U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43224182

Date: JUNE 17, 2026

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

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

The Petitioner, an executive chef, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as an alien with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This EB-1 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. Section 203(b)(1)(A)(i) of the Act.

USCIS denied the petition, concluding that the record did not establish, as required, that the Petitioner meets at least three of the ten initial evidentiary criteria for this classification. 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

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

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

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

The term "extraordinary ability" means expertise commensurate with "one that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Unless a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award), they must provide sufficient qualifying documentation that meets at least three of the ten lesser evidentiary criteria listed at 8 C.F.R.

§ 204.5(h)(3)(i)–(x). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

If a petitioner meets these initial evidence requirements, USCIS must then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step extraordinary ability analysis "consistent with the governing statute and regulation"); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual.

II. ANALYSIS

The Petitioner intends to be an executive chef in the field of culinary arts and filed the instant petition in October 2025. The Petitioner has worked as a chef at various restaurants in Poland and the United States.

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 claimed to have met four initial criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (viii), and (ix), but USCIS concluded that he did not meet any of the criteria he claimed, as summarized below:

- Receipt of lesser nationally or internationally recognized prizes or awards for excellence;
- Published materials about the alien in the field;
- Performing leading or critical roles for organizations that have a distinguished reputation; and
- Commanding a high salary or other significantly high remuneration for services in the field.

Upon review, we withdraw USCIS' determination and conclude that the Petitioner has met three initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(iii), (viii), and (ix). However, in reviewing the totality of the evidence in the context of the final merits determination, we conclude that the Petitioner has not shown he garnered sustained national or international acclaim and his achievements have been recognized in the field of endeavor, demonstrating he is one of that small percentage who has risen to the very top of the field. *See* 8 C.F.R. § 204.5(h)(3).[1]

A. Evidentiary Criteria

We first conclude that the Petitioner meets the following initial evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

[1] As contemplated by Congress, the Petitioner's achievements should reflect a "career of acclaimed work in the field." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

1. Published Materials

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

USCIS stated that the overall evidence "lacks the primary source documentation and specific identifiers necessary to establish that the petitioner has been the subject of major media coverage." We similarly find that several published articles submitted by the Petitioner to support this criterion are not probative. For instance, an article from Travel + Leisure Magazine 2025 edition, featuring [redacted] as one of the notable restaurants in New York, is not specifically about the Petitioner and his work as it briefly mentions the Petitioner as the executive chef who works at the restaurant. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1), Criterion 3 (stating that the published material should not be just about the person's employer and the employer's work). In another instance, an article from [redacted] Magazine's [redacted] 2012 issue introduces the Petitioner as [redacted] who participated in the magazine's chef competition and provides his recipe for the dish that he presented to the magazine's chef competition without substantial discussion of his work in the field. *Id.* (a published material covering a broader topic with a substantial discussion of the person's work in the field and the person in connection to the work may be considered material).

However, contrary to USCIS' conclusion, we determine that the Petitioner has met this criterion based on the following articles published in a Polish regional newspaper, Echo Dnia ("Echo of the Day")[2]:

- [redacted] dated [redacted] 2015;
- [redacted] dated [redacted] 2015;
- [redacted] dated [redacted] 2015.

These articles, each provided in its original online print form in English, contain the necessary identifiers, such as authors, titles, and dates, and are about the Petitioner as a chef who worked in Michelin-starred restaurants in the United States and returned to Poland.

In addition, the Petitioner submitted the newspaper's social media pages and website traffic data, demonstrating wide reach in readership to qualify as a major media. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1), Criterion 3; *see also Victorov v. Barr*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at *8 (C.D. Cal. Apr. 9, 2020) (upholding evidence of website traffic to gauge the scope of readership).

[2] Some articles from Echo Dnia newspaper are not included in this list as they are missing specific information required by the regulation, such as dates of publication or authors, due to poor quality printing or copying of the original articles or deficient English translations. *See* 8 C.F.R. § 204.5(h)(3)(iii) (requiring the evidence to include the title, date, and author of the material, and any necessary translation).

Therefore, we withdraw USCIS' determination here and conclude that the Petitioner has met this criterion.[3]

2. Leading or Critical Role

To meet this criterion, a petitioner must provide "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." 8 C.F.R. § 204.5(h)(3)(viii). A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1), Criterion 8. A critical role means an alien contributed in a significantly important way to the activities of the organization, establishment, division, or department. *Id.* Additionally, a petitioner must establish that the organization, establishment, division, or department has a distinguished reputation. The word "distinguished" ordinarily means "marked by eminence, distinction, or excellence" or "befitting an eminent person." *Distinguished*, Merriam-Webster Online Dictionary, www.merriam-webster.com. Relevant considerations in determining whether an organization is "distinguished" include not only its relative size and longevity but also other factors, such as the scale of its customer base or relevant media coverage of it. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1), Criterion 8.

The Petitioner has claimed he performed leading or critical roles at multiple restaurants where he worked as a chef. USCIS concluded that the evidence for this criterion largely consisted of "general information about the establishments and statements highlighting that the petitioner was 'responsible' for certain properties or roles" and that these descriptions were often conclusory or lack detailed and specific information, such as organizational charts, payroll records, or comparative performance metrics to show how the Petitioner's role was leading or critical. Although we agree with this conclusion as it relates to the Petitioner's roles at [redacted] we find that the Petitioner has submitted sufficient information regarding his role at [redacted] or [redacted] to meet this criterion.

The reference letter dated June 30, 2022, from Chef J-F-, the owner and restauranteur of [redacted] explains that the Petitioner "played a critical role in the planning and execution of one of Chef [J-F-]'s high profiled properties, [redacted] located in the [redacted] as the executive sous chef and was promoted to "the Executive Chef for Research and Development" for [redacted] "responsible for all aspects of menu research and development and creating and executing recipes while leading and supporting our Chefs through menu changes at new openings as well as all existing properties." J-F- also stated in his letter that the Petitioner "played a critical role during many restaurant openings" and "served as the sole representative of [redacted] at new restaurant openings and off premise events." In examining the Petitioner's role specifically at [redacted] restaurant and for [redacted] as a whole, we conclude that the Petitioner has provided sufficient information that his role was critical at this establishment.

[3] On appeal, the Petitioner introduces another new evidence to support this criterion: that the Petitioner participated as a key contributor to a documentary by National Geographic that will be broadcast in fall 2026. Although we need not address this evidence as we conclude that the Petitioner met this criterion, we note that this documentary is not probative evidence because it will be distributed for public viewing in the future and his eligibility must be shown at the time of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In addition, the Petitioner has provided various media coverage of chef and owner J-F- and [redacted] by reputable food magazines and newspapers. Therefore, the Petitioner has sufficiently shown that [redacted] or [redacted] has distinguished reputation.

Accordingly, by preponderance of evidence standard, we conclude that the Petitioner satisfied this criterion.

3. Commanding a High Salary or Renumeration

This criterion requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R. § 204.5(h)(3)(ix). Evidence regarding whether the person's compensation is high relative to that of others working in the field may take many forms. Examples may include, but are not limited to, geographical or position-appropriate compensation surveys and organizational justifications to pay above the compensation data. *See generally* 6 *USCIS Policy Manual*, supra, at F.2(B)(1), Criterion 9.

The Petitioner submitted his own income and tax certificates from 2025 and comparative salary data from several sources, including Indeed, Glassdoor, Salary.com, and ZipRecruiter, sufficient to demonstrate that his salary was high in relation to other similarly employed executive chefs in [redacted] On appeal, the Petitioner provides the Occupational Employment and Wage Statistics (OEWS) which offered the 90th percentile salary range for chefs working in the [redacted] and has shown that his 2025 salary is within that high percentile range.

Accordingly, this criterion has been met.

B. Final Merits Determination

Although the Petitioner has met the three initial criteria, in conducting the final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2),(3); *see also Kazarian*, 596 F.3d at 1119-20. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner has not established that he enjoys a career that meets this very high standard.

We acknowledge the Petitioner's contention on appeal that the final merits determination under *Kazarian* lacks statutory or regulatory basis based on the recent U.S. District Court decision, *Mukherji v. Miller,* No. 4:24CV3170, 2026 WL 895708 (D. Neb. Jan. 28, 2026).[4] But we note that the *Mukherji* decision issued by a district court in Nebraska is not a binding precedential authority for the Petitioner who is in New York. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993) (in contrast to the precedential authority of the case law of a U.S. circuit court, the Board of Immigration Appeals is not bound to

[4] The court in *Mukherji* found that USCIS' adoption of the two-tiered system under *Kazarian* is not valid because it was implemented without the proper notice and comment rulemaking process.

follow a decision of a U. S. district court). Alternatively, the Petitioner contends that even if the second step of the *Kazarian* analysis is permissible, he has demonstrated that he is an individual of extraordinary ability based on the totality of the evidence. However, we do not find the Petitioner's claim persuasive, as discussed below.

The record indicates that the Petitioner worked seasonal jobs at restaurants while studying psychology at a university and eventually launched his career as a cook. He competed in 2012 chef competition sponsored by [redacted] magazine and was one of the three finalists for this competition. The record includes [redacted] magazine articles featuring the Petitioner's recipe as [redacted] in the competition and that he was selected as a finalist. However, aside from this recognition in 2012, the Petitioner has not documented participation in other culinary competitions or shown that he won other recognitions or awards in the culinary field.

The Petitioner also submitted several published articles by Echo Dnia newspaper in 2015. These articles discuss his background as a chef, that he previously worked in the United States at a three Michelin-starred restaurant, [redacted][5] and how he trained kitchen staff at [redacted] a hotel in Poland. However, more recent articles in the record highlight various restaurants where the Petitioner has worked and lack substantial discussion of his culinary achievements, only briefly referencing or identifying him as the chef. Without evidence that sets him apart from other chefs, the Petitioner did not show that he attracted a level of attention from the field demonstrating that that he is recognized as someone who is among "that small percentage who [has] risen to the very top of the field of endeavor" or achieved sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2); *see also Hamal v. U.S. Dep't of Homeland Sec.*, No. CV 19-2534 (RC), 2021 WL 2338316, at *4 (D.D.C. June 8, 2021), *aff'd sub nom. Hamal v. United States Dep't of Homeland Sec.*, No. 21-5160, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (upholding plaintiff did not show his press coverage was indicative of a level of success consistent with being at the top of his field).

With respect to the Petitioner's service in a leading or critical role, the Petitioner submitted letters from various restaurants he has worked in and reputation of these establishments. These letters, written by the Petitioner's current and former employers, largely demonstrate his employment history of working as a sous chef at [redacted], a Japanese restaurant in [redacted], from January 2016 to October 2019; as an executive sous chef and executive chef research and development at [redacted] an organization owning several restaurants in [redacted] from November 2019 to August 2022; as an executive chef de cuisine at [redacted], a resort in [redacted], from August 2022 to January 2024; and an executive chef at [redacted], a Japanese Polish restaurant in [redacted] New York, from January 2024 to present. The authors described the Petitioner's duties and responsibilities at these restaurants as important and crucial, and media coverage of these restaurants shows that the Petitioner has served at popular and well-respected establishments in the [redacted]

However, the letters do not discuss whether the Petitioner's duties have garnered him national or international acclaim consistent with being among that small percentage at the very top of the field. *See* section 203(b)(1)(A) of the Act. Here, the record does not contain sufficient information and

[5] The Petitioner worked at this restaurant from June 2014 to June 2015 as a chef de partie (also known as a station chef or line cook, who is in charge of a particular area of production in a restaurant) as a J-1 exchange visitor status, a nonimmigrant category designed for individuals to participate in work- and study-based exchange program.

explanation to show that the Petitioner is viewed by the overall culinary field, rather than by a solicited few, among the upper echelon or that he has garnered recognition on a national or international scale, consistent with being among the small percentage at the very top of the field of endeavor. *Mishra v. Richardson*, No. 120CV991LMBTCB, 2021 WL 1566071, at *3 (E.D. Va. Apr. 20, 2021) (finding the plaintiff submitted letters only from people within his circle of professional acquaintances, and none of the letters point to evidence of extensive documentation of his accomplishments to show sustained national or international acclaim). Although the letters highlight the Petitioner's talents and responsibilities, they do not reflect a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See Bodhankar v. United States Citizenship & Immigr. Servs.*, No. 119CV706MADCFH, 2020 WL 777211, at *5 (finding the plaintiff's work for organizations did not result in national or international acclaim).

The Petitioner further asserts that he has commanded a high salary relative to other executive chefs. We agree that his salary in 2025 as shown in his paystubs and tax statements appear higher than the salaries for executive chefs in the [redacted] However, the Petitioner only provided his salary information for one year, the year in which he filed the petition. While the evidence may demonstrate some degree of recognition of his achievement as an executive chef, he has not submitted sufficient evidence showing his earnings have consistently been at a level reflecting that he is among the small percentage at the very top of his field. *See Jafarov v. United States Citizenship & Immigr. Servs.*, No. 23 CIV. 3372 (PAE), 2024 WL 69056, at *9 (S.D.N.Y. Jan. 5, 2024) (finding the failure to show consistent high wage earnings did not reflect sustained national or international acclaim and a single year's, or even a few years', worth of salary data unlikely to satisfy this requirement).

The evidence overall depicts a successful chef who has worked at well-respected establishments and restaurants, but the record as a whole does not reflect recognition of an individual who has reached the top of his field with sustained acclaim and does not establish the Petitioner's eligibility for the benefit sought.[6] Here, 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); *Amin v. Mayorkas*, 24 F.4th at 394 (stating that extraordinary ability is such an elite level of accomplishment); *Lapteva v. Schuurmans*, No. 8:24CV83, 2025 WL 815087, at *1 (D. Neb. Mar. 10, 2025) (stating that EB-1 visa are intended to be available to only an exceedingly small amount of individuals with extraordinary ability). In this case, 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. *See* Section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he is among the small percentage at the top of his field. *See* 8 C.F.R. § 204.5(h)(2).

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Petitioner, the prior approvals do not preclude USCIS from denying an

[6] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (providing that some evidence weighs more favorably on its own, while other evidence is more persuasive when viewed with other evidence).

immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., 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 director 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 La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).[7]

III. CONCLUSION

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

ORDER: The appeal is dismissed.

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.

[7] *See also generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3).