



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

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

In Re: 8537722

Date: MAY 29, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a visual effects producer, 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.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is 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.

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 (9th Cir. 2010).

II. ANALYSIS

The Petitioner indicates employment in motion pictures as a visual effects producer. Because the Petitioner has not claimed 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 determined that the Petitioner fulfilled only two of the initial evidentiary criteria, display at 8 C.F.R. § 204.5(h)(3)(vii) and commercial successes at 8 C.F.R. § 204.5(h)(3)(x). However, for the reasons discussed later, we do not concur with the Director’s findings for these criteria. On appeal, the Petitioner asserts that he meets three additional criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that he satisfies the requirements of at least three criteria.

A. Evidentiary 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 Petitioner claims eligibility for this criterion based on membership with the Producers Guild of America (PGA) and the Doordarshan Approved Drama Artist Association (DADAA). In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.¹

¹ 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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

Regarding PGA, the Petitioner previously submitted screenshots from PGA’s website reflecting that membership requires professional experience in a certain period, such as at least 2 feature films within the past 7 years, or at least 5 short films, 2 long-term television programs, 13 episodic television programs, or 100 non-episodic television programs for the last 5 years. In addition, the applicant must submit a résumé and verifying references from one PGA member and two industry professionals. However, the Petitioner did not demonstrate that attaining a minimum amount of professional experience rises to a level of “outstanding achievements” consistent with this regulatory criterion.² Here, the Petitioner did not establish that PGA membership requires outstanding achievements of its members.

Moreover, the screenshots indicate that “[u]pon receipt of all materials your application will be processed and then vetted by the Membership Committee.” However, the Petitioner did not identify the individuals on the membership committee and did not establish whether they are comprised of recognized national or international experts.³ On appeal, the Petitioner submits PGA’s “Master Committee Manual” that provides an overview of its national and regional committees, chair policies and procedures, meetings and events, and budgets and contracts.⁴ The manual, however, does not reference the “Membership Committee,” nor does it show that the committee consists of recognized national or international experts. In addition, while the manual contains a “Staff Contact Sheet” listing the national and regional directors of membership, the Petitioner did not demonstrate that these individuals actually judge the achievements of membership candidates and whether they are nationally or internationally recognized experts.

Regarding DADAA, the Petitioner initially submitted his membership card without any other evidence showing the membership requirements and selection process. On appeal, the Petitioner presents screenshots from allindiaradio.gov claiming that they are “available audition criterias [sic] applicable to the Drama Artists as per Drama Audition Committee.” However, the screenshots pertain to radio drama auditions in India rather than the membership requirements for DADAA. Here, the Petitioner did not establish how the evidence relates to DADAA, let alone how the evidence demonstrates that DADAA requires outstanding achievements of its members, as judged by recognized national or international experts.

For the reasons discussed above, the Petitioner did not establish that he meets this 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).

The Petitioner contends that his recommendation letters reflect his eligibility for this criterion. In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has

² See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (instructing that relevant factors that may lead to a conclusion that the alien’s membership in the associations was not based on outstanding achievements in the field include where the alien’s membership was based solely on a level of education or years of experience in a particular field).

³ *Id.*

⁴ The Petitioner also submitted a letter from Jo-Ann B. West, director of operations for PGA, who confirmed the Petitioner’s membership standing.

he made original contributions but that they have been of major significance in the field.⁵ For example, a petitioner may show that the 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 in the field.

The Petitioner previously submitted job offer letters from [REDACTED]. However, the Petitioner did not demonstrate how the letters established his original contributions of major significance in the field. On appeal, the Petitioner provides several recommendation letters praising him for his talents and abilities. For instance, “I can assure you based on my experience and associations that he is one of the very best talents whom I know from India and who has established himself over the passage of time through his continued efforts” [REDACTED], “[the Petitioner’s] finished works are all testaments and extraordinary ability and it is really astounding that he has made his name as an established professional” [REDACTED], and “I can assure that he has already established himself through his continuous sound efforts and stellar technical performances” [REDACTED].⁶ However, the letters do not establish how the Petitioner’s skills are viewed by the field as original contributions of major significance. The letters, for instance, do not specifically identify the Petitioner’s contributions and explain how they have significantly impacted or unusually influenced the field in a major way consistent with this regulatory criterion. Moreover, having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. Further, the record must be supported by evidence that the Petitioner has already used those skills and talents to influence the field at a significant level, which he has not shown. In addition, the letters do not demonstrate how the Petitioner’s talents and skills have been a major influence in the overall field beyond the film projects in which he worked.⁷ While the letters generally acknowledged the Petitioner’s participation on unnamed films, they did not establish how the Petitioner’s work constituted contributions in the field in a significant, major manner.

Here, the Petitioner’s letters do not contain specific, detailed information identifying his original contributions and explaining the unusual influence his work has had on the overall field. Letters that specifically articulate how a petitioner’s contributions are of major significance in the field and its impact on subsequent work add value.⁸ On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.⁹ Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (finding that although funded and published work may be “original,” this fact alone is not sufficient to establish that the work is of major significance).

⁶ Although we discuss a sampling of letters, we have reviewed and considered each one.

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; see also *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

⁸ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁹ *Id.* at 9. See also *Kazarian*, 580 F.3d at 1036, *aff’d* in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

As previously mentioned, although the Director determined that the Petitioner satisfied this criterion, we disagree. In order to demonstrate eligibility for this criterion, a petitioner must show that his work was on display, and the venues were artistic exhibitions or showcases.¹⁰

The record reflects that the Petitioner provided a self-compiled list indicating 10 film titles with their formats, theatrical exhibition territories, and his contributions. While the Petitioner claimed that he derived the information from imdb.com and he provided screenshots from IMDb's website regarding the films, they do not corroborate his assertions relating to the theatrical exhibition territories and his contributions. Moreover, while he indicated that the theatrical exhibition territory covered numerous countries, he did not identify which artistic exhibitions or showcases displayed the films. In addition, the Petitioner submitted screenshots from the-numbers.com for eight movies regarding box office receipts. Again, the screenshots do not show which exhibitions or showcases displayed the films, nor do they credit the Petitioner for contributing to the films.

Furthermore, the Petitioner did not demonstrate that he displayed his work.¹¹ Specifically, the Petitioner's self-comprised list claims his contributions as production coordinator, senior production coordinator, and line producer. However, the Petitioner did not establish how his positions involved displaying his work in the movies. Moreover, the Petitioner did not show that he displayed his special effects for the movies rather than overseeing the work of others. Likewise, although the record contains a letter from [redacted] human resources for [redacted] who indicated that the Petitioner worked on five films as a production coordinator, senior production coordinator, or associate line producer, the Petitioner did not show that his producing contributions resulted in his work being displayed.

Moreover, the Petitioner previously argued that his evidence should also be considered as comparable evidence. The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation.¹² A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).¹³ General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted.¹⁴ Here, the Petitioner did not demonstrate why he cannot offer evidence that meets at least three criteria, including this criterion. The fact that the Petitioner provided documentation that does not meet at least three criteria is not evidence that a visual effects producer could not do so. Further, the Petitioner did not establish that the other criteria, such as awards, published material, judging, and high salary, do not apply to his occupation.

¹⁰ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

¹¹ *Id.* at 9.

¹² See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

¹³ *Id.*

¹⁴ *Id.*

Accordingly, the Petitioner did not demonstrate that he fulfills this criterion, including through the submission of comparable evidence. For these reasons, we withdraw the decision of the director for this criterion.

Evidence 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).

The Petitioner contends eligibility for this criterion based on his positions with [redacted], [redacted], [redacted] and the [redacted]. As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.¹⁵ Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.¹⁶

As it relates to [redacted], he submitted a letter from [redacted], senior human resources manager, who indicated that the Petitioner "joined in the VFX Department and at the time of relieving his designation was VFX Line Producer." On appeal, the Petitioner refers to a screenshot from producersguild.org that indicates that the "Co-Producer /Line Producer is to be granted to the individual who reports directly to the individual(s) receiving 'Produced By' credit on the theatrical motion picture," and "[t]he Co-Producer/Line Producer is the single individual who has the primary responsibility for the logistics of the production, from pre-production through completion of production." However, the Petitioner did not demonstrate how the evidence shows that in his position as a line producer for a movie he performed in a leading role for [redacted] overall. Moreover, according to the screenshot, the Petitioner's line producer role is in a subordinate role compared to the other positions in a production. For instance:

The chief of Executive Producer shall only apply to an individual who has made a significant contribution to the motion picture and who additionally qualifies . . . [as] [h]aving secured an essential and proportionally significant part (no less than 25%) of the financing for the motion picture; and/or [h]aving made a significant contribution to the development of the literary property.

In addition, while [redacted] listed his "key roles and responsibilities," he did not explain how the petitioner critically contributed to the successes of [redacted]. Instead, [redacted] generally described the responsibilities of a line producer without specifically showing how the petitioner performed in an essential position for [redacted] as a whole.¹⁷

Likewise, regarding [redacted] the Petitioner provided two letters from [redacted] human resources, who indicated that the Petitioner served as a production coordinator and later as a senior production

¹⁵ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

¹⁶ *Id.*

¹⁷ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

coordinator.¹⁸ The producerguild.org screenshot reflects that “[t]he Production Coordinator reports to the person(s) receiving the Produced By credit, the Co-Producer/Line Producer[,] the Production Supervisor/Manager[,]or UPM,” and “[t]he Post Production Supervisor reports directly to the Co-Producer/Line Producer.” Here, the Petitioner did not establish how the evidence shows that in his position as a production coordinator and senior production coordinator for a movie resulted in a leading or critical role for [redacted] as a whole. In fact, the role of a production coordinator and senior production coordinator for a movie is in a lesser role than a line producer.

Similar to [redacted]’s letter, [redacted] also generally described the Petitioner’s “key roles and responsibilities” without specifically explaining how the Petitioner’s role as a production coordinator and senior production coordinator for movies resulted in successes for [redacted] overall. Here, [redacted] did not elaborate and articulate how the Petitioner contributed to the [redacted]’s accomplishments in a critical way.

As it pertains to [redacted], the Petitioner submitted emails and a letter, including an additional letter on appeal, inviting him “to connect at [redacted]’ events and network with others. However, the Petitioner did not demonstrate how the documentation establishes that he performed in either a leading or critical role by attending and connecting with other [redacted] members.

Moreover, the Petitioner did not show that [redacted], [redacted], and [redacted] have distinguished reputations.¹⁹ On appeal, the Petitioner provides screenshots regarding [redacted]’s stock share information. Although the evidence reflects that [redacted] is a viable business, the Petitioner did not demonstrate how the evidence establishes that [redacted] enjoys a distinguished reputation. Moreover, he submits a screenshot from [redacted]’s website promoting itself and providing background information for the company; however, the Petitioner did not demonstrate how the screenshot shows [redacted]’s eminent reputation. Further, the Petitioner offers a screenshot blog from arenach.com opining the “Top VFX Studios in India You Never Heard About.” While the blog lists [redacted] and [redacted] it does not explain or justify its claim besides providing a brief history and contact information. Further, the Petitioner presents a screenshot from [redacted]’s website advertising itself, and the Petitioner did not supplement the record with independent, objective evidence showing that [redacted] garnered an excellent reputation. Here, the Petitioner did not present sufficient documentation to establish the standings or statures of the organizations.

Finally, the record reflects that the Petitioner claimed comparable evidence to meet this criterion based on the same claims and documentation discussed above. For the reasons previously discussed, the Petitioner did not demonstrate why he cannot offer evidence that meets at least three criteria, including this criterion. As such, he did not show his eligibility for the submission of comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4).

Accordingly, the Petitioner did not demonstrate that he fulfills this criterion, including based on comparable evidence.

¹⁸ The record also contains four paystubs indicating his position as an associate line producer, which appears to be in a lesser role than a line producer discussed earlier.

¹⁹ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (providing that *Webster’s* online dictionary defines distinguished as marked by eminence, distinction, or excellence).

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales. 8 C.F.R. § 204.5(h)(3)(x).

The Director found that the Petitioner met this criterion. However, we disagree with the Director's determination. In order to satisfy this criterion, the evidence must show that the volume of sales and box office receipts reflect an alien's commercial successes relative to others involved in similar pursuits in the performing arts.²⁰

The record reflects that the Petitioner submitted a self-compiled list of ten films reflecting their "making cost" and "worldwide recovery." In addition, he provided screenshots from Wikipedia regarding background for eight of the films. Moreover, as mentioned under the display criterion, the Petitioner provided screenshots from imdb.com and the-numbers.com relating to eight films. However, none of the screenshots from Wikipedia, IMDb, and The Numbers credit the Petitioner with working on any of the films. Further, while the previously discussed letter from [redacted] indicated that the Petitioner worked on five films as a production coordinator, senior production coordinator, or associate line producer, the Petitioner did not show that in those positions he was responsible for the commercial success of those five films. Here, the Petitioner did not demonstrate that *he* achieved commercial successes in the performing arts consistent with this regulatory criterion.

Finally, the record reflects that the Petitioner claimed comparable evidence to meet this criterion based on the same claims and documentation discussed under the display criterion. For the reasons previously discussed, the Petitioner did not demonstrate why he cannot offer evidence that meets at least three criteria, including this criterion. As such, he did not show his eligibility for the submission of comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4).

As he did not demonstrate his commercial successes in the performing arts, the Petitioner did not establish that he fulfills this criterion, including based on comparable evidence. Accordingly, we withdraw the decision of the Director for this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. 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.

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. at 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work 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

²⁰ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 11-12.

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). Although the Petitioner has experience working in the motion picture industry, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual 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.