lack either the date or author of the material. The article entitled [redacted], lacks an author and is also labeled as a press release. As noted above, marketing materials are generally not considered published material about the person. *See* 6 *USCIS Policy Manual*, *supra*, F.(2)(B)(1). The four remaining articles are: [redacted].

The first article, [redacted] was published by US Times Now. The copy in the initial submission lists no author or date of publication. The Petitioner submitted a new copy with the request for evidence (RFE) that provides a date of publication and lists the Petitioner's name at the top of the article. Though the Petitioner's name appears above the article, it does not definitively state he is the author. The subsequent article is an interview with the Petitioner. The article is written in the third person, wherein questions are posed to the Petitioner, and he responds. This indicates that the Petitioner is not the author. As such, the Petitioner has not shown that the article lists its author as required under 8 C.F.R. § 204.5(h)(3)(iii).

The next article, [redacted], comes from The Open News. The article does not discuss the Petitioner and his work, rather it focuses on his views on Italian design and aesthetics. As such, it does not adequately about Petitioner, relating to his work as required. *See* 6 *USCIS Policy Manual*, *supra*, F.(2)(B)(1).

The remaining two articles were published by Houzz.com. Neither are sufficiently about the Petitioner relating to his work. The first lists 10 ways to introduce polka dots into home décor and gives one of the pieces sold by the Petitioner's company as an example. The second discusses the versatility of modular sofas and highlights one of the sofas sold by the Petitioner's company as an example. These articles briefly highlight singular pieces in the company's collection as examples of the articles' topic. They are not about the Petitioner relating to his work. Moreover, such brief mentions, even if they did concern the Petitioner, would not make the articles about the Petitioner. Articles that are not about a petitioner, do not fulfill the regulatory criterion. *See Noroozi v. Napolitano,* 905 F.Supp.2d 535 (S.D.N.Y. 2012) (articles about the Iranian Table Tennis Team which only briefly mentioned the person were not about him); *see also 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). Thus, we withdraw the Director's determination. The Petitioner has not established this criterion.

2. "Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv).

To meet this requirement, a petitioner must submit "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv). A petitioner must show not only their invitation to judge others' work, but also their actual participation in the judging. 6 *USCIS Policy Manual*, *supra*, F.(2)(B)(1). Examples of judging work may include but are not limited to peer reviewing for a scholarly journal, peer review of abstracts or papers submitted for presentation at a scholarly conference, serving as a member of a Ph.D. dissertation committee, and peer reviewer for government research funding programs. *Id.*

The Petitioner contends that he qualifies for this criterion based on his selection of new manufacturers for his collections. He provided the criteria he employs when selecting manufacturers. The Director determined that Petitioner had established the criterion. Upon de novo review, we withdraw that determination. The Petitioner is a chief executive officer. Judging products made by furniture manufacturers is not in the same or allied field, and as such is not compliant with the plain language of the criterion. The Petitioner has not provided sufficient evidence to establish how this action would constitute the judging of the work of others in his or an allied field. Thus, the Petitioner has not provided sufficient evidence to demonstrate eligibility for this criterion.

3. "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).

To meet this criterion, a petitioner must submit "[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). USCIS should first determine whether an alien has made original contributions in their field. 6 *USCIS Policy Manual*, *supra*, F.(2)(B)(1). If so, the Agency should then determine whether any are of "major significance to the field." *Id.*

Evidence of significant contributions can include published research that has provoked widespread commentary on its importance from others in the field, or documentation that research generated a high number of citations relative to others' work in the field. *Id.* When determining whether original contributions have major significance, detailed letters from experts in the field explaining the nature and significance of the contributions may provide valuable context, especially if accompanied by corroborating documentation. *Id.*

In the initial brief, the Petitioner argues that he qualifies for this criterion because "no one does business this way" as the Petitioner sells high-quality Italian furniture with customization options and excellent shipping. He alleges that his business model is novel. He contends that there is "no business in the field spending as much time in Italy" as him, and that having a supplier like him "involved in the shipping process is unheard of."

The Petitioner alleges that his business model is novel. However, he has not presented evidence sufficient to show that. The articles cited and letters from clients commend his business but do not

note that his efforts to sell high-quality customizable Italian furniture in his method was developed by him. We further observe that the evidence demonstrates that the Petitioner's grandfather began the business in Uruguay. As it states in the article [redacted] by [redacted] "is a family-owned company, started by [the Petitioner's] grandfather that for the past 60 years has been manufacturing high-end furniture[,]…[s]ince May 2002 they started working in the United States." In the article the Petitioner states that the company has worked with "Italian companies for the past 50 years." According to company documents submitted by the Petitioner, the Petitioner ran the business with another family member and only became the sole manager in approximately 2018. The Petitioner has not pointed to sufficient evidence that his business model is original.

Furthermore, even if the Petitioner could establish his business model is an original contribution, the evidence does not demonstrate that the Petitioner's business model has impacted his field beyond his business, clients, and partners such that it constitutes a contribution of major significance in the field. The Petitioner argues that his contributions impact the field as his business "extends far beyond the written contract and paying customers," because he has built a network of clients and manufacturers. He contends that his community "of Designers, Architects, and Manufacturers which promotes the visibility of small businesses, increases trade, and promotes the artistic value of Italian luxury furniture."

The evidence does not support the Petitioner's assertions either. For example, the letter from [redacted], one of the Petitioner's clients details their professional relationship and success. It compliments the business as the "best-sourced Italian product" and praises the Petitioner's acumen and business practices. Nevertheless, [redacted] does not detail any contributions the Petitioner has made of major significance in the field. Another client letter from [redacted], notes that the Petitioner's website provides a unique selection of the Italian furniture, and notes that the Petitioner has the "highest qualifications." Yet beyond these compliments to the Petitioner's business, he does not describe that the company has made original contributions of major significance to the field. Similarly, the individuals quoted in the various articles submitted by the Petitioner note his skill but do not sufficiently illustrate that the Petitioner has made contributions of major significance on the field. Thus, the Petitioner has not adequately demonstrated that his business has made a significant impact on the field beyond his clients and manufacturing partners, and therefore, has not established the criterion.

4. "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).

In determining this criterion, USCIS first determines whether the person has authored scholarly articles in the field. 6 *USCIS Policy Manual*, *supra*, F.(2)(B)(1). As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. *Id.* Scholarly articles are also generally peer reviewed by other experts in the field of specialization. *Id.* In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article. *Id.* For other fields, a scholarly article should be written for learned persons in that field. *Id.*

Second, USCIS determines whether the publication qualifies as a professional publication, major trade publication, or major media publication. *Id.* In evaluating whether a submitted publication is a professional publication or major media, relevant factors include the intended audience (for professional journals) and the circulation or readership relative to other media in the field (for major media). *Id.*

In support of this criterion, the Petitioner submitted a number of articles, not written by the Petitioner. He asks that we consider these articles as comparable evidence. Under 8 C.F.R. § 204.5(h)(3)(4) if the standards of a criterion do not readily apply to an occupation, the petitioner may submit comparable evidence to establish eligibility. USCIS determines if the evidence is comparable. 6 *USCIS Policy Manual*, *supra*, F.(2)(B)(1). When evaluating such comparable evidence, officers must consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation. *Id.* A general unsupported assertion that the listed evidentiary criterion does not readily apply to the petitioner's occupation is not probative. *Id.* USCIS considers comparable evidence if the petitioner shows that a criterion is not easily applicable to the person's job or profession. *Id.* The Policy Manual provides several examples. For instance, if the publication of scholarly articles is not readily applicable to a person whose occupation is in an industry rather than academia, a petitioner might demonstrate that the person's presentation of work at a major trade show is of comparable significance to that criterion. *See* 6 *USCIS Policy Manual*, *supra*, F.(2)(B)(1).

In this instance, the Petitioner has not established that the standards of this criterion do not readily apply to his occupation. In the brief in response to the RFE, the Petitioner avers "[i]t does not readily fit the occupation of CEOs to require scientific journals as evidence of authorship." He further contends that business journals are not an appropriate analog as the Petitioner is not an economist. The Petitioner did not provide any support for these assertions. As the Policy Manual states, general unsupported assertions that a criterion is not applicable is not probative. 6 *USCIS Policy Manual*, *supra*, F.(2)(B)(1). Moreover, as a common matter, contentions require support to underpin them, as assertions themselves do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

Even if were to conclude that this criterion does not readily apply to the Petitioner's occupation, he has not demonstrated that the articles presented are comparable to authoring scholarly articles in the field, in professional or major trade publications or other major media. The Petitioner argues that they are comparable as they present his opinions about artistic furniture making and the way he does business, and that his expressed "expertise here is scholarly." The articles identified by the Petitioner as comparable evidence are [redacted], [redacted]. These articles consist of short interviews with the Petitioner about his work. They were not authored by the Petitioner, and do not contain the kind of complexity and detail generally found in a scholarly article, which engage in research, experimentation, or discourse with cited sources intended for academics or learned persons in the field. *See* 6 *USCIS Policy Manual*, *supra*, F.(2)(B)(1). We do not view the articles identified as comparable evidence to the criterion.

5. "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).

To meet this criterion, a petitioner must demonstrate that they had a role in a distinguished organization or establishment, in which the person was a leader within the organization or played a critical role by making a significant contribution to the organization's outcome or activities. 6 *USCIS Policy Manual*, *supra*, F.(2)(B)(1).

A leading role means that the person is (or was) a leader within the organization or establishment. *Id.* In contrast, a petitioner in a critical role "has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities." *Id.* A petitioner's role, rather than their title, determines whether their role is (or was) critical. *Id.* In considering if an organization or establishment has a distinguished reputation, several factors are evaluated, including but not limited to the size and longevity of an organization, scale of its customer base, or relevant media coverage.

The Petitioner claims eligibility for this criterion based on his role leading [redacted] In light of the evidence presented regarding the Petitioner's role in the company, the company's history and distinction in the industry, we determine that the Petitioner has established this criterion.

6. "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).

To meet this criterion, a petitioner must demonstrate that their salary or remuneration is high relative to the compensation paid to others in the field. To determine whether a person's compensation is high relative to others, USCIS will consider comparative evidence, such as geographical or position-appropriate compensation surveys. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1). Broad descriptions that include multiple occupations may not provide an accurate comparison to others in the field. *Id.*

The Petitioner contends that he qualifies for this criterion based on his position as a chief executive officer for [redacted] The Petitioner provided several tax documents, bank statements, a statement from his accounting firm, and salary statistics for chief executives from several sources. In the appeal brief the Petitioner avers that his income is indicated on the 1040-NR tax form as a business expense labeled as "Commissions and fees." The letter from the accounting firm states that he receives fees as a "Purchasing Agent for work performed outside the USA." The Petitioner has not presented evidence to demonstrate that this role of purchasing agent is akin to chief executive officer. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1).

The Petitioner argues that the labeling of a purchasing agent is an "artifact of the U.S. tax code, and not a feature of the Petition." The Petitioner avers that it did not address this issue as this petition is not one in which a petitioner's duties "is a prima facie issue." Part of this criterion requires comparing to others in the field, which demands evidence regarding individuals with comparable roles. *See generally Skokos v. U.S. Dep't of Homeland Sec.*, 420 F. App'x 712, 714 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field). The figures the Petitioner employed were earned under this title according to his accountant. We also

observe that the Petitioner's occupation on the 1040-NR forms is "Investor."[1] It is the Petitioner's burden to establish his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Based on the record, the Petitioner has not provided sufficient documentation that to establish he qualifies for this criterion.

As the Petitioner has not established that he meets at least three of the evidentiary criteria, he cannot be classified as an individual of extraordinary ability. Accordingly, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20.

## III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

**ORDER:** The appeal is dismissed.

[1] Furthermore, we note that the appeal brief states that the Petitioner is the company's only employee, but the articles and letters in the record repeatedly refer the company as "we" and note it has a "team."