



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

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

In Re: 23090673

Date: NOV. 30, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a film and media editor, seeks classification as an individual 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 although the Petitioner met the initial evidence requirement for this classification, the record does not establish that he has national or international acclaim and is among that small percentage at the very top of the field of endeavor. On appeal, the Petitioner submits a brief and contends that the Director did not conduct a proper final merits determination.

We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *See* Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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

A. Evidentiary Criteria

The Petitioner is a film and media editor. Because the Petitioner has not established that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied four of these criteria, summarized below:

- (i) Lesser nationally or internationally recognized prizes or awards;
- (iv) Participation as a judge of the work of others in the same or an allied field;
- (vii) Display at artistic exhibitions or showcases; and
- (viii) Performance in a leading or critical role for organizations or establishments that have a distinguished reputation.

The Director found that the Petitioner met three of the evidentiary criteria: lesser nationally or internationally recognized prizes or awards, display at artistic exhibitions or showcases, and performance in a leading or critical role for organizations that have a distinguished reputation. However, upon review of the record in its totality, we conclude that the record does not establish that the Petitioner satisfies at least three of the ten initial evidentiary criteria.

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Director determined that the Petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the Petitioner submitted sufficient documentary evidence to establish that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner submitted evidence of: (1) 2005 [redacted] Latin America Awards [redacted] presented to [redacted] (2) 2005 [redacted] Latin America Awards [redacted] presented to [redacted] (3) 2006 [redacted] Latin America Awards [redacted] presented to [redacted] and (4) 2006 [redacted] Latin America Awards [redacted] presented to [redacted]. The Petitioner is listed as the editor on the awards. The Petitioner also submitted various articles about [redacted], [redacted] awards, a keynote speaker for the organization's annual conference in 2007, and some of the past winners of [redacted] awards from the [redacted] website and other various websites. For example, the Petitioner submitted two articles from the Businesswire.com website, which state that [redacted] is the largest member association for the global entertainment marketing community and is a global, non-profit association dedicated to advancing the role and effectiveness of promotion, marketing, and broadcast design professionals in the electronic media. These articles discuss [redacted] awards generally and its recipients but do not provide any information regarding specific categories that the Petitioner was awarded in or establish that the Petitioner was recognized for excellence in the field as a film and media editor. The record does not contain sufficient evidence about [redacted] awards, such as different categories for the awards, an overview of the different levels of awards, the selection criteria used to grant the awards, national or international significance of the specific awards in the field, the number of awardees, or candidates for the awards. As such, we are unable to determine the purpose of the awards. For example, the record does explain what [redacted] is and does not address the significance of the [redacted] award to establish that the Petitioner was recognized for excellence in his field as a film and media editor and considered as one of the top film and media editors in the field.

The Petitioner also submitted evidence of [redacted] Festivals "2006 Bronze Award" presented to [redacted] where the Petitioner is listed as the editor. The Petitioner submitted various articles about some of the past winners of [redacted] Festivals television and film awards, and international advertising awards from the [redacted] Festivals website and other various websites. The [redacted] Festivals website states that [redacted] Festivals television and film awards honor content in all lengths and forms from over 50 countries and embrace all aspects of the television and film industries. However, the record does not provide any information regarding the specific category that the Petitioner was awarded in or establish that the Petitioner was recognized for excellence in his field as a film and media editor and considered as one of the top film and media editors in the field. The record does not contain sufficient evidence about [redacted] Festivals awards, such as different categories for the awards, an overview of the different levels of awards, the selection criteria used to grant the awards, national or international significance of the specific awards in the field, the number of awardees, or candidates for the awards.

While the Petitioner provided evidence of 2005 and 2006 [redacted] Latin America Awards and 2006 [redacted] Festivals Bronze Award, the Petitioner did not submit sufficient documentary evidence to establish that the awards are nationally or internationally recognized for excellence in the field. Submitting evidence of the Petitioner's receipt of a prize or award is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) without documentary evidence reflecting that

the prize or award is nationally or internationally recognized for excellence in the field of endeavor. Accordingly, the Petitioner does not meet 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 determined that the Petitioner did not establish eligibility for this criterion. We agree with the Director's determination that the Petitioner did not meet the judging criterion.

The Petitioner claimed that he served as a judge of the work of filmmakers in the [redacted] Festival. The Petitioner submitted two letters from the Director and Chief Executive Officer of the [redacted] which indicate that the Petitioner was invited to participate as a judge at an event to be held in [redacted] 2021. The letters also states that the [redacted] [redacted] is an online education platform on which the students can access learning materials about film making. The Petitioner filed the instant visa petition in October 2021 – two months prior to the scheduled event. In a notice of intent to deny, the Director requested for evidence of the actual participation of the Petitioner as a judge at the claimed event. In response to the notice, the Petitioner did not provide the requested evidence or other evidence to supplement the record.

There is no documentary evidence from the [redacted] or other sufficient evidence indicating that the Petitioner actually participated in judging at the event at the time of filing his visa petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, the Petitioner does not meet 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).

The Director determined that the Petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires “[e]vidence of the display of the alien’s work in the field at artistic exhibitions or showcases.” A review of the record of proceeding reflects that the Petitioner submitted sufficient documentary evidence to establish that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Accordingly, the Petitioner 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 Director determined that the Petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the Petitioner submitted sufficient documentary evidence to establish that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) for the reasons outlined below.

The Petitioner claimed that he has performed in a leading and critical role for [redacted], a production company, as an editor. The Petitioner submitted four letters from the Executive Producer and a founding partner of [redacted]. The letters state that the Petitioner worked for [redacted] in

the post-production audiovisual department from March 2004 to June 2015; he fulfilled all his duties in a serious and responsible manner; he was the most trustworthy service provider; and he contributed to the company to achieve the highest standard of quality in audiovisual production. However, the letters do not describe how the Petitioner's position fits within the overall hierarchy of [redacted]. Without an organizational chart or other evidence documenting how the Petitioner fits within the general hierarchy of [redacted] the Petitioner cannot establish that he has performed in a leading role. With regard to critical roles, the Petitioner must establish how he contributed to [redacted] outcome or activities. The letters fall short of specifying how the Petitioner contributed to [redacted] in a way that is significant to its outcome or activities. Moreover, the Petitioner did not submit sufficient independent, objective evidence distinguishing [redacted] from other highly regarded production companies so as to establish that it has a distinguished reputation.

The Petitioner also claimed that he has performed in a leading and critical role for [redacted] a production company, as an editor. The Petitioner submitted a letter from the Director of [redacted], which states that the Director worked with the Petitioner, resulting in a high-quality work and that the Director's video clip '[redacted]' by [redacted] was awarded Best Pop Video in the [redacted] Film Festival in 2014 and Teen Choice Award in the [redacted] Music and Video Festival in 2014. However, the letter does not describe how the Petitioner's position fits within the overall hierarchy of [redacted] to establish that he has performed in a leading role. The letter also does not specify how the Petitioner contributed to [redacted] in a way that is significant to its outcome or activities. In addition, the Petitioner did not submit sufficient independent, objective evidence demonstrating that [redacted] has a distinguished reputation.

The Petitioner also claimed that he has performed in a critical role for [redacted], a production company, as an editor. The Petitioner submitted a letter from a filmmaker and a co-founder of [redacted] which states that the co-founder has known the Petitioner for over 10 years as a professional post-producer and that the Petitioner has shown outstanding skills and social ethics. The letter also states that thanks to the Petitioner's professional and personal aptitudes, [redacted] has received awards and recognition. For example, the letter states that [redacted] film titled [redacted] won Best Thriller Film Award in [redacted] Film in 2021 and that its film titled [redacted] won Best Dark Comedy Award in [redacted] Film Festival in 2018. We acknowledge that films produced by [redacted] have received awards. However, the letter does not specify how the Petitioner contributed to [redacted] in a way that is significant to the outcome of the organization. The letter does not explain how the Petitioner's role as a film editor was critical to the overall outcome of [redacted] activities. Furthermore, the Petitioner did not submit sufficient independent, objective evidence that distinguishes [redacted] from other highly regarded production companies. Every production company that boasts its accomplishments does not necessary demonstrate a distinguished reputation.

Without sufficient documentary evidence demonstrating that the Petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the Petitioner has not established that he meets the plain language of this regulatory criterion.

B. O-1 Nonimmigrant Status

The record reflects that the Petitioner has been granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Forms 1-140 are correctly denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *affd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers (the office adjudicating the nonimmigrant visa petition) is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La.), *affd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 regulatory 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 have reviewed the record in its totality and conclude that the Petitioner has not 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 those progressing toward that goal. 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). The Petitioner appears to be a talented editor in the production of short films and marketing entertainment videos. However, the Petitioner has not shown that the significance of his work as an editor in the film and media industry 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). Moreover, the Petitioner has not shown that he 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; 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.