



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

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

MATTER OF S-Z-

DATE: DEC. 4, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner seeks classification as an individual of extraordinary ability in the field of Uzbek traditional embroidery.<sup>1</sup> 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.

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that he met four of the ten initial evidentiary criteria but that he did not establish eligibility in the final merits analysis.

On appeal, the Petitioner submits a brief, arguing that he meets an additional criterion, and has sustained the required acclaim and has risen to the very top of his field.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to certain immigrants 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

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<sup>1</sup> In addition to the instant petition, the Petitioner has filed a second petition seeking classification as an individual of extraordinary ability in the field of Uzbek traditional embroidery. That second petition remains pending at the time of this decision.

- (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 regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirement. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying awards, published material in certain media, and scholarly articles).

Where a petitioner meets the initial evidence requirement, we then consider the totality of the submitted material in a final merits determination and assess whether the record, as a whole, 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, 1119-20 (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, 1343 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The record shows that the Petitioner has been a professional embroiderer in the field of Uzbek traditional embroidery since 2011. He seeks to continue his work in the field of Uzbek traditional embroidery in the United States.

### A. Evidentiary Criteria

On appeal, the Petitioner maintains that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has sustained the required acclaim and has risen to the very top of his field. For the reasons discussed below, we find that he has not satisfied the initial evidentiary requirements.

Because the Petitioner has not indicated or established that he has 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). In denying the petition, the Director found that the Petitioner fulfilled four of the initial evidentiary criteria, membership under 8 C.F.R. § 204.5(h)(3)(ii), judging under 8 C.F.R. § 204.5(h)(3)(iv), scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), and display under 8 C.F.R. § 204.5(h)(3)(vii). We agree with the Director's determination regarding the display criterion. The Petitioner has offered diplomas from the Mayor of the City of  and the Head of

Regional Department of the Uzbekistan Chamber of Commerce and Industry, indicating that the Petitioner exhibited his embroidery at the municipal and regional level competitions of the [redacted] (Initiative) – 2012 Contest. However, for the reasons discussed later, we do not concur with the Director’s finding as it relates to the membership, judging and scholarly articles criteria.

On appeal, the Petitioner maintains that he meets an additional criterion, discussed below. We have reviewed all of the evidence in the record and we conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

*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).

The Director concluded that the Petitioner met this criterion. The record does not support this finding. The Petitioner claims that he meets this criterion, based upon his membership in the [redacted] Association of Artisans, Craftsmen and Folk Artists of the Republic of Uzbekistan. The record includes a membership certificate and two letters issued by the Head of the [redacted] Department of the association, [redacted]. The letters state that the Petitioner has “full association membership” in the association and that it “requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in the respective fields of folk art,” in the Petitioner’s case, “Uzbek traditional artisanal embroidery.” The Petitioner also submitted a letter from [redacted] [redacted] of the association, stating that it “is open only to highly skilled masters who are among the few on top of their fields and requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in the respective field of folk art.” The letter provides that the Petitioner’s membership was recommended by [redacted] and [redacted] [redacted]. The record further contains resumes for [redacted].

The evidence in the record is insufficient to confirm that the Petitioner satisfies this criterion. While the letters from [redacted] and [redacted] contain language that mirrors the regulation, neither those authors nor the Petitioner has pointed to sufficient evidence in the record that supports the claim that the organization requires outstanding achievements of its members, as judged by recognized national or international experts. Specifically, the record lacks the entity’s constitution, bylaws, or other official documents, detailing its membership selection process and criteria. Without additional evidence that accurately and credibly explains the association’s membership requirements or selection process, conclusory statements are insufficient to demonstrate that the Petitioner meets this criterion. *See 1756, Inc. v. United States Att’y Gen.*, 745 F. Supp. 9, 17 (D.D.C. 1990) (noting that we need not accept primarily conclusory statements).

Moreover, although the record includes resumes for [redacted] and [redacted] the individuals who [redacted] asserts recommended the Petitioner for membership in the [redacted] Association, the documentation is insufficient to show that they qualify as national or international experts in the field. [redacted]’s resume indicates he was the head of two art museums and was a professor of museology and art history in [redacted] and that his “scholarly articles and brochures” include two works on traditional embroidery. [redacted]’s resume indicates she teaches tour guides in [redacted] and is a member of the organizing committee of the [redacted] Festival. Those

uncorroborated resume documents are insufficient to confirm the individuals are qualifying experts in the field. Similarly, although [redacted] claims that [redacted] and [redacted] are nationally recognized experts, he has not explained the basis of his knowledge or offered sufficient evidence in support of his statement. Finally, even if the submitted evidence did demonstrate the expertise and recognition of [redacted] and [redacted] a comparison alone to the other members of the association is insufficient to meet this criterion. While the individual members of the association may be highly qualified, the record does not demonstrate that membership in [redacted] requires outstanding achievements, as judged by recognized national or international experts.

Based on the above reasons, the Petitioner has not satisfied this criterion.

*Evidence of the alien's participation, either individually or on a 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).*

The Director concluded that the Petitioner met this criterion. The record does not support this finding. The record includes a letter issued by the Head of the [redacted] Department of [redacted] [redacted], that “thanks the member of the association - [the Petitioner] – for participating” in the association’s 2011 [redacted] exhibition fair. It notes that the Petitioner “has participated in national and international exhibitions many times with his artistic products.” However, the letter from [redacted] does not assert or establish that the Petitioner participated as “a judge” of the work of others in the field.

The Petitioner also submitted an undated letter issued by the Head of the [redacted] Department of [redacted] [redacted] thanking the Petitioner for “his help in determining craftsmen, artisans and painters, who were invited” to the 2014 “Art in Uzbekistan” exhibition. That letter does not establish in what manner providing help in determining what artists were invited to the exhibition equates to participating as “a judge” of the work of others in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence demonstrating that the petitioner has participated as “a judge of the work of others.” The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). There is no evidence demonstrating that in the performance of that role the Petitioner actually judged the artwork and made final selections for the exhibition, rather than, for example, merely assisting with general administrative functions of the exhibition.

Moreover, there is no documentary evidence showing the specific exhibitions judged by the Petitioner, the dates of his participation, and the names of the artists whose work he specifically selected. Merely submitting a statement asserting that the Petitioner judged the work of others without evidence showing who he judged and their field of specialization is insufficient to establish eligibility for this criterion. Rather than submitting contemporaneous documentary evidence of the Petitioner’s participation as a judge for the 2014 “Art in Uzbekistan” exhibition sponsored by [redacted], the Petitioner instead submitted a brief, undated statement from [redacted] attesting to the Petitioner’s involvement. There is no documentary evidence showing the Petitioner’s specific assessments and the names of the artists whose work he evaluated.

Moreover, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). In this instance, the record does not include primary evidence demonstrating the Petitioner's participation as a judge for that contest. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence is either unavailable or does not exist. *Id.* When relying on an affidavit, the petitioner must demonstrate that both primary and secondary evidence are unavailable. *Id.* In this instance, the petitioner has not demonstrated that primary evidence of the Petitioner's participation as a judge does not exist or cannot be obtained. Accordingly, the undated statement from [redacted] does not comply with the preceding regulatory requirements.

In light of the above, the Petitioner has not established that he meets this regulatory criterion.

*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).

On appeal, the Petitioner asserts that reference letters offered in support of this criterion establish that "[the Petitioner's] art has substantially influenced his field of endeavor."

Letters from [redacted] a K-12 art teacher, and [redacted] a fine artist and gallery coordinator, state that they are familiar with the Petitioner's work as an "accomplished traditional Uzbek embroiderer" and provide that he has "made [a] contribution of major significance to this field by virtue of his mastery of Uzbek traditional embroidery techniques and by adaptation of these techniques to contemporary materials and tastes." In addition, they claim that the Petitioner's "use of the thick needle technique as well as his ability to combine various traditional styles in a single piece constitute a contribution of major significance in the field of traditional Uzbek embroidery."

A letter from [redacted] a K-12 art teacher, provides that the Petitioner's contributions "to the art of embroidery, decorative art, and cultural traditions of Uzbekistan are of major importance as they have and will continue to influence the work of other artists" and that "[m]any of his unique creations have been displayed and sold at major exhibitions in Uzbekistan and Central Asia."

To satisfy this criterion, the Petitioner must establish that not only has he made original contributions but that they have been of major significance in the field of Uzbek traditional embroidery. Major significance in the field may be shown through evidence that his original methods or processes have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The evidence is insufficient to establish that the Petitioner has satisfied this criterion. While the reference letters discuss his work, noting in general that it is well-regarded and appreciated, they do not explain how, specifically, his work has impacted the field in a major or significant way, consistent with a finding of "contributions of major significance." For example, the record does not demonstrate that the Petitioner's techniques have been widely used by others in the field. The documents in the record, including those not specifically mentioned, primarily contain attestations of the Petitioner's

status in the field without providing specific examples of how his contributions rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field significantly are insufficient to satisfy this criterion. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. Moreover, we need not accept primarily conclusory statements. *1756, Inc.*, 745 F. Supp. at 17. Accordingly, the Petitioner has not satisfied this criterion.

*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).

On appeal, the Petitioner states that he meets the requirements of this criterion based upon evidence submitted of "articles and a book published by the Petitioner in major and/or professional media." The record includes copies of several pages of the book, [redacted], that list the Petitioner as "developer." According to two letters from [redacted], the head of [redacted], the publisher of the book, the Petitioner is also the author of the book and the book "was published in 350 copies and distributed among regional libraries." The record also includes evidence that the Petitioner has authored three articles that were published, respectively, in the newspaper *Buxoroyi Sharif*, and the magazine *Education and Upbringing*, and presented at the 2014 Scientific-Practical International Conference of the Academy of Sciences of the Republic of Uzbekistan.

While the Petitioner might have authored written work, he has not shown that his pieces qualify as "scholarly articles," as required under the criterion. In general, scholarly articles report on original research, experimentation, or philosophical discourse, and often have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.<sup>2</sup> Usually, scholarly articles are written for learned persons in that field. In this case, the Petitioner has not demonstrated that [redacted] and the articles (which are each between one and three pages in length), without footnotes, endnotes, or bibliographies, qualify as scholarly.

Moreover, the Petitioner has not established that his work has been published in qualifying publications. For example, he has offered a letter from the chief editor of *Buxoroyi Sharif* stating that "[t]he circulation of *Buxoroyi Sharif* is 500 printed copies." He also provided a letter from the chief editor of *Education and Upbringing*, indicating that the publication "has the circulation of 4,000 copies." Finally, he submitted a letter from the head of the Academy of Sciences, stating that the annual Scientific-Practical International Conference "provides more than 100 scientific articles in different areas. All articles of the conference were published in one collection, with a circulation of 1,000 printed copies." The Petitioner has not demonstrated that based on the circulation data, these publications qualify as major media. In addition, he has not presented adequate documentation confirming they constitute either professional or major trade publications. Based on the above reasons, the Petitioner has not met this criterion.

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<sup>2</sup> See USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 9* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

## B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner is not eligible because he has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, and conclude that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his accomplishments is indicative of the required sustained national or international acclaim or that 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 that 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).

## III. CONCLUSION

The Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The appeal will be dismissed for the above stated reasons. 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 Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-Z-*, ID# 4316395 (AAO Dec. 4, 2019)