U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40768899

Date: AUG. 17, 2026

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

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

The Petitioner, a franchise development businessman, 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 Petitioner did not satisfy at least three of the ten initial evidentiary criteria. 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 his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient 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). If an evidentiary standard under 8 C.F.R. § 204.5(h)(3)(i)-(x) does not "readily apply" to a petitioner's occupation, the petitioner may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

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, 1121 (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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022) (upholding USCIS' two-step review process as "consistent with the governing statute and regulation").

II. ANALYSIS

The Petitioner indicates he has been working in the United States as the chief executive officer of [redacted], a laser hair removal business in [redacted] Florida, with a focus on expanding the business through franchise development. He is seeking to be classified as an alien of extraordinary ability in the field of business franchise development.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, the issue to be addressed on appeal is whether the Petitioner satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, USCIS determined that while the Petitioner fulfilled two criteria, published materials about the individual in professional publications and participation as a judge of others' work, he did not fulfill the six additional claimed evidentiary criteria:

- lesser nationally or internationally recognized awards or prizes,
- memberships in associations in the field which require outstanding achievements of their members as judged by experts in the field,
- original contributions of major significance,
- authorship of scholarly articles in professional or major trade publications or other major media,
- leading or critical role for organizations with a distinguished reputation, or
- high salary or other remuneration in relation to others in the field.

On appeal, the Petitioner claims that the evidence demonstrates he meets the six claimed criteria. Upon de novo review, the Petitioner has not demonstrated he meets at least three of the initial evidentiary criteria.[1]

1. "Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i).

For the reasons discussed below, we agree with USCS' conclusion that the Petitioner did not meet this criterion.

To meet this criterion, the Petitioner must demonstrate that he received prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients, as well as any limitations on competitors. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.

To meet the criterion, the Petitioner claims he received five awards or prizes. The record, however, does not demonstrate that the Petitioner received an award or prize, or that any of the claimed awards or prizes is recognized nationally or internationally for excellence in his field.

First, the Petitioner claims he was named by *Forbes Brasil* in its article titled [redacted]. He submitted a portion of an article from the publication, *Forbes Brasil*, indicating he was named as [redacted] for its article titled [redacted] 2014. The article names the Petitioner as [redacted] and, each in their own area, with a young spirit, rare motivation and openness to new things, aiming to reinvent Brazil and take control of our future." An article submitted with the Petitioner's request for evidence reply titled [redacted] discusses the *Forbes* list honoring individuals in Brazil since 2014 and some of the factors considered when compiling the list of individuals. While the [redacted] article includes a discussion about the Petitioner and his work as a businessman and founder of [redacted] it and other evidence in the record do not indicate that the Petitioner received a prize or award based on him being [redacted] written about in the article. In addition, the record does not show that the Petitioner being one of the individuals named in the *Forbes Brasil* article demonstrates being nationally or internationally recognized for excellence in his field of business franchise development.

For the remaining four claimed awards or prizes, the Petitioner did not provide evidence sufficient to show that he was the recipient of the award or prize. For instance, the Petitioner submitted evidence about [redacted] being named Entrepreneurial Company of the Year from [redacted] in 2014. The Petitioner submitted photographs depicting him holding an award; printouts from [redacted] website about [redacted] and the [redacted], an article about him and his business, [redacted], a printout of a blog article from [redacted], and an article listing [redacted] as one of three entities being named Entrepreneurial Company of the Year.

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

The evidence indicates that [redacted] received the award, not the Petitioner. While nothing precludes reliance on a team award to satisfy this criterion, the alien must be one of the recipients. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). The description of this type of evidence in the regulation indicates that the focus should be on the alien's receipt of the awards or prizes, as opposed to the employer. *Id.* Here, the Petitioner did not demonstrate that [redacted] bestowed the award to the Petitioner, rather than the business, [redacted]. *See Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885, at *7 (E.D.N.Y. Sept. 30, 2011) (upholding plaintiff was not named as the award recipient); *see also 72andSunny Partners LLC v. Mayorkas*, No. 222CV04465CASGJSX, 2023 WL 5661527, at *7 (C.D. Cal. Aug. 28, 2023) (upholding the record did not establish the beneficiary was the intended recipient of awards for which he was not listed).

Similarly, the Petitioner indicates he won the Young Entrepreneur Award from [redacted] in 2012. In support of the award, the Petitioner submitted photographs depicting him holding an award, print outs from [redacted] website about [redacted] and the [redacted] and an article from 2014 about the [redacted] awards. While the photographs depict the Petitioner holding an award, the record does not corroborate the Petitioner's claims that he was the recipient of the Young Entrepreneur Award from [redacted] in 2012. In addition, he claims receipt of the Market Excellence Award from the [redacted] held in [redacted] Columbia in 2013. The Petitioner submitted a photograph depicting him with an award; an article dated [redacted] 2013, from the publication *larepublica.co*, mentioning the Petitioner founding the [redacted] and being at the [redacted]; printouts from the [redacted] website about the [redacted] in 2026; and an informational summary dated 2017 about [redacted] While the Petitioner is depicted holding an award, it and other evidence in the record do not corroborate the Petitioner's claims that he was a recipient of the Market Excellence Award.

Moreover, the Petitioner's claims that he received the [redacted] Award in 2014 from the newspaper publication, *Diário da Região*,is not supported by the record. The Petitioner submitted a photograph of an award and an informational summary about *Diário da Região*, but he did not show that he received the award. Without further evidence, the Petitioner has not demonstrated he was the recipient of any of these awards or prizes.

The Petitioner has not established that he received an award or prize and thus does not meet this criterion. In addition, the record lacks evidence that the claimed awards or prizes are recognized beyond the awarding organizations, *Forbes Brasil*, [redacted] and *Diário da Região*, respectively. *See Visinscaia v. Beers,* 4 F.Supp. 3d. 126, 136 (D.D.C. 2013) (requiring evidence of "how a larger audience viewed [the] awards").

For these reasons, the Petitioner has not demonstrated he meets this criterion.

2. "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." 8 C.F.R. § 204.5(h)(3)(ii).

For the reasons discussed below, we agree with USCS' conclusion that the Petitioner did not meet this criterion.

To demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership, and that such achievements are judged by recognized experts in the field. Membership requirements based on employment in a certain occupation, minimum education or experience, or payment of dues or fees do not satisfy this criterion as such requirements do not constitute outstanding achievements. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1).

On appeal, the Petitioner argues he meets the criterion based on his membership in four organizations, namely LIDE, Brazilian Franchising Association (ABF), Instituto Foodservice Brasil (IFB), and Women's Empowerment Principals (WEP).

For his membership with LIDE, the Petitioner did not submit evidence sufficient to demonstrate his membership. He submitted two pages from LIDE's website identifying the management committee for LIDE [redacted] with him listed as its president; photographs of him with awards; an article about the LIDE [redacted] and an informational summary from LIDE about the organization. Based on LIDE's website information, the Petitioner has had [redacted], but he did not submit evidence that he is a member of LIDE.

In addition, the record does not show that membership with LIDE requires outstanding achievement of its members as judged by experts in his field of business franchise development. The informational summary describes LIDE as "an organization that brings together executives from the most varied sectors in search of strengthening free initiative for economic and social development, as well as defending ethical principles of governance in the spheres public and private." The summary also states, "Brazilian and multinational companies with annual revenue equal to or greater than R$200 million can join LIDE, companies that practice corporate governance, value human beings at all levels, respect the environment and offer support for social responsibility programs, in addition to well-known organizations that have a highly reputable public image in Brazil and abroad." These requirements do not show outstanding achievement as judged by recognized experts in the field is an essential element for membership with LIDE.

Similarly, for his membership with ABF, IFB, and WEP, the Petitioner did not establish that he is a member of these organizations, as required under the regulations. For instance, for WEP, the Petitioner submitted an email dated October 7, 2020, from WEP, which mentions WEP signatory membership, but the email does not mention the Petitioner or him being a member of WEP. The Petitioner also submitted a screenshot from the website for [redacted] stating it has been a WEP signatory member since August 26, 2020; published material which mentions [redacted] having been recognized by WEP; and an informational summary about WEP's establishment, goals, and commitment on gender equality and empowerment. The record suggests that [redacted] may be a signatory member of WEP, not the Petitioner. Without further evidence, the Petitioner has not established he is a member of WEP.

Similarly, for ABF, the Petitioner submitted two declarations from ABF, both dated February 8, 2024. The first declaration states [redacted] franchise network . . . is associated with ABF since 06/13/2023" and the second declaration states, "the franchise network [redacted] . . . is associated with ABF since 01/13/2022." In addition, he submitted a summary page about ABF

and articles about franchises. The evidence indicates that the businesses, [redacted] and [redacted], are associated with ABF, not the Petitioner. For IFB, the Petitioner submitted a declaration dated February 27, 2023, from IFB stating, "the company [redacted] . . . is associated with [IFB] since March 2022." In addition, he submitted printouts from IFB's website which provide informational summaries about IFB. The evidence reflects that [redacted] is associated with IFB, not the Petitioner.

Moreover, there is no indication that the requirement for being a member of LIDE, AFB, IFB, or WEP includes outstanding achievements of the members, as judged by recognized experts in the field of business franchise development.

With his initial petition, the Petitioner indicated he met the criterion based on his membership in two additional associations. For the Brazilian Association of E-commerce, the Petitioner submitted printed information about the association. However, the record does not include evidence that the Petitioner is a member of this association, the association is in his field, the association requires outstanding achievement as an essential condition for admission to membership, and that such achievements are judged by recognized experts in the field. For American Med Spa Association, he submitted two certificates and an email indicating he has been a member of American Med Spa Association from 2023 to 2025. However, the record does not indicate American Med Spa Association is in his field, business franchise development, or that the association requires outstanding achievement as an essential condition for admission to membership, and that such achievements are judged by recognized experts in the field.

For these reasons, the Petitioner has not established that he meets the requirements for this criterion.

3. "Evidence of the alien's participation, either individually or on 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).

USCIS determined that the Petitioner met the criterion but did not provide an explanation. Upon de novo review, we conclude that the Petitioner has not met the requirements for this criterion.

For this criterion, the alien must show that they not only have been invited to participate as a judge of the work of others in their field, but also that they have actually participated in such judging. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). Examples of judging may include peer review for a scholarly journal, conference, or government research funding program or serving as a member of a Ph.D. dissertation committee. *Id.*

To meet this criterion, the Petitioner claims that he judged the work of business operators and provided them with advice for the growth of their businesses. In support of his assertions, he submitted letters from business owners indicating that they participated in the Petitioner's mentoring courses for the growth of their businesses and that the Petitioner provided them with an analysis of their businesses, including advice on business structuring, operations, franchise support and expansion, and branding. For instance, the owner of [redacted] explains having attended the Petitioner's mentoring course and that the Petitioner provided the owner with advice on business model formatting, franchise support, and expansion. A second letter from the owner of [redacted] explains having participated

in the Petitioner's mentoring program and that the Petitioner evaluated the business and provided strategies to improve the business. Other business owners provided similar letters. The Petitioner also provided an article from the publication, *Franchisee*, which includes a statement from the Petitioner about the general characteristics of franchise candidates for his business.

However, the evidence does not indicate that the Petitioner participated as a judge, individually or on a panel, of the work of others in the same or an allied field. Instead, the letters from business owners indicate that the Petitioner provided "guidance" for their businesses, including business structuring, operations, franchise support and expansion, and branding, but did not further elaborate or explain how his guidance or mentoring through the classes demonstrates participation as a judge of the work of others. *See Onaghise v. Dep't of Homeland Sec.*, No. 3:20-CV-03033-X, 2022 WL 4073344, at *5 (N.D. Tex. Sept. 2, 2022) (upholding letters indicating various responsibilities, including teaching, training, and mentoring, did not constitute judging the work of others). Furthermore, the letters do not elaborate and indicate who, when, and what the Petitioner purportedly judged. *See Guida v. Miller*, No. 20-CV-01471-LB, 2021 WL 568850, at *8 (N.D. Cal. Feb. 16, 2021) (upholding "that there were no details about what event the plaintiff was judging, who he was judging, or the basis for [the plaintiff's] knowledge [in her letter] of the Federation's authority regarding the plaintiff's judging history").

Based on the evidence submitted, the Petitioner has not sufficiently demonstrated that he meets this criterion. We withdraw USCIS' findings to the contrary.

4. "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).

For the reasons discussed below, we agree with USCS' conclusion that the Petitioner did not meet this criterion.

To meet this criterion, a petitioner must first demonstrate making original contributions in the field. In addition, a petitioner must show the original contributions are of major significance to the field. The criterion focuses on whether a petitioner's original work constitutes major, significant contributions to the field. A petitioner may show that their contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013). Relevant evidence of the significance of an original contribution may include, but is not limited to:

- Published materials about the significance of the alien's original work;
- Letters providing details about how the alien's original work has been significant in the field;
- Citation of the alien's published scholarly work at a level indicative of major significance; and
- Patents or licenses deriving from the alien's work or evidence of its commercialization.

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

To meet the criterion, the Petitioner claims his original contributions are based on a book he authored; his lectures at multiple organizations and businesses; his participation in podcasts; and multiple letters of recommendation.

The Petitioner submitted a copy of a book he authored, [redacted] However, the Petitioner did not explain or provide evidence to show that his authoring the book is an original contribution, or that it is of major significance in his field. For instance, the Petitioner did provide evidence about the citation of his book, published materials about the significance of his book, or other evidence to show how his book has influenced his field or has been original and majorly significant in his field of business franchise development. *See Kazarian v. USCIS*, 580 F.3d 1030 (9th Cir. 2009), *aff'd in part,* 596 F.3d 1115 (9th Cir. 2010) (finding publications and presentations alone are not sufficient to demonstrate major significance); *see generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1).

In addition, the Petitioner submitted nine letters to support his claim that he has made qualifying contributions in the field of business franchise development. However, the letters do not identify any specific original contribution by the Petitioner or explain how his contribution is of major significance in the field. Instead, the letters generally praise the Petitioner's skills in franchise development, his mentoring program, and his guidance for their businesses.

For example, W-B- generally discusses the Petitioner having influence in franchise operations and financial protection services in Brazil and the United States. The letter lacks specific details about the Petitioner's influence in franchise operations and financial protection services to understand whether they constitute original contributions of major significance to his field. In addition, a letter from R-N-, the owner of [redacted] discusses the Petitioner assisting with raising the standard of service, enhancing menu and customer experience, and strategizing to create a laboratory unit to test recipes. Another letter from T-B-, a real estate entrepreneur, discusses having met the Petitioner when he was president of [redacted] and T-B- becoming a franchisee of another business the Petitioner founded, [redacted] T-B- generally discusses the Petitioner's business knowledge and success with this vocational program. Similarly, a letter from M-S-, the founder of a payment management business and a web development business, explains how the Petitioner helped expand and improve his business with a customer notification system, billing messaging, invoicing, payment plans, and security enhancements. Letters from W-G- and L-S-B- discuss having taken the Petitioner's mentoring course and it helping to improve the operation and expansion of their businesses. However, these letters did not detail any original contribution or describe how the Petitioner has significantly influenced the field.

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). Here, the letters do not contain specific, detailed information explaining the unusual influence or high impact the Petitioner's work in business franchise development has had on the overall field to establish that it has been of major significance. *See Jafarov v. United States Citizenship & Immigr. Servs.*, No. 23 CIV. 3372 (PAE), 2024 WL 69056, *8 (S.D.N.Y. Jan. 5, 2024) (finding the petitioner's testimonial letter mostly consisted of conclusory statements about the significance of his work and his potential).

In addition, the Petitioner claims he contributed to his field by imparting his professional knowledge, career history, and experience to business owners, business leaders, academics, and other business professionals during his lectures for franchise organizations, businesses, LIDE, academic institutions, and business exhibitions and fairs, as well as his participation in podcasts. The Petitioner provided a list of his lectures and podcasts, together with photographs and informational documents about some of the events. However, the Petitioner did not explain or provide evidence about his original contributions based on these events, or how his lectures and podcasts have been of major significance in his field. *See Goncharov v. Allen*, No. 3:21-CV-1372-B, 2022 WL 17327304, at *5 (stating that "[c]ourts have routinely affirmed agency decisions that held § 204.5(h)(3)(v) 'requires substantial influence beyond one's employers, clients, or customers); *see also Amin v. Mayorkas*, 24 F.4th at 394; *Visinscaia v. Beers*, 4 F. Supp. 3d at 134; *Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *6 (S.D. Cal. May 31, 2019).

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

5. "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).

For the reasons discussed below, we agree with USCS' conclusion that the Petitioner did not meet this criterion.

USCIS determined that the Petitioner did not meet this criterion because the materials authored by the Petitioner are not "scholarly articles" as required under the regulations. The Petitioner claims eligibility for this criterion based on him authoring the book titled '[redacted]' In addition, he claims eligibility based on him having been a speaker at several events focused on helping business professionals improve their businesses and careers, including speaking at LIDE events, business development programs, educational programs, academic institutions, businesses, and podcasts.

This criterion contains multiple evidentiary elements the Petitioner must satisfy through the submission of evidence. The first element is that the Petitioner is an author of scholarly articles in his field. We consider these articles to fall within two distinct areas. One area is within the academic arena in which 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. 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. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(l). The second area lies outside of the academic arena in which a scholarly article should be written for learned persons in that field. *Id.* Learned persons include all persons having profound knowledge of a field. *Id.*

The second evidentiary element of this criterion is that the scholarly articles appear in one of the following: (1) a professional publication, (2) a major trade publication, or (3) in a form of major media. Regarding the medium in which the articles appear, the Petitioner should establish that the publication's circulation statistics are high relative to similar publications and should also establish the publication's intended audience. *Id.*

The Petitioner submitted a photocopy of the book he authored and a letter from J-V-G-D-, an entrepreneur and franchise business owner, who indicates that the Petitioner's book "had a significant impact on how [he] understand[s] the franchising world" and "stands out as a valuable tool for serious entrepreneurs seeking to thrive in a competitive sector." While the evidence shows that the Petitioner authored the book for learned persons in his field of business franchise development, he did not provide evidence about its publication. He did not establish that the book he authored appeared in a professional publication, a major trade publication, or in a form of major media, as required under the regulations.

Moreover, the Petitioner speaking at various events, such as at LIDE, businesses, academic institutions, and podcasts, does not show written work he authored, as required under the regulations.

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

6. "Evidence of 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).

For the reasons discussed below, we agree with USCS' conclusion that the Petitioner did not meet this criterion.

The role may be shown to be leading or critical for a division or department of an organization or establishment, or for the organization or establishment overall. Evidence of a leading role should show that the alien was a leader for the claimed component, and a job title with matching duties may help to establish that a role was leading. For a critical role, evidence should show that the alien 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. In determining whether the organization or establishment, or a department or division thereof, has a distinguished reputation, relevant factors include its size, longevity, scale of its customer base, and relevant media coverage. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(l).

The Petitioner claims his eligibility for the criterion based on his roles with multiple organizations. He claims he co-founded a Brazil hair removal franchise business, [redacted] He submitted printouts from the [redacted] website discussing the business and its locations in Brazil; printouts from its social media pages; an unsigned sample lease agreement; a signed lease agreement between [redacted] relating to the lease of commercial space; photographs of [redacted] office space locations; a signed franchise agreement dated June 20, 2023, between [redacted]; a franchise contract dated November 17, 2023, between [redacted] and screenshots of individuals' social media pages. While the lease agreements are signed by the Petitioner on behalf of [redacted], the Petitioner did not submit evidence sufficient to corroborate his claims that he is a co-founder of the business or has otherwise held a leading or critical role with [redacted] in accordance with the regulations.

Similarly, for [redacted] the Petitioner did not submit evidence corroborating his claims that the Petitioner has a leading or critical role with the business. The Petitioner provided marketing

material for [redacted] franchise investment opportunities; a sample franchise investment statement; a franchise disclosure document for [redacted] an unsigned franchise agreement for [redacted], a print out of Florida limited liability company details for [redacted] articles of organization for [redacted]; a management operating agreement for [redacted] between [redacted] and D-G-; a lease agreement dated October 1, 2023, with [redacted] as tenant; marketing materials and photographs for [redacted] screenshots of social media accounts of multiple individuals; and a 2024 W-2 wage and tax statement for a company named [redacted] indicating wages, tips and other compensation of $187,531.52 with 11 employees. The evidence provides some information relating to [redacted] and [redacted] but it does not explain the Petitioner's role with these organizations or otherwise demonstrate his role as leading or critical in accordance with the regulations.

For his role with [redacted] the Petitioner also submitted a letter from D-G-, an individual who describes himself as a partner of [redacted] The letter states that "[the Petitioner] was responsible for adapting the entire Brazilian business model to the U.S. market, including setting operational standards and commercial strategies. His leadership was pivotal in launching and managing the company's American operations, and his vision continues to serve as the foundation for the company's functioning in a highly competitive environment." Similarly, another letter from R-P-, a co-founder of [redacted] generally discusses the Petitioner's contributions being critical to the development and expansion of the business to an international operation. The letters, however, do not contain detailed, specific information evidencing the Petitioner's leading or critical role. Instead, the letters make broad statements without explaining the Petitioner's specific role at [redacted] or elaborating how the Petitioner performed in a leading or critical role. Moreover, repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, No. 95 CIV. 10729 MBM, 1997 WL 188942 at *5 (S.D.N.Y. Apr. 18, 1997).

In addition, the Petitioner claims he has held leading or critical roles with additional organizations, namely [redacted] However, the letters of recommendation discussing these organizations indicate that authors attended the Petitioner's mentoring classes. While the letters describe the Petitioner providing guidance and advice to individuals about the businesses, the evidence does not show that the Petitioner held a leading or critical role for these businesses in accordance with the regulations.

In addition, the Petitioner claims he meets the criterion based on having co-founded [redacted] a home repair franchise business in Brazil. In support of his claims, he submitted an article published in *La Republica*, a Colombia newspaper, discussing the [redacted] while mentioning that [redacted] would be a guest of the event. In addition, the Petitioner submitted an informational summary about *La Republica* from *Wikipedia.org*; documentation about *La Republica's* circulation; part of an article discussing [redacted] in *El Nuevo Siglo*, a Colombia news publication, and printouts about its circulation; part of an article in *Forbes Brasil* titled [redacted] and screenshots from *Forbes Brasil's* website about the publication. While the articles discuss the Petitioner co-founding [redacted], they are brief summaries about [redacted] and the Petitioner starting the business. The articles and other evidence in the record do not provide sufficient information to establish that he served in a leading or critical role with [redacted] It is the Petitioner's burden to show, through the submission of

relevant evidence pertaining to his roles with specific organizations, so that he can satisfy the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). He has not made such a showing.

This regulatory criterion also requires the organization or establishment, or the department or division for which the person holds or held a leading or critical role, to have a distinguished reputation. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). *Meriam-Webster's* online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence" or "befitting an eminent person." *Id.* Here, while the Petitioner claims the businesses discussed above have distinguished reputations, he did not provide evidence to corroborate his assertions. The Petitioner mainly submitted screenshots from the business' websites, marketing materials, and articles which do not include an author. *See Cuckic v. Jaddou*, No. 21-CV-8395 (JPO), 2023 WL 2586031, at *5 (S.D.N.Y. Mar. 21, 2023) (finding self-promotional material from the organization did not establish a sufficiently high reputation).

For his role with [redacted], the Petitioner submitted a letter from R-K-N-, a co-owner of [redacted] explaining that Petitioner became a partner of [redacted] for six years and advised on the expansion of [redacted] menu, creation of dedicated laboratory unit for testing new recipes, partnerships with brands, investments in marketing, digital marketing, and franchise development. The letter sufficiently demonstrates that the Petitioner performed in a leading or critical role for [redacted]. However, the Petitioner did not establish that [redacted] has a distinguished reputation. While the Petitioner submitted an article titled "[redacted]" dated September 17, 2019, the article and other evidence in the record do not indicate where the article was published in order to understand whether [redacted] garnered a distinguished reputation based on the article.

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

7. "Evidence 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).

For the reasons discussed below, we agree with USCS' conclusion that the Petitioner did not meet this criterion.

In meeting this criterion, a credible employment contract or job offer may establish that an alien "has commanded" such salary or remuneration, as may evidence of past earnings such as tax returns and pay statements. Comparative wage or remuneration data that is appropriate for the alien's occupation and location should be submitted to establish that their compensation is high relative to others working in the field. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1).

The Petitioner claims his eligibility for this criterion based on his remuneration as a chief executive officer of his Brazilian businesses for the years 2020 to 2023. For his salary, the Petitioner submitted an opinion letter from an accounting firm in Brazil, as well as his tax returns reflecting the Petitioner's taxable income for 2020 at R$8,024,037.09, 2021 at R$7,843,203.99, 2022 at R$8,004.863.64, and 2023 at R$450,000.

However, the annual income tax returns do not indicate that the Petitioner's taxable income for these years is from his work in his field of business franchise development. For instance, his income tax

return for 2022 states total profits and dividends of R$8,004,853.65, with R$4,002,431.82 resulting from the Petitioner being a beneficiary earning profits and dividends from [redacted]. The Petitioner, however, has not explained or provided evidence about his work and earnings from [redacted]. Also, the income tax return indicates that an additional R$4,002,431.82 is from his dependent, [redacted], being a beneficiary earning profits and dividends from [redacted]. However, he has not explained how his dependent receiving profits and dividends of R$4,002,431.82 from [redacted] is considered part of his R$8,004,853.65 remuneration for 2022. Moreover, he has not explained or provided evidence that his remuneration for any of the years 2020 to 2023 is for his work as a chief executive officer in his field of business franchise development. For instance, the Petitioner did not explain or provide evidence about [redacted], his role with the entity, or how him being a beneficiary of its profits relates to him earning remuneration in his field of business franchise development.

The letter from the accounting firm states its opinion is based on the Petitioner's income tax returns for the years 2020 to 2023, noting the Petitioner's "average annual income during this period was approximately BRL 5,084,918.23, demonstrating his sustained and exceptional income-generating capacity in the business and franchise sectors." The opinion notes that salary survey data information from the website *payscale.com* indicates that a chief executive officer in Brazil earns an average base salary of R$500,00 per year, and that salary data from *salary.com* for comparative purposes, "reports that the average annual salary of a CEO in Brazil is approximately BRL 1,805,044.00. This figure represents the average compensation for top-level executives in medium and large-sized companies across the country."

While the opinion letter indicates the Petitioner's income was in the business and franchise sectors, it does not explain the Petitioner's role and the source of his income to understand whether he earned his remuneration as the chief executive officer in the business franchise development field. Also, the opinion provides salary data related to chief executive officers in medium and large-sized corporations in Brazil, whereas the Petitioner specifically points out that he submitted evidence related to his *remuneration*, not his *salary* as chief executive officer of a medium or large-sized company.

Moreover, the Petitioner did not provide the proper comparable salary or remuneration information for his particular occupation as a chief executive officer in the field of business franchise development. The opinion letter provided comparison data for the role of chief executive officer in Brazil, not specifying that it is in the Petitioner's field of business franchise development. The plain language of this criterion requires a comparison against "others in the field." 8 C.F.R. § 204.5(h)(3)(ix). Salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. The Petitioner must submit details of his work and comparison documentation of the earnings of those in their occupation performing similar work.

Additionally, average salary levels are not comparable when evaluating whether a salary was high "in relation to others in the field." *See Kinuthia v. Biden*, 702 F. Supp. 3d 5, 11 (D. Mass. 2023) (finding USCIS reasonably concluded a filing party's evidence comparing average and median salaries was insufficient to establish she commanded a high salary in relation to others in the field). Here, the comparison data provides an average base salary statistic from *payscale.com* and *salary.com*. Average and median salaries are insufficient to establish the Petitioner commanded a high salary in relation to

others in the field. *Id.*; *Mussarova v. Garland*, 562 F. Supp. 3d 837, 853 (C.D. Cal. 2022). Proving a salary is "above average" typically doesn't suffice to establish a "high salary" or "significantly high remuneration." More comprehensive wage data is needed to effectively demonstrate high earnings relative to others in his field.

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

B. Reserved Issues

USCIS determined that the Petitioner meets eligibility for an additional criterion relating to published material at 8 C.F.R. § 204.5(h)(3)(iii). Even if the Petitioner meets this criterion, he cannot fulfill the initial evidentiary requirement of meeting three criteria under 8 C.F.R. § 204.5(h)(3). We, therefore, need not determine whether he meets the requirements of the criterion relating to published material and will reserve this issue. *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).

Because the Petitioner has not fulfilled the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we need not provide the type of final merits determination referenced in *Kazarian v. USCIS*, 596 F.3d at 1119-20. Accordingly, we will reserve this issue. *See INS v. Bagamasbad*, 429 U.S. at 25. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

C. O-1 Nonimmigrant Status

The record reflects that in 2024 the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, this approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard in statute, regulations, and case law. Many Form 1-140 immigrant petitions are denied after USCIS approves nonimmigrant petitions. *See, e.g., Sunlift Int'l v. Mayorkas, et al.*, 2021 WL 3111627 (N.D. Cal. 2021); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See, e.g., La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam). Nor are we required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology In'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Constr. & Design Co. v. Bureau of Citizenship & Immigr. Servs.*, 2008 WL 2074097 *5 (N.D. 111. May 14, 2008) (describing as "prudent" that the AAO "assess each application on its own, rather than rubber stamping applications merely because of prior approvals"), *aff'd sub nom. Constr. & Design Co. v. US. Citizenship & Immigr. Servs.*, 563 F.3d 593 (7th Cir. 2009).

III. CONCLUSION

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 v. Beers*, 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 v. USCIS*, 596 F.3d 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 not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an alien of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

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.