U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43199295

Date: JUNE 25, 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 specializing in transit-oriented development (TOD), 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish in a final merits determination, as required, that the Petitioner has sustained national or international acclaim and is an alien in the small percentage at the very top of the field. 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.

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 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.

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 [redacted] the Petitioner earned a bachelor's degree in educational administration in 2008, and a master's degree in business administration in 2018. Since 2007, the Petitioner has held management positions at various companies within [redacted] a [redacted] real estate conglomerate. When he filed the petition in November 2025, the Petitioner was vice president of [redacted] and president of [redacted][1] In the United States, the Petitioner intends to establish a consulting company for TOD and urban renewal.

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 satisfied five of these criteria, summarized below:

- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (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 met four of the criteria, pertaining to published material; judging; scholarly articles; and remuneration. USCIS briefly discussed the remaining claimed criterion, relating to leading or critical roles, but stated no definitive conclusion as to whether or not the Petitioner had satisfied its requirements.[2] The Petitioner asserts that he has also met this last criterion. Because there is no dispute that the Petitioner has met three or more other criteria, we need not address this criterion directly. Instead, we will consider the Petitioner's role in the broader context of the final merits determination.

Because the Petitioner submitted the required initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, sustained national or international acclaim; that he is one of the small percentage at the very top of the field of endeavor; and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their

[1] USCIS records show that the Petitioner previously filed another Form I-140 petition on his own behalf, with receipt number [redacted] seeking classification as an alien of exceptional ability and a national interest waiver of the job offer requirement. That petition, relating to a different immigrant classification with different eligibility requirements, was approved in October 2024.

[2] USCIS also discussed a sixth criterion, pertaining to original contributions of major significance, but the Petitioner observes on appeal that he had made no claim regarding that criterion.

successes are sufficient to demonstrate that they have 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. *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification). In this matter, we determine that the Petitioner has not established eligibility.

On appeal, the Petitioner cites a district court decision, *Mukherji v. Miller*, No. 4:24-CV-3170 (D. Neb. Jan. 28, 2026), in which the court objected to USCIS' reliance on *Kazarian* to justify its use of the final merits determination as the basis for denying a petition. The Petitioner contends that *Mukherji v. Miller* is a "controlling decision" and "governing legal authority" in the present case.

We disagree with the Petitioner's reliance on this non-precedent district court decision. In contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow a decision of a United States district court, even in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). In this instance, the *Mukherji* decision was issued by a district court in Nebraska. In the present case, the petition was denied at the Texas Service Center, outside the jurisdiction of the Nebraska court that decided *Mukherji*.

Moreover, while we may consider the court's reasoning when it is properly before us, unpublished opinions are not considered binding precedent. *See Suchite-Salguero v. Att'y Gen. United States*, 147 F.4th 355, 359-60 (3d Cir. 2025) ("[W]e have cautioned over and over again that non-precedential opinions carry little to no weight for future cases."); *Wang v. Holder*, 569 F.3d 531, 538 n.5 (5th Cir. 2009); *cf. Matter of K-S-*, 20 I&N Dec. at 719 (considering the reasoning of district court decisions).

The two-step adjudication process is an interpretive rule that does not violate the Administrative Procedure Act, nor is it a legislative rule. *Nagaiah v. Allen*, 784 F. Supp. 3d at 810; *Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *12 (D. Neb. Sept. 12, 2025); *Etsy, Inc. v. Jaddou*, No. 4:22CV3022, 2023 WL 3689555, at *23 (D. Neb. May 25, 2023) (citing *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015).

The final merits determination considers the totality of the evidence in the broader context of sustained national or international acclaim as required by the statute. Issues that "are not relevant to the antecedent procedural question of whether the petitioner has provided at least three types of evidence" "might be relevant to the final merits determination of whether a petitioner is at the very top of his or her field of endeavor." *Kazarian v. USCIS*, 596 F.3d at 1121. Considerations that might impermissibly amount to "a novel evidentiary requirement" within the narrow confines of an initial criterion nevertheless "might be relevant to a final merits determination." *Id.*

The final merits determination hinges on whether the Petitioner has established sustained national or international acclaim and has reached the small percentage at the very top of the field. This determination is related to, but separate from, the antecedent question of whether the Petitioner has satisfied at least three of the initial criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x).

Therefore, in the final merits determination, we review the record with an eye toward the broader issue of sustained acclaim rather than the narrower focus of those initial criteria.

In the denial decision, USCIS concluded that, although the Petitioner's evidence satisfies the basic requirements of four initial regulatory criteria, that evidence does not establish the sustained national or international acclaim that the statute requires. On appeal, the Petitioner asserts: "Each of the four final merits findings in this denial applies no articulated standard, draws no comparison, and identifies no benchmark." We will discuss key issues in greater depth below.

In the denial notice, USCIS acknowledged the Petitioner's submission of letters from officials of [redacted] and the [redacted] USCIS stated that these "solicited letters . . . do not, in themselves, constitute presumptive evidence of eligibility."

On appeal, the Petitioner asserts: "the denial provides no specific reasoning for why these particular letters lack probative value." The Petitioner also asserts that several of the letters are "formal official governmental correspondence," rather than "employer and associate letters." We will discuss the government letters here. But first, we note that the denial notice does not indicate that the letters have no probative value. Rather, the decision cited case law and the *USCIS Policy Manual* indicating that letters require independent corroboration.

The letters in question address a relatively narrow issue, concerning the Petitioner's selection to participate in municipal policy review for government committees in [redacted] The official in [redacted] stated that the Petitioner received an invitation because he "enjoys high visibility and recognized influence within the industry." The official in [redacted] cited the Petitioner's "outstanding influence and professional authority within the industry, placing him among the small number of top-tier, interdisciplinary professionals in the sector."

The letters are highly complimentary toward the Petitioner, recognizing his expertise in his particular field, but they are not strong evidence that the Petitioner had earned a reputation beyond [redacted] As such, the letters indicate recognition at a regional level rather than more broadly on a national or international scale.

The Petitioner, in an earlier brief, contended that in his specialized field, "recognition at the highest level . . . is reflected by whether governmental bodies . . . entrust an individual with evaluative authority over the work of others." Statements in a brief are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998).

Likewise, the Petitioner states that his response to a notice of intent to deny (NOID) included [redacted] expert opinion letter explaining in technical detail how [the Petitioner's] TOD delivery frameworks have been adopted beyond [redacted] own operations and relied upon by governmental authorities as independent review standards — exactly the evidence the NOID said was missing." The NOID did not indicate that the Petitioner could establish eligibility by showing that the Petitioner's methods had been "relied upon by governmental authorities as independent review standards." Rather, the NOID indicated that the Petitioner could establish the significance of his work by showing that it "is being implemented by others." A TOD framework that has been widely used by others in the fields of

real estate development and urban renewal could show that the field has considered that framework to be worth adopting and implementing. Without further context and wider corroboration, invitations to participate in municipal policy review do not show the same level of impact.

Because the Petitioner emphasizes the letter from [redacted] we will address it here. [redacted] claims no background specifically in real estate development or urban renewal. Instead, his work in finance has sometimes brought him into contact with "large-scale integrated real estate and infrastructure initiatives." [redacted] states that he has "engaged in direct and verifiable business collaboration with [the Petitioner] on cross-border capital and real estate projects."

Because [redacted] has collaborated directly with the Petitioner, his statements are not direct evidence of the wider influence that the classification demands. It is generally expected that one whose accomplishments have garnered sustained national or international acclaim would have received recognition for their accomplishments well beyond the circle of their personal and professional acquaintances. *See, generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3).

[redacted] cited the use of the Petitioner's work "across multiple provinces and cities . . . in [redacted]." The record shows that the Petitioner held a high-ranking position with authority over [redacted] activities in [redacted] but this regional authority within one company does not necessarily translate into acclaim or influence outside that company, or on a national or international scale rather than a regional one. [redacted] asserts that the Petitioner contributed to [redacted] success, but without other supporting evidence his importance within that company does not necessarily translate into acclaim at a national or international level.

The record documents the Petitioner's high-level involvement with major development projects in [redacted] some of which won awards. The chairman of [redacted] stated that the Petitioner "was primarily responsible for the overall planning of [redacted] real estate development in [redacted]" and "introduced advanced urban planning concepts to [redacted]"

These materials indicate that the Petitioner has worked at high levels in regional real estate development. The key question is whether this work has resulted in sustained national or international acclaim, rather than a regional reputation concentrated in [redacted] [redacted] named the Petitioner among the "Top Ten Real Estate Figures," but the only evidence of this title is a trophy, providing no context for the title and its significance. The record does not show the geographic scope — local, provincial, regional, national, or international — of the real estate figures contemplated by the award.

The Petitioner submitted translated copies of several newspaper and magazine articles about him or mentioning him. While these articles are not identical, the ones that focus the most on the Petitioner share several similarities that raise questions about the circumstances of their publication.[3] We note that two of the articles, published three months apart in two different publications, have the same credited author. Each article includes biographical details about the Petitioner and information about his employer and some of its projects, and credits the Petitioner with influential reforms in real estate development. But

[3] Materials in the record indicate that at least some of the publications accept submissions from the public. The exact number of the publications that accept such submissions is difficult to discern, because the Petitioner has submitted only partial translations of the background information about the publications. The regulation at 8 C.F.R. § 103.2(b)(3) requires full English translations of foreign-language documents, certified as complete.

the articles do not mention recent newsworthy developments that would explain why he is now the subject of media attention. Instead, they highlight projects that the Petitioner had undertaken several years earlier. Articles that include general claims, such as the assertion in [redacted] that the Petitioner "has won wide acclaim from both inside and outside the industry, and set a benchmark for the whole industry," have limited weight in the absence of persuasive, specific corroboration. General assertions about the Petitioner's influence have little weight in the absence of specific, concrete information showing how the wider field reflects that influence.

The record shows that the Petitioner has held a high-ranking position with a major real estate developer. His scholarly articles show that he has contributed knowledge to his field, and several documented projects show practical implementation of his ideas. But while the Petitioner has been successful and productive in his field, the record does not show a degree of recognition that rises to the level of sustained national or international acclaim at the very top of the field.

III. 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.

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 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.