



**U.S. Citizenship
and Immigration
Services**

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

MATTER OF R/GAM-G- Inc.

DATE: NOV. 9, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an advertising agency, seeks to classify the Beneficiary as an individual “of extraordinary ability” in the arts.¹ *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The classification the Petitioner seeks on behalf of the Beneficiary, who serves as the company’s Creative Director, makes visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The Director determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R § 204.5(h)(3), which requires a one-time achievement or satisfaction of at least three of the ten regulatory criteria.

On appeal, the Petitioner submits a brief, asserting that the Beneficiary has a one-time achievement, or in the alternative, the Beneficiary meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner further states that the Beneficiary is one of the small percentage who is at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). For the reasons discussed below, the Petitioner has established the Beneficiary’s eligibility for the classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

- (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

¹ The Petitioner indicated that the Beneficiary is in the field of Experience Design (XD), which is “the art of designing products, processes, services, events and environments, with a focus on the quality of the user experience and culturally relevant solutions.”

(b)(6)

Matter of R/GAM-G- Inc.

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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 has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Otherwise, the Petitioner must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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 Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming U.S. Citizenship and Immigration Services’ (USCIS) proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present the Beneficiary’s one-time achievement that is a major, internationally recognized award. On appeal, the Petitioner asserts that its receipt of awards at the [REDACTED]

² We have reviewed all of the evidence the Petitioner has filed and will address those criteria the Petitioner asserts that it meets or for which the Petitioner has submitted relevant and probative evidence.

(b)(6)

Matter of R/GAM-G- Inc.

_____ and _____ constitute the Beneficiary's one-time achievement. The record is insufficient to support a finding that either the _____ or the _____ constitutes the Beneficiary's "one-time achievement," as the term is used in the regulation. Notwithstanding this finding, as discussed below, the Beneficiary is eligible for the exclusive classification sought, because he meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x), is one of the small percentage who is at the very top in his field of endeavor, and has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3).

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The Petitioner asserts that the Beneficiary meets this criterion because he was responsible for elements of the _____ advertising campaign that won a number of awards including the _____ and _____. The evidence supports the Director's conclusion that the _____ and the _____ are lesser nationally or internationally recognized prizes or awards in the field of advertising. A number of online and print materials, including those from _____ indicated that the _____ is the world's biggest advertising festival and is known as the Oscars of the advertising world. _____ Managing Partner of _____ and Global Chief Digital Officer at _____ verified that the _____ "is the single most prestigious awards festival within advertising and interaction design globally." The _____ are similarly recognized. According to _____ "[t]o the advertising industry, a _____ is tantamount as the Oscar in film, the Tony in theater, the Emmy in television, and the Grammy in music." The _____ noted in a 1987 article that the _____ "is the most prestigious honor in the advertising business," and it stated in an April 2012 article that the _____ "is the [advertising] industry's most recognized competition honoring creative achievement."

This criterion requires a showing of the Beneficiary's actual receipt of prizes or awards. In considering whether the Beneficiary is the recipient of the honor under this criterion, we may, on a case-by-case basis, consider whether the Beneficiary was so inextricably linked with the awarded entity that he is recognized in the field as the *de facto* honoree. According to _____ the Petitioner's Associate Director of Human Resources Operations, the Beneficiary "led his team in creating concepts for the future of the _____ platform, culminating in the creation of _____, an innovative product which merges digital and physical experiences." _____ the Petitioner's Senior Vice President and Executive Creative Director, indicated that the Beneficiary "was hired to work on creation of [the] _____ advertising campaign, and that his "design leadership proved critical," making "the project a business-changing success." _____ further noted that the Beneficiary's "efforts helped [the company] win the most respected award in the [advertising] industry – the _____"

³ The Petitioner submitted materials that referred to the awards as both _____ and _____

(b)(6)

Matter of R/GAM-G- Inc.

More significantly, an August 14, 2013, letter from [REDACTED] Chief Executive Officer (CEO) of [REDACTED] verified that the Beneficiary's work in the [REDACTED] campaign "has been recogni[z]ed at our festival," with four [REDACTED]. The Beneficiary was the credited Associate Creative Director - interaction design, which according to the Petitioner, "refers to the shaping of the interactive products and services with a specific focus on their use." An article at [REDACTED] explained that the jurors awarded the [REDACTED] campaign and one other advertisement [REDACTED] rather than an [REDACTED] because they were both equally strong as integrated works. In addition, the Petitioner earned the [REDACTED] in the Integrated category and the [REDACTED] for the same advertisement. This information confirms that it was the integrated/interactive nature of the project, for which the Beneficiary was responsible, that resulted in the award. The record, including reference letters, has sufficiently established that the Beneficiary had a major and significant role in the award-winning campaign, and that because of his extensive involvement, he was recognized in the field as one of the *de facto* honorees of the [REDACTED] and the [REDACTED]. Considering all of the evidence relating to this criterion, the Petitioner has documented the Beneficiary's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The Petitioner has met this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The Petitioner asserts that the Beneficiary meets this criterion, in part, through his involvement in the [REDACTED] advertising campaign. To meet this criterion, the Beneficiary's contributions must be both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term "original" and the phrase "major significance" are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) (quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003)). The Beneficiary's contributions must be original, such that he is the first person or one of the first people to have done the work in the field, and must show that his contributions are of major significance in the field, such that his work significantly advanced the field as a whole.

The Petitioner has submitted published materials confirming that the [REDACTED] advertising campaign significantly impacted the advertising field. [REDACTED] Executive Creative Director of [REDACTED] stated that the award-winning and critically acclaimed [REDACTED] campaign "expands the idea of what creative agencies can do," in that the agencies "can actually inspire and, in some cases, build [their] client's product." [REDACTED] which an October 1985 [REDACTED] article categorized as a "leading advertising and marketing trade" publication, named the campaign as a top 15 advertising campaign of the 21st century. [REDACTED] listed it as the second most influential campaign of the 21st century in a January 2015 article. [REDACTED] a trade publication, named it as the digital campaign of the decade.

As discussed, the Beneficiary was extensively involved in the [REDACTED] advertising campaign, specifically with the interactive/integrated aspects for which it was recognized. According to [REDACTED] the Petitioner's Executive Vice President and Global Chief Creative Officer, the Beneficiary

(b)(6)

Matter of R/GAM-G- Inc.

was “directly responsible” for the company’s “most successful product innovations[, including] the [REDACTED]. The Beneficiary led a team that created concepts for the [REDACTED] platform and product, which merges digital and physical experiences, as well as its associated advertising campaign. [REDACTED] stated that the Beneficiary’s design leadership was critical to the Petitioner winning “more than 25 international accolades,” including the [REDACTED] [REDACTED] the UX Lead and Manager at [REDACTED], and the Petitioner’s former Vice President of Product Design, noted that the Beneficiary “led the Experience Design of the [REDACTED] project to great commercial success and critical acclaim.” In light of the above reasons, the Petitioner has documented the Beneficiary’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The Petitioner has met this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The record supports a finding that the Petitioner meets this criterion. In 2009, the Petitioner won [REDACTED] and [REDACTED] top ten [REDACTED]. The company was [REDACTED]. A number of publications, including [REDACTED] and the [REDACTED] have published articles about [REDACTED], which is indicative of the publication’s standing in the advertising field. Materials from [REDACTED] short for [REDACTED] showed that the advertising agency was [REDACTED] noting that it “cemented its reputation for melding technology and creative” and that its “work did not merely reflect popular culture; it steered it.” The record confirms that the Petitioner is an organization or establishment that has a distinguished reputation.

The Beneficiary, who is currently the Creative Director, has performed a leading and critical role for the advertising agency. [REDACTED] stated that the Beneficiary was “directly responsible for some of [the Petitioner’s] most successful product innovations such as the [REDACTED] project, and has “helped [it] to win a remarkable 18 awards for [its] preeminent [REDACTED] account,” including the [REDACTED]. As the Creative Director, the Beneficiary “direct[s] the creative development, design, and implementation of interactive digital marketing campaigns and transactional experiences for [the company’s] Fortune 500 clients.” In light of the above reasons, the Petitioner has shown that the Beneficiary has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The Petitioner has met this criterion.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will conduct a final merits determination that considers the entire record in the context of whether or not the Beneficiary has demonstrated: (1) that he enjoys a level of expertise indicating that he is one of a small percentage who have risen to the very top of the field of endeavor, and (2) that he has sustained national or international acclaim and that his achievements have been recognized in the field of expertise. Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-

(b)(6)

Matter of R/GAM-G- Inc.

20. Based on the filings and consistent with *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm'r 1994), the Petitioner has made the requisite showing.

The [REDACTED] advertising campaign, in which the Beneficiary was closely involved from its inception to execution, won numerous prestigious accolades in the advertising industry. The honors specifically recognized the integrated/interactive elements of the campaign, for which the Beneficiary was responsible. In addition to -the [REDACTED] and the [REDACTED] the campaign also won the [REDACTED] the [REDACTED] and the [REDACTED]. [REDACTED] verified that the campaign “nearly single-handedly pioneered a new consumer category: wearable computing and the integration of software and mobile apps into our daily lives.” Top executives at the company – including the Petitioner’s Executive Vice President and Global Chief Creative Officer, Senior Vice President and Executive Creative Director, and Vice President of Product Innovation and Executive Creative Director – all confirmed that the Beneficiary was integral to [REDACTED] creation and commercial success, including the advertising campaign being named one of the top campaigns of the decade and of the century by major trade publications.

In addition to the Beneficiary’s work in the [REDACTED] advertising campaign, his work at [REDACTED] a top design firm in Denmark, has similarly been recognized. [REDACTED] reported that [REDACTED] “received a [REDACTED] in the [REDACTED] representing Scandinavia as a finalist in the [REDACTED]. It further provided that [REDACTED] is Europe’s largest strategic design firm, creating meaningful experiences for humans enabled by technology.” According to [REDACTED] “design[s] product-service experiences that transform businesses, helping clients such as [REDACTED] and The European Union place users at the cent[er] of their work.” [REDACTED] CEO and Co-Founding Partner of [REDACTED] stated that the firm is the third ranking international strategic design firm in the world, and that the Beneficiary had been instrumental in the company’s rising status and standing. [REDACTED] indicated that the Beneficiary “brought a lot of new process and thinking that exposed the existing team of senior designers to the newer aspects of digital user experience design – which taught us a new approach that today is the core innovation philosophy of [REDACTED]. The record supports a finding that the industry has recognized the significance of the Beneficiary’s work, including projects that he completed while working for a number of international companies.

Moreover, many industry experts have submitted reference letters, attesting to the Beneficiary’s status as one of the small percentage who is at the very top of his field and verifying his sustained national or international acclaim. For example, [REDACTED] Director of User Interface at [REDACTED] a German design and innovation agency, indicated that in “more than 16 years that [he has] worked in the industry, [he has not] come across another interaction designer that can match [the Beneficiary’s] extraordinary ability His tremendous design ability and global work experience makes him an incredibl[y] valuable Interaction Designer on a world-class level.” [REDACTED] Co-Founder of [REDACTED] a design firm located in [REDACTED] California, stated that “for the last 14 years, [he has] yet to meet an Experience Designer who can match [the

(b)(6)

Matter of R/GAM-G- Inc.

Beneficiary's] outstanding talent in design skills, trend forecasting, user research [and] business thinking" and that the Beneficiary "ranks at the very top of the Experience Design field." [REDACTED] Creative Director at [REDACTED] in [REDACTED] United Kingdom, who worked with the Beneficiary in a large telecom project, noted that he has "come across very few designers who can rival [the Beneficiary's] extraordinary ability in Experience Design," and that he "ranks at the very top of [the] field." [REDACTED] said that [REDACTED] attracts some of the greatest talent on this planet - but [the Beneficiary] will always stand out as the most outstanding talents we've seen." Similarly, [REDACTED] confirmed that the Beneficiary "represents truly best-in-class talent." The evidence, including the many reference letters from experts, verified the Beneficiary's top status in the field.

The record in the aggregate, including the awards that recognized the Beneficiary's work, the Beneficiary's original contributions of major significance in the field, the impact of his work in the [REDACTED] advertising campaign, and the role he has performed for the Petitioner, confirm that the Beneficiary enjoys a level of expertise that is consistent with a finding that he is one of a small percentage who have risen to the very top of the field of endeavor, that he has sustained national or international acclaim and that his achievements have been recognized in the field of expertise. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Accordingly, the Petitioner has established by a preponderance of the evidence that the Beneficiary is eligible for the exclusive classification sought.

III. CONCLUSION

The materials supporting a claim of extraordinary ability must establish that the Beneficiary has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of his or her field of endeavor. The Petitioner has submitted qualifying evidence under at least three of the ten evidentiary criteria and has documented that the Beneficiary has a "level of expertise indicating that [he] is one of that small percentage who have risen to the very top of the field of endeavor" and "sustained national or international acclaim." The Beneficiary's achievements have been recognized in his field of expertise. The Petitioner has shown that the Beneficiary seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the Petitioner has demonstrated the Beneficiary's eligibility for the benefit sought under section 203 of the Act.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of R/GAM-G- Inc.*, ID# 14201 (AAO Nov. 9, 2015)