U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42213327

Date: AUG. 6, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, an information technology (IT) consultant,[1] 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.

USCIS denied the petition, concluding that the record did not establish that the Petitioner had either received a major, internationally recognized award or satisfied at least three of ten initial evidentiary criteria, as required. USCIS also concluded that the Petitioner had not established that his entry will substantially benefit prospectively the United States. The matter is now before us on appeal under 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. We will also enter a finding of willful misrepresentation of a material fact.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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. A petitioner must establish that the alien seeks to enter the United States to continue work in the area of extraordinary ability, and that their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those aliens 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 international recognition of an alien's achievements in the field through a

[1] On appeal, the Petitioner claims that "[t]he decision . . . improperly narrows the petitioner's field to 'IT consulting'" in a way that "disregards the interdisciplinary nature of his practice." On Part 5, line 11 and Part 6, line 1 of Form I-140, the Petitioner specified his "Occupation" and "Job Title" as "IT Consultant."

one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria 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. If those standards do not readily apply to the alien's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the alien 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

In Brazil, the Petitioner earned a bachelor's degree in computer systems analysis in 2013 and a master's degree in business administration, specializing in solution architecture, in 2021. The Petitioner worked in various IT positions in Brazil starting in 2010. The Petitioner indicated that he established his own IT consulting firm in 2016, and has served as its chief executive officer since 2021.[2] The Petitioner entered the United States in December 2023 as a B-2 nonimmigrant visitor, and was still in the United States when he filed the present petition in March 2024.[3]

Because the Petitioner has not indicated or shown that he received 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 seven of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

USCIS concluded that the Petitioner had not satisfied the requirements of any of the claimed criteria.

On appeal, the Petitioner maintains that he satisfied all the claimed criteria.

[2] Corporate filing documents from Brazil indicate that the company was formed in [redacted] 2016, but the record shows that the Petitioner continued to work for other employers until 2021.

[3] The Petitioner previously filed three Form I-140 immigrant petitions seeking classification as an alien of exceptional ability or a member of the professions holding an advanced degree, with a national interest waiver of the job offer requirement under section 203(b)(2) of the Act. The third petition, filed in September 2023 with receipt number [redacted] was approved in October 2024.

Upon review of the record, we conclude that the Petitioner has satisfied one criterion, the criterion pertaining to authorship of scholarly articles in the field, in professional or major trade publications or other major media. We note that, as worded, professional publications need not be *major* publications. The significance of the professional publication would, instead, be a matter for discussion in the final merits determination, if the proceeding were to reach that point. Likewise, a scholarly article's citation history, noted in the USCIS denial decision, is a matter for the final merits determination rather than the underlying initial criterion.

We will discuss the remaining criteria below.

1. Prizes or Awards

The regulation at 8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In 2014, the Petitioner worked as a systems development analyst for a consulting firm that undertook a project for [redacted]. A translated certificate from [redacted] indicates that a project called [redacted] received a "Local Phase" [redacted] Award in 2014. The certificate does not mention the Petitioner by name. In a January 2024 letter, a software architect at [redacted] stated that he collaborated with the Petitioner on the project.

In a request for evidence (RFE), USCIS asked for documentary evidence showing, among other things, the requirements for the prize or award; the national and international recognition of the prize or award; and who is eligible for the prize or award.

In response, the Petitioner submitted a translated article from *Mercúrios* identifying six team members, including the Petitioner, stating that the award is "one of the highest within the company." The Petitioner stated: "This independent coverage serves as objective evidence of the award's prestige and the importance of the work that led to its receipt."

The Petitioner has subsequently disavowed the *Mercúrios* article. Further below, we will explain why we have concluded that the article is not credible.

In the denial notice, USCIS concluded that the record does not show that the certificate is a prize or award issued to the Petitioner for excellence in the field. USCIS also concluded that the Petitioner did not show that this certificate is a nationally or internationally recognized prize or award, rather than an internal recognition from [redacted] to its employees and contractors.

An award available only to persons within a single locality, employer, or school may have little national or international recognition. *See, generally*, 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. The [redacted] Award appears to be limited to [redacted] employees and contractors working on [redacted] projects.

On appeal, the Petitioner contends that USCIS failed to consider "the national prominence of [redacted] a state controlled enterprise whose technical awards represent nationwide honor within the industrial and technological sectors." Statements in a brief, motion, or Notice of Appeal are not evidence and thus are

not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). The Petitioner had previously cited the *Mercúrios* article as evidence of the award's significance, but the Petitioner has since acknowledged evidence showing that the article is not credible.

Whatever the status or reputation of [redacted], the regulation requires the prize or award itself to be nationally or internationally recognized. *See Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 183 (D.N.J. 2021) (USCIS must focus on the recognition of the award, not its issuer); *see also Visinscaia v. Beers*, 4 F. Supp. 3d at 136. The Petitioner has not shown that his certificate received any recognition outside [redacted] The word "Local" on the certificate itself suggests that the certificate did not come from the highest levels of the company.

The Petitioner claimed other awards, such as the [redacted] Award, but on appeal the Petitioner either does not dispute USCIS' conclusions or, in the case of the [redacted] Award, asks that we disregard the evidence. The Petitioner has therefore waived appeal regarding these other awards. *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)).

The Petitioner has not satisfied the requirements of this criterion.

2. Membership

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) calls for documentation 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.

The Petitioner is a professional member of the Association for Computing Machinery (ACM). A printout from the ACM's website reads, in part: "Professional Members are those who subscribe to the purposes of the Association and satisfy one of the following qualifications: 1. Bachelor's Degree; 2. Equivalent level of education; or 3. Two years full-time employment in the IT field." A level of education or years of experience in a particular field are not outstanding achievements for the purposes of this criterion. *See, generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The Petitioner also submitted a letter attributed to ACM Member Services, stating that the Petitioner's "active role in the ACM community and his commitment to contributing to the field distinguish[] him as more than a regular member." The regulation indicates that outstanding achievements must be a requirement for gaining membership. The assertion that the Petitioner has taken an especially active role within ACM after becoming a member does not establish that ACM requires outstanding achievements as a condition for admission into the association.

USCIS concluded that the "ACM does not require outstanding achievements of [its] members." On appeal, the Petitioner cites the letter quoted above, but the Petitioner's activities once he became a member of the ACM do not show that the ACM requires outstanding achievements as a condition of membership.

The Petitioner has not satisfied the requirements of this criterion.

3. Original Contributions

The regulation at 8 C.F.R. § 204.5(h)(3)(v) calls for evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The Petitioner described the following projects:

- He "played a key role in the development of [redacted] a Learning Management System (LMS) designed for healthcare professionals";
- He "implemented various fixes and improvements in" the [redacted] used for college preparation;
- At [redacted] he "served as a mentor to software engineers and led the development and implementation of an advanced data analytics system"; and
- He "was the driving force behind the development of the APL (Leadership Profile Analysis)" at [redacted] which "has empowered more than 1000 behavioral analysts and conducted over 40000 behavioral analysis tests."

Initially, the Petitioner supported the above claims almost entirely with letters from employers and clients. Such letters may provide valuable context for evaluating the contributions, but they should be supported by corroborating documentation. *See, generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) and (3).

The submitted letters lack the necessary support. The letters are from high-ranking officials of the companies responsible for the products on which the Petitioner worked. As such, the letters are not independent evidence that the Petitioner's contributions to those projects have major significance at the field-wide level that the regulation requires.

One of these letters is attributed to [redacted] head of engineering at [redacted] described as "a software startup." The concluding paragraph of the letter reads as follows:

> With an exceptional level of professional excellence, [the Petitioner] exceeds the average of professionals in the market. Your knowledge and skills set you apart, making you a standout in your field. His dedication to detail, technical expertise, and unwavering commitment to delivering exceptional results make him a highly sought after IT consultant. If there is any additional information you would like to share to showcase [the Petitioner], please do not hesitate to provide it.

This paragraph raises questions as to the letter's true authorship and the circumstances of its writing. References to the Petitioner alternate between third and second person. The final sentence reads as an instruction to the putative writer, rather than as information for USCIS. At this time, we do not dispute that [redacted] signed the letter, but the inclusion of the above language does not suggest that he carefully reviewed the letter before signing it.

Apart from letters, the only evidence initially submitted under this criterion consists of screen captures and a report from the APL System. These materials show that the system exists, but they do not establish its major significance.

In the RFE, USCIS asked for a detailed explanation of how the Petitioner's contributions are of major significance in the field, supported by objective documentary evidence. USCIS advised the Petitioner that letters alone would not suffice.

In response, the Petitioner did not provide any further evidence regarding the contributions listed in his initial filing. Instead, the Petitioner provided an entirely different list of claimed contributions:

- Subscription Model Architecture for SaaS [Software as a Service] Products;
- NeoLearning: AI-Powered LMS Tool;
- N.E.O. Methodology: A Revolutionary Framework for Project Management; and
- [redacted] System – Revolutionizing Pipeline Maintenance in the Oil and Gas Industry

Apart from a copy of the 2014 [redacted] Award certificate from [redacted] discussed above, the evidence that the Petitioner submitted regarding these newly-claimed contributions consisted entirely of letters, mostly from employers and clients. These letters explain how the companies benefited from the Petitioner's work, but they are not sufficient as objective documentary evidence to show that the Petitioner's contributions are of major significance in the field.

The remaining letter, submitted as an expert evaluation, summarizes and describes letters and other evidence in the record, but does not constitute objective documentary evidence to show that the Petitioner's contributions have major significance beyond the employers and clients that commissioned the projects described. The *USCIS Policy Manual* states that contributions should be described in as much detail as possible, but it does not indicate that providing such detail is sufficient to establish major significance. *See, generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

In the denial notice, USCIS acknowledged the submitted letters, but concluded that they are uncorroborated by evidence that the Petitioner's "work has been widely implemented throughout the field, has remarkably impacted or influenced the field, or has otherwise risen to a level of major significance."

On appeal, the Petitioner contends that "[m]ultiple independent industry leaders confirm" that his work "materially advanced the fields of software engineering and digital innovation," and that its "influence extends far beyond a single company." The Petitioner states: "The denial did not identify any contradictory evidence nor provide a valid rationale for rejecting this corroboration."

The Petitioner does not identify the "[m]ultiple independent industry leaders." As noted above, the letters are mostly from the individuals who employed the Petitioner to undertake the various projects described in their letters. An additional letter that reiterates the statements in the other letters does not provide strong documentary corroboration.

Also, as noted above, there are questions regarding the origin and authorship of the letters, along with other credibility issues of serious concern, to be discussed further below. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The Petitioner has not satisfied the requirements of this criterion.

4. Leading or Critical Role

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) calls for evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The Petitioner initially claimed "leading roles in renowned organizations" as follows:

- "In his role as a technical leader at [redacted] [the Petitioner] was instrumental in the development of the [redacted], an app that has become an essential tool for over 300,000 healthcare professionals."
- "As a manager at [redacted] [the Petitioner] played a crucial role during a transformative period for the company, which culminated in its acquisition by [redacted] 2021."

The Petitioner submitted letters from employers and consultants detailing the nature of the work the Petitioner performed. These individuals are in a position to attest to that work, but the burden remains on the Petitioner to establish the distinguished reputations of the employing organizations.

The relative size or longevity of an organization or establishment is not in and of itself a determining factor but is considered together with other information to determine whether a distinguished reputation exists. Other relevant factors for evaluating the reputation of an organization or establishment can include the scale of its customer base or relevant media coverage. *See, generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

For a startup business, we consider evidence that the business has received significant funding from government entities, venture capital funds, angel investors, or other such funders commensurate with funding rounds generally achieved for that startup's stage and industry, as a positive factor regarding its distinguished reputation. *Id.*

Because the Petitioner's initial submission included no documentary evidence of his employers' distinguished reputations, USCIS, in the RFE, requested evidence of the types described in the *USCIS Policy Manual*.

In response, the Petitioner cited various statistics about the companies, but did not identify sources for the information. The Petitioner noted that those companies were later acquired by other companies, but he did not show that the companies had distinguished reputations at the time he held the roles described.

The Petitioner submitted "web traffic reports" for his employers' websites. The raw numbers in these reports provide little context that would establish that the organizations have distinguished reputations.

Also, at best, the web traffic information relates to [redacted] each as a whole. When a role is leading or critical for a department or division of an organization, then the petitioner must

establish the critical reputation of that department or division. *See, generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The letters regarding the Petitioner's work at [redacted] indicate that the Petitioner's tasks included "improving the traceability of logs from the signature management system" and delivering "best practices content with lectures or exchange of experiences." A co-founder of the company stated that the Petitioner was responsible for "guiding and inspiring a team of over 15 software engineers." The Petitioner's work at [redacted] involved "strategies/initiatives for revenue recovery" and development of "a new content recommendation tool." The Petitioner did not submit evidence to establish the distinguished reputations of the divisions or departments responsible for these functions.

Letters submitted in response to the RFE are attributed to higher-level officials, and credit the Petitioner with more consequential achievements. In this regard, we note that several of the documents submitted in that same RFE response raise major credibility issues, to be discussed further below. We reiterate that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

In the denial notice, USCIS stated that the Petitioner had not submitted adequate evidence to meet the requirements of the criterion. On appeal, the Petitioner repeats prior claims. As noted above, apart from web statistics, the information provided derives from letters for which the Petitioner has provided no direct documentary corroboration.

The Petitioner has not satisfied the requirements of this criterion.

5. High Salary

The regulation at 8 C.F.R. § 204.5(h)(3)(ix) calls for evidence that the alien has commanded a high salary or other significantly high remuneration for services in relation to others in the field.

The Petitioner initially stated that his "impressive average monthly income of R$24,125.64 not only surpasses but triples the average salary of a Software Development Manager in Brazil." The Petitioner submitted an accountant's letter, indicating that in 2023 the Petitioner earned R$289,507.76 from his company, an amount equivalent to the monthly earnings the Petitioner claimed. The Petitioner did not submit direct documentation of this income.

The Petitioner submitted a copy of a Brazilian tax return for 2022. The Petitioner stated that this document shows that he "earned a total of BRL 167,605.75." Apart from 63 centavos in savings interest, that figure represents nontaxable "income of a partner or owner of a microenterprise or small business." The tax return also indicates that the Petitioner received taxable income of R$21,720 from his own company and R$28,800 "from individuals and abroad." The tax return does not establish how much of the income from various sources could be attributed to salary or remuneration for services.

The Petitioner submitted a printout from salary survey website *Salario* indicating that an "Information Technology Consultant earns an average of R$7,210.04 in the Brazilian job market." The printout

also states that an "Information Technology Consultant's salary range is between R$6,379.00 . . . and the salary ceiling of R$16,136.39."

The *Salario* printout indicates that the data is "from all over Brazil." It shows links for city-specific salary data, but the Petitioner did not provide that information. The printout indicates that the data includes "a total of 119,952 salaries," but does not specify whether that is the total number for all occupations, or only for IT consultants. Charts and graphs in the printout are in Portuguese without the certified English translations required by 8 C.F.R. § 103.2(b)(3).

In the RFE, USCIS advised the Petitioner that the submitted information does not show "the full range of salaries for the field." In response, the Petitioner submitted a printout from *Glassdoor*, indicating that IT consultants in Brazil with more than 15 years' experience earn a monthly base salary between R$10,000 and R$16,000.

The Petitioner stated that his "earnings for 2023 amounted to R$660,749.41 . . . , and for 2022, R$518,612.54, both figures significantly surpassing average remuneration for professionals in his field, locally and globally." These figures are substantially higher than the R$167,605.75 on the 2022 tax return and the R$289,507.76 shown on the accountant's letter for 2023. The Petitioner did not explain or address the discrepancies.

The R$660,749.41 figure for 2023 derives from a tax document showing the total gross revenue of the Petitioner's company, rather than the Petitioner individually. The Petitioner did not establish that he personally received all of his company's gross income as salary or remuneration.

USCIS concluded that the Petitioner had not submitted "sufficient information or evidence showing the full range of salaries for the field."

On appeal, the Petitioner repeats the higher figures stated in response to the RFE. The Petitioner asserts that, as the sole owner of his company, "all business income flows directly to him as personal compensation." This assertion does not acknowledge or explain the considerably lower figures he initially reported for 2022 and 2023. We also note that, because the Petitioner only provided salary survey data, he has not shown that his earnings exceed those of other IT consultants who, like the Petitioner, operate their own businesses.

The Petitioner has not satisfied the requirements of this criterion.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criterion, concerning judging the work of others, cannot change the outcome of this appeal. Because the Petitioner has not otherwise established eligibility for the classification sought, we need not reach, and therefore reserve, the remaining criterion. *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). Likewise, we reserve the separate issue of whether the Petitioner's entry will substantially benefit prospectively the United States.

III. WILLFUL MISREPRESENTATION OF A MATERIAL FACT

Misrepresentation of a material fact may lead to multiple consequences in immigration proceedings. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Under Board of Immigration Appeals precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility."[4] A willful misrepresentation requires that the individual knowingly make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled.[5] Material misrepresentation requires only a false statement that is material and willfully made.[6] The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise.[7]

The Petitioner signed Form I-140, Immigrant Petition for Alien Worker, under penalty of perjury, thereby taking responsibility for the petition and its contents. *See Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018) (stating "an alien's signature on an immigration application establishes a strong presumption that he or she knows the contents of the application and has assented to them"). The Petitioner did not identify any attorney, representative, or preparer who assisted him in preparing and filing the petition; he even stated that he personally prepared the translations in the record. In this way, the Petitioner has assumed full responsibility for all the statements and evidence submitted in support of his petition.

As discussed below, we conclude that the Petitioner has willfully misrepresented material facts by submitting falsified documents containing information material to the petition.

1. *Mercúrios* Article

As noted above, the Petitioner submitted a translated copy of an article from *Mercúrios* (mercurios.top) regarding the [redacted] Award from [redacted] The following paragraph appeared alongside a screen capture of the Portuguese-language article, incorporated into the Petitioner's RFE response statement:

> Founded in 2010, Mercurios is a news portal based in [redacted], specializing in promoting the economy, entrepreneurship, and innovation. Affiliated with Agência Sebrae and the Brazilian Business Mentors Association, Mercurios is dedicated to providing content that drives economic development and inspires the creation of new businesses. With a focus on key topics for the country's growth, the portal stands out as an essential source of information for entrepreneurs and professionals seeking innovation and success.

[4] *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).
[5] *Sergueeva v. Holder*, 324 Fed. Appx. 76 (2d Cir. 2009) (citing *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).
[6] *See* 9 FAM 40.63 N2; *see also Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998) (*en banc*) (Rosenberg, concurring).
[7] *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979).

The Petitioner cited no source for this information. Because the Petitioner has not identified any other individual or organization that participated in preparing the RFE response, we must presume that the Petitioner himself added this information alongside the screenshot of the article.

The dateline on the article indicates that the article was first published on [redacted] 2014, and then "updated" on [redacted] 2024. The latter date was about six weeks after USCIS issued the RFE on July 5, 2024. Efforts to verify the article confirm that it appeared on mercurios.top in [redacted] 2024. But we have not been able to confirm that the article first appeared in [redacted] 2014 as claimed.

We can find no evidence that the website mercurios.top existed in 2014. Public sources[8] indicate that the website domain name was registered on April 30, 2024. The earliest article on mercurios.top that we have been able to verify is dated May 6, 2024,[9] which is consistent with the April 30, 2024 site registration. The record does not identify any other past or present web address used by *Mercúrios* where the article could have appeared in 2014.

2. [redacted] Award and *Agência News* Article

When the Petitioner filed the petition in March 2024, he claimed two awards under the criterion at 8 C.F.R. § 204.5(h)(3)(i). When he responded to the RFE in September 2024, he newly claimed a third award, specifically a [redacted] Award from the [redacted] 2023. The Petitioner did not explain why he never mentioned this award in his initial submission in March 2024. We note that the résumé that the Petitioner included in his initial submission has a section with the heading "Lectures Taught and Professional Awards." Despite the wording, the section lists no awards; it shows only a lecture during the "Academic Week of [redacted] – 2017."

The Petitioner's response to the RFE included a translated copy of the [redacted] 2023 Award certificate and a partially translated copy of an article from *Agência News* (https://www.agencianews.info), dated [redacted] 2023. The translated portion of the *Agência News* article reads, in part:

> Over the years, the [redacted] award has established itself as one of the most important honors for professionals in various fields. The 2023 edition was especially significant, awarding national personalities and highlights in several categories, recognizing not only individual success, but also the positive impact that these professionals have generated in their respective communities and sectors.

The Petitioner's name appears in the article's subheadline, directly above his photograph. Although the article indicated that there were several award recipients in 2023, and included a photograph showing 19 people onstage at an award ceremony, the article names only the Petitioner, with no discussion of the other winners and no explanation for why the article singled out the Petitioner from the other unnamed winners.

[8] For example, https://www.whois.com/whois/mercurios.top.
[9] https://www.mercurios.top/noticia/0979.

The following paragraph appeared alongside a screen capture of the Portuguese-language article, incorporated into the Petitioner's RFE response statement:

> Founded in 2019, Agência News has become a significant voice in Brazilian media, known for delivering fast and accurate information. With a dedicated team of journalists and partnerships like CNN Brazil, Agência News publishes its own stories and republishes highly relevant news, reaching over eight hundred thousand daily visits.

As with the information accompanying the *Mercúrios* article, the Petitioner cited no source for this information about *Agência News*. Because the Petitioner did not identify any person or organization who assisted him in preparing the petition when asked to do so on Form I-140, the most direct conclusion is that the Petitioner himself prepared the document that includes the screenshot and the above paragraph.

Public sources[10] indicate that the website domain name agencianews.info was registered on April 30, 2024, 15 minutes after the registration of mercurios.top. The earliest article on agencianews.info that we have been able to verify is dated May 3, 2024,[11] which is consistent with the April 30, 2024 site registration. The record does not identify any other past or present web address used by *Agência News* where the article could have appeared in 2023.

The web addresses of the individual articles on *Agência News* are sequentially numbered. The address of the article about the Petitioner is https://www.agencianews.info/noticia/[redacted] The article with the previous number, at https://www.agencianews.info/noticia/[redacted] is dated [redacted] 2024. The article with the next number, https://www.agencianews.info/noticia/[redacted] is dated [redacted] 2024. This information therefore indicates that the *Agência News* article about the Petitioner was published on [redacted] 2024, rather than on [redacted] 2023 as claimed in the RFE response. The difference in timing is significant because the Petitioner initially filed the petition in April 2024, but did not submit or mention this article until after he received the RFE in July 2024.

We notified the Petitioner of the above information related to *Mercúrios* and *Agência* in a notice of intent to dismiss (NOID) in May 2026. In response, the Petitioner asserts: "As to the Internet-based third-party materials and the [redacted] 2023 Award, Petitioner cannot at this time provide independent objective evidence sufficient to overcome the AAO's domain-registration findings, and he does not contest those findings. He accordingly formally withdraws those materials and asks that they be disregarded entirely."

We will not disregard the submitted materials. Section 212(a)(6)(C)(i) of the Act applies to any alien who seeks to procure or has sought to procure a benefit under the Act. The Petitioner submitted the materials described above in an effort to procure such a benefit, specifically classification as an alien of extraordinary ability under section 203(b)(1)(A) of the Act.

[10] For example, https://lookup.icann.org/en/lookup.
[11] https://www.agencianews.info/noticia[redacted]

An alien is not inadmissible under section 212(a)(6)(C)(i) of the Act if he or she timely and voluntarily retracts the fraud or misrepresentation. *Matter of M-*, 9 I&N Dec. 118, 119 (BIA 1960) (holding that attempted fraud must be corrected "voluntarily and prior to any exposure"); *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that where an alleged retraction "was not made until it appeared that the disclosure of the falsity of the statements was imminent[, it] is evident that the recantation was neither voluntary nor timely"). The *USCIS Policy Manual* states that for a retraction to be effective, an applicant must correct the representation before being exposed by the officer or U.S. government official. *See, generally*, 8 *USCIS Policy Manual*, *supra*, at J.3(D)(6).

The visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. *Matter of O-*, 8 I&N Dec. 295 (BIA 1959). We claim no authority to make a formal finding of inadmissibility here. But we take notice of the Petitioner's misrepresentation, which might lead to such a finding in a future proceeding in which his admissibility is at issue.

Furthermore, USCIS cannot properly approve an immigrant petition unless USCIS determines that the factual claims in that petition are true. *See* section 204(b) of the Act, 8 U.S.C. § 1154(b). Here, the available evidence indicates that the Petitioner made false claims in response to the July 2024 RFE. In the absence of contrary independent objective evidence, we conclude that the claimed publication dates in 2014 (for the *Mercúrios* article about the [redacted] Award) and 2023 (for the *Agência News* article about the [redacted] Award) have been falsified.

In response to our NOID, the Petitioner acknowledged that he has no independent evidence to confirm the accuracy of the claimed publication dates of the two articles described above. But the Petitioner also asserts that false evidence submitted "inadvertently" does not constitute willful misrepresentation. The Petitioner contends that "[t]he record before the AAO establishes, at most, that certain Internet-based third-party materials were submitted without sufficient verification [and] a failure of diligence."

The Petitioner asserts:

> A petitioner who, upon learning of an inaccuracy in his submission, takes immediate steps to withdraw the inaccurate material and to provide independent evidence of the underlying fact is exhibiting the conduct that the regulatory framework seeks to encourage. . . .
>
> . . . .
>
> A knowing falsifier, confronted with the AAO's domain-registration findings, would be expected to: defend the authenticity of the materials; contest the AAO's findings; construct alternative explanations for the registration dates; rely on collateral arguments to insulate the materials from further scrutiny; resist withdrawal; minimize acknowledgment of responsibility; and, in particular, avoid supplying the AAO with primary contemporaneous evidence that would render the falsified materials unnecessary in the first place.
>
> Petitioner has done none of those things.

The Petitioner's arguments are not persuasive. When the Petitioner responded to the RFE in September 2024, that response included articles from *Mercúrios* and *Agência News* that prominently featured him. There is no reliable evidence that the articles existed before USCIS issued its RFE in July 2024, and no evidence that the articles *could* have existed at the respective times of their claimed initial publication in 2014 and 2023. The Petitioner has not submitted any evidence to overcome the basis of the NOID on this issue.

The *Mercúrios* article includes a quotation attributed to the Petitioner. The Petitioner does not explain how he could have believed, mistakenly but in good faith, that he provided the quotation in 2014.

The Petitioner's response to the NOID includes internal documentation concerning his receipt of the 2014 Award certificate from We do not question the authenticity of the certificate. At issue here, rather, is the *Mercúrios* article intended to establish the significance of that certificate. Therefore, the Petitioner's recent submission of additional information about the certificate does not mitigate the consequences of his earlier submission of the article.

In this respect, we note that the Petitioner's response to the NOID includes translated copies of email messages, indicating that while the Award recognized achievements in 2014, "the Award 2014 event . . . took place on 2015 at the The Petitioner also submitted a printout of a colleague's congratulatory social media post, likewise dated , 2015, including photographs from the award ceremony. A photograph in the *Mercúrios* article shows the Petitioner and others standing in a sports stadium that appears to be the If that photograph was taken at a ceremony in 2015, then it could not have been published in *Mercúrios* in 2014. Because the Petitioner attended that ceremony in 2015, he had direct knowledge that photographs from that event could not have been published in 2014. And because the Petitioner personally attested to the English translation of the article, including the claimed publication date, he was demonstrably aware of that claimed publication date.

The Petitioner states that he "withdraws the 2023 Award as evidence under the award criterion of 8 C.F.R. § 204.5(h)(3)(i), upon recognition that the certificate is connected to professional training and course completion rather than constituting a nationally or internationally recognized prize or award for excellence in the field." But he previously submitted the *Agência News* article that claimed "the award has established itself as one of the most important honors for professionals in various fields . . . , recognizing not only individual success, but also the positive impact that these professionals have generated in their respective communities and sectors." The Petitioner personally attested to the English translation of the article and was therefore demonstrably aware of that article's contents.

Previously submitted evidence indicates that several people receive the Award every year, but the *Agência News* article only features the Petitioner. Likewise, newly submitted evidence indicates that had a number of different Award categories in 2014, but the *Mercúrios* article only mentions the specific Award relating to the Petitioner's work. This unexplained focus on the Petitioner adds to the questions surrounding the origins of the submitted articles.

As noted above, the Petitioner did not simply submit these articles without comment. The submitted printouts include purported information about *Mercúrios* and *Agência News*, including their purported founding dates, affiliations, and circulation. This information is not part of the submitted articles themselves; whoever prepared the RFE response added this information, in English, to pages showing Portuguese-language screen captures. The Petitioner has not claimed or established that anyone other than himself prepared that response, and therefore we must conclude that the Petitioner personally incorporated the articles into his response and added the claimed background information about the two publications. In his response to the NOID, the Petitioner does not identify any source for his specific claims about the two publications, such as his assertion that *Mercúrios* was "[f]ounded in 2010" and is "[a]ffiliated with Agência Sebrae," and he does not say how he found these articles.

Considering not only the content of the articles, focusing on the Petitioner to the exclusion of others who received similar recognition at the same time, but also the timing of the submission of the articles, coinciding with the preparation of the RFE response, the articles appear to have been designed specifically to bolster that RFE response. The claimed publication dates shown on the articles cannot be accurate, based on the websites' registration dates. The Petitioner has not provided any relevant independent objective evidence in response to the AAO's NOID, which raised these points directly. This leads us to conclude that the articles were backdated to appear to have originated when the Petitioner received the awards. And because the Petitioner has not identified attorneys or others who helped to prepare the petition materials, we conclude that the Petitioner prepared these materials himself.

The Petitioner cites various case law to support the proposition that the submission of false evidence does not constitute willful misrepresentation if the party submitting that evidence believes, in good faith, that the evidence is authentic and true. But the Petitioner, submitting his latest brief under penalty of perjury, does not directly assert that he *did* believe the submitted evidence to be true; rather he seeks to withdraw the evidence.[12]

Furthermore, while the Petitioner repeatedly asserts that a finding of willful misrepresentation must rest on affirmative evidence of "intent to deceive," intent to deceive is an element of fraud, which is legally distinct from willful misrepresentation. Willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009) (citing to *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997); *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995). "The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary." *Mwongera v. INS,* 187 F.3d 323, 330 (3d Cir. 1999).

Upon consideration of the evidence of record and the Petitioner's assertions in response to the NOID, we conclude that the record supports a finding that the Petitioner willfully misrepresented material facts concerning the articles submitted in response to the RFE. USCIS and other agencies can take this finding into account in future proceedings where the Petitioner's admissibility is at issue.

[12] As stated above, our appellate decision does not include a direct finding of inadmissibility. Rather, it establishes the basis for a future finding.

IV. CONCLUSION

Congress set a very high benchmark for aliens of extraordinary ability by requiring the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" to show his or her achievements have been recognized in the field. Section 203(b)(1)(A)(i) of the Act. Because the Petitioner has not satisfied the threshold "initial evidence" requirements at 8 C.F.R. § 204.5(h)(3), we cannot conclude that he is an alien of extraordinary ability and need not further analyze the merits under the statute. *See Kazarian*, 596 F.3d at 1119-20; *see also Nagaiah v. Allen*, 784 F. Supp. 3d 798, 814 (E.D. Pa. 2025) (finding the regulation "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa."). Therefore, we decline to reach and hereby reserve any final merits determination in this matter. *See INS v. Bagamasbad*, 429 U.S. at 25.

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.*, 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.*, 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. 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 established success in his field, but has not shown a degree of recognition of his work that rises to the level of sustained national or international acclaim and demonstrates 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 that the Petitioner 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 Petitioner has not demonstrated eligibility as an alien of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.