



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

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

In Re: 17286250

Date: MAY 23, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a producer of short films, commercials, and music videos, 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 record did not establish that he met the initial evidence requirements through receipt of a major, internationally recognized award or meeting at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

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 international 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 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).

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) (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

The Petitioner is a producer of television commercials, short films and music video who co-founded [REDACTED], a production firm originally based in [REDACTED], in 2011. He states that he intends to continue working as a producer in the United States.¹

A. Evidentiary Criteria

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). The Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to the display of his work at artistic exhibitions or showcases and his participation as a judge of the work of others in his field. On appeal, the Petitioner asserts that he also meets four additional evidentiary criteria. After reviewing all of the evidence in the record, we agree with the Director regarding the display and judge criteria, but conclude that the Petitioner also meets at least one additional criterion and thus the initial evidentiary requirement for this classification.

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 specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The evidence shows that the Petitioner served as a member of the jury for the National Association of Advertisers (ANDA) awards in two years, 2011 and 2012. These awards were given in several

¹ In response to our request for evidence (RFE), the Petitioner restated his intent to work as an executive producer in the United States for [REDACTED] in [REDACTED], FL, and also included an updated letter from the manager of this company dated January 20, 2022 which states his intent to offer the Petitioner a position. However, a search of the Florida Department of State, Division of Corporations website (sunbiz.org) on March 10, 2022 revealed that the company was voluntarily dissolved on March 16, 2021 because it did not have any operating activities, and was therefore incapable of offering a job to the Petitioner on the date of the letter. As the only evidence of the Petitioner's intent to continue working in his field in the United States consists of a fraudulent letter, he would be required to overcome this issue in any further proceedings in this matter.

categories to advertising agencies and production companies. While a letter from ANDA also invited him to serve as a jury member in the technical categories for these awards in 2015, this does not establish that [redacted] participated as a judge in that year. In addition, the Petitioner submitted an article published in [redacted] in 2012 which names him as one of nine jury members for an exhibition, [redacted] which featured creative works in advertising. This evidence establishes that he meets this criterion.

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)

To meet this criterion, a petitioner must show that their work in the field was displayed at an exhibition or showcase, and that the exhibition or showcase was artistic in nature. In support of his claim under this criterion, the Petitioner submitted evidence that the short film [redacted] for which he is credited as the executive producer, was screened at several international film festivals, including the 2018 [redacted] International Film Festival. He also served as a producer for the short film [redacted] [redacted], which was screened at several film festivals in 2000. This evidence establishes that he meets 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 submitted evidence showing that he is a founding partner of [redacted] and has served as its executive producer since 2011, which establishes his leading role for the company. Additional evidence shows that the company received several ANDA awards at the gold, silver, and bronze levels between 2012 and 2016 in recognition of the commercials it produced. It was also ranked as one of the top four production companies in [redacted] for three years, from 2013 to 2015, by [redacted] magazine. As such, the Petitioner has established that he performed in a leading role for an organization with a distinguished reputation.

B. Final Merits Determination

As shown above, the Petitioner meets three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3) and has thus established that he meets the initial evidence requirement. While he asserts that he also meets additional criteria, we need not consider those claims. Rather, we will consider the evidence submitted in support of those additional criteria together with the entirety of the record when conducting a final merits determination. In a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and 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. Here, the Petitioner has not offered sufficient evidence that he meets that standard.

As noted above, the record shows that the Petitioner is one of three co-founders and the executive producer of [redacted] a [redacted] video and film production firm which has also expanded into other markets in [redacted]. The company's work has been recognized through its receipt of several ANDA awards from 2012 through 2016, although the evidence indicates that only recipients of gold awards received statuettes, and the agency did not win the top "producer of the year" award in

any year. While the Petitioner claims that his previous employer, [redacted] also received several ANDA awards during his employment there as an associate executive producer, the letter from ANDA refers only to awards received by [redacted] and unlike the awards received by [redacted] which are documented by both media and copies of plaques, the record does not include independent documentary evidence of the awards claimed to have been received by [redacted]. We also note that an article from the website of [redacted] covering the 2016 ANDA awards lists a total of 142 that were granted that year at the gold, silver, and bronze level, which indicates that these are considerably less exclusive than the top “best agency” and “best producer” awards granted by ANDA.

On appeal, the Petitioner also submits new evidence regarding silver and bronze [redacted] awards received by [redacted] at the [redacted] International Festival in 2013, 2014 and 2015, which receives entries from advertising agencies in several countries in the [redacted] region. Although this evidence does not show that the Petitioner personally received either ANDA or [redacted] awards, as he is not named as a recipient by either of the awarding organizations, it does show that the work of the company which he founded and leads has been recognized at some level by national organizations in [redacted] and [redacted].²

The record also shows that [redacted] was named as one of the top four production companies in [redacted] in 2013, 2014 and 2015 by [redacted] magazine, which features short articles about each of the ranked companies in those annual rankings and includes quotes from the Petitioner in the article about his company. Evidence in the form of marketing materials from the publisher indicates that [redacted] is a monthly business magazine in [redacted] with circulation of 18,000, primarily serving the [redacted] area, but the record does not include evidence which puts this circulation figure into perspective in the [redacted] media market, and therefore does not show the extent to which these rankings were recognized on a national basis. This evidence shows that during this period, the company which the Petitioner founded and lead achieved some level of recognition as standing out from other production companies in [redacted], and that he was acknowledged as one of its leaders. We note, however, that these awards, rankings, and the resulting professional media attention for [redacted] [redacted] spanned only four years, a small portion of the Petitioner’s career in this field, and the record does not include similar evidence before 2012 or after 2016 despite the petition being filed three years later.

In addition to acting as a producer for television commercials, the record includes evidence of the Petitioner’s work on short films and music videos. As discussed above, he is credited as a producer on the short film [redacted] (2000), and as an executive producer on the short film [redacted] (2018), both of which were screened at several film festivals. The evidence indicates that [redacted] was nominated for an award at the [redacted] International Film Festival, and was named “Best [redacted] Film” at the [redacted] festival, and the IMDB pages for [redacted] and [redacted] show that they also received awards at other film festivals. As with the ANDA and [redacted] awards, the evidence does not show that the Petitioner was named as a recipient of any of these awards. While we acknowledge the letter from [redacted] director of [redacted] and the Petitioner’s business partner, describing the Petitioner’s important role on this film, the evidence does not show

² The Petitioner submitted evidence which appears to be part of his portfolio, or that he prepared for purposes of this petition, which lists [redacted] as being a finalist for an [redacted] award for “Best [redacted] TV Commercial” in 2010. While some reference letters mention the [redacted] award, the record lacks evidence that either [redacted] or the Petitioner received such an award.

that he received significant acclaim for this role. Also, although the press releases for [] published in some [] media mention both the Petitioner and [] this self-created content does not reflect acclaim from others in the field. Ultimately, while these two short films produced by the Petitioner over his long career as a producer garnered attention in the industry and at film festivals, the record does not establish that this work helped to elevate his standing into one of the small percentage at the top of his field.

As for music videos, a letter from the founding member of the band [] briefly describes the Petitioner's work on the video for the song [], the release of which in 2018 was covered by media in [] and elsewhere. Several of the articles contain an identical paragraph, apparently from a press release, which describes [] as "one of the main audiovisual production companies in [] and names the Petitioner as the executive producer. As with the press release material for [] while these articles show that the video garnered some attention in the press, they do not demonstrate acclaim for the Petitioner from others in his field.

The Petitioner also asserts that he served as a producer for the [] series [] referring to articles apparently from [] media which report that [] will produce the third season of the series to be shot in []. While reference letters also make mention of this project which was completed in 2019, there is no documentary evidence of the Petitioner's direct involvement. We further note that the evidence names other companies as producers of the show, and the record lacks evidence to show that either the Petitioner or [] were credited for its production.

Further evidence pertaining to the Petitioner's acclaim and standing within his field includes an interview of him which was published in [] in July 2013 in which he discusses the establishment and progress of []. The previously noted quotes in the profiles of the production companies ranked by [] published in 2013, 2014 and 2015, focus mainly on [] production statistics and business outlook rather than the Petitioner and his career, and thus do not reflect personal acclaim beyond recognition of his role for a distinguished production house.

In addition, an autobiographical article by the Petitioner, which appeared on the [] website but is not dated, does not appear to be accompanied by a complete and accurate English translation based upon the structure and content of the original, and has not been demonstrated to have appeared in a major or professional medium. This evidence, considered together with the press releases about [] and other media which only mentions him in passing, verify that he was playing a leading role for a successful production house, but does not reflect sustained acclaim for the Petitioner as a producer.

Turning to another type of evidence in the record, the Petitioner's service as a jury member for the 2011 and 2012 ANDA awards, and his invitation to participate in this role for the 2015 ANDA awards, show that he was acknowledged as an expert in his field at the national level in that period. As with the company awards and media, however, it does not show that this recognition was sustained, or that he stood out from other production experts in the field who also served in such roles.

The record also includes reference letters in addition to those previously mentioned which mainly describe the Petitioner's roles in several projects.³ For example, the second letter from [redacted] aka [redacted] discusses his work on a music video for the character [redacted] noting that the Petitioner took leading roles in the development of the character and production of a music video for the song '[redacted]'. [redacted] notes that the video had more than 42,000 views on YouTube as of the date of the letter, September 3, 2020, and was briefly reviewed along with other new music on NPR's alt [redacted] podcast.

Another reference letter was submitted by [redacted] a founder of the [redacted] production company. He describes the Petitioner's work as a line producer for a television commercial for the [redacted] noting that it required a remote location, cameras mounted on a variety of equipment, and action stunts. [redacted] also states that both he and his clients were pleased with the commercial and the Petitioner's leading role in its production. While these and other letters show that the Petitioner has led or participated in the successful production of a variety of projects, they do not establish that he received sustained national or international acclaim for this work.

On appeal, the Petitioner also reasserts his claim to a high salary compared to others in his field as evidence of his sustained acclaimed and position near the top of his field. The record includes several statements translated as "Statement of Miscellaneous Withholdings" for the years 2014-17, which the Petitioner describes as his "W-2s." While the terms and figures in these statements are not completely explained, the statements include two columns labelled "Withholding Tax Base," one in [redacted] and another in U.S. dollars, which appear to show the Petitioner's pre-tax earnings, or gross income, for the year. The figures are as follows:

- 2014 \$27,614
- 2015 \$24,052
- 2016 \$29,625
- 2017 \$37,533
- 2018 \$9,427

For 2017 and 2018, the Petitioner also submitted forms titled "Form DPN-99025: Final Tax Return of Income and Payment for Individuals Residences and Inheritances." The figure matching the above form for 2017 appears on Line 22 of Part E, Total Net Income, although for 2018 this figure is slightly lower than that shown on the above form.

As proof of his earnings in [redacted] the Petitioner submitted a letter and figures from an accounting firm, although we note that no address or telephone number are provided on this letter. The attached tables show "List of payments received" from [redacted] and [redacted] Productions for the years 2015-17, with the totals as follows:

- 2015 B/.29,300
- 2016 B/.54,700
- 2017 B/.39,500

³ All reference letters in the record were reviewed and considered, including those not specifically mentioned in this decision.

Because the [redacted] has a 1:1 exchange rate with the U.S. dollar, the Petitioner adds the figures from the documents showing his earnings in [redacted] and [redacted] claiming totals of \$53,352 in 2015, \$84,325 in 2016 and \$77,033 in 2017.

For purposes of comparison to others in his field, the Petitioner initially submitted a letter from his accountant stating that he receives 150% of the daily rate of other executive producers of short films in [redacted] appearing to base this statement upon his work with [redacted] and other companies. However, this statement is not supported by a salary survey of the broader video and film production industry in [redacted]. Even if the other companies listed by the accountant are production companies and he has access to their financial data, given the small sample size and lack of supporting data, this statement cannot be considered as a reliable indicator of the average salaries of others in the Petitioner's field.

In response to the Director's RFE, the Petitioner also submitted a letter from [redacted] who states that she is the President of the [redacted] Film and Video Industry in [redacted]. [redacted] indicates that this organization represents professionals in the audiovisual industry and works with the labor unions to set the wages for these professionals. Although she concedes that the organization does not negotiate wages for executive producers, she states that it has knowledge of these wages through budget reviews, and that it is "common" for an executive producer to earn \$400 or \$500 per day. Further, she states that most executive producers in [redacted] involved in creating commercials would earn between \$10,000 and \$20,000. As with the letter from the Petitioner's accountant, these statements are not supported by documentary evidence such as a salary survey, and they are also not accompanied by additional information about the chamber or its functions. [redacted] appears to base her figures on casual observation rather than a systematic study of such salaries, and she does not provide relevant data such as the sample size her figures are based upon. As such, this evidence is not sufficient to establish a basis for comparison of the Petitioner's salary to those of other producers.

The totality of this evidence shows that the Petitioner has enjoyed some success as an executive producer of commercials and other short films and co-founder of a production company, but that the acclaim stemming from that success was relatively short-lived. In addition, while his company enjoyed success and acclaim for a period, and his expertise was sought in the judging of other production professionals, the record does not establish that this elevated his standing as a producer to that of one of the small percentage at the top of the field. Accordingly, after a thorough review of the evidence in the record, the petition will remain denied.

III. CONCLUSION

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 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 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 that 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).

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.