



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

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

In Re: 24218383

Date: FEB. 06, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a photographer, seeks classification as an individual of extraordinary ability in the arts. *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 the Petitioner had not established eligibility as an individual of extraordinary ability, either as the recipient of a major, internationally recognized award, or by meeting at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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).

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

Because the Petitioner does not argue and has not 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 the Petitioner met one evidentiary criterion, that of 8 C.F.R. § 204.5(h)(3)(viii), related to the foreign national’s performance in a leading or critical role for organizations or establishments that have a distinguished reputation. On appeal, the Petitioner asserts that he meets additional evidentiary criteria, which we analyze below. Additionally, for the reasons described below, we withdraw the Director’s finding that the Petitioner has established eligibility under 8 C.F.R. § 204.5(h)(3)(viii) and instead conclude that he has not established eligibility under any criteria. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

A. Evidentiary Criteria

Documentation of the individual’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)

In order to fulfill this criterion, the Petitioner must demonstrate that he received prizes or awards that are nationally or internationally recognized for excellence in the field of endeavor.¹ The Petitioner provided evidence that he received a 2017 first place award in the category of “news photography” from the [REDACTED]. The Director notified the Petitioner in a request for evidence (RFE) that the record did not sufficiently demonstrate how the [REDACTED] award is nationally or internationally recognized or that the award is given for excellence in the Petitioner’s field of

¹ *See generally*: 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>.

endeavor. In response, the Petitioner provided the contest rules and entry requirements, information about the award, printouts of various media outlets' announcement of the winners, and readership figures of the media outlets. Nevertheless, the Director determined that the Petitioner had not established the national or international recognition of the [redacted] award. We agree.

As the Director noted, multiple media printouts refer to the competition as "statewide." While the various media that announced past winners may have national or international readership, the evidence provided does not sufficiently demonstrate that the media announced [redacted] winners beyond state or local editions of the media. While we understand the Petitioner's assertion that media outlets such as *USA Today* announced the [redacted] winners, the evidence reflects these announcements may have been local news, as evidenced by *USA Today's* online article within the [redacted] Florida [redacted] and references to the Florida regional *USA Today* Network. Other media announcing [redacted] winners include the [redacted]

[redacted] Although the parent companies of these local newspapers, or even the local newspapers themselves, may have national or international readership, this is insufficient to support a finding that the [redacted] award is a nationally or internationally recognized award. To further illustrate, the Petitioner provided evidence of the contest rules, which state that contest submissions must have appeared "in a daily newspaper in Florida. . . and must have been the work of staff members of the newspaper or Florida-based staff members of a news organization." This supports a conclusion that the [redacted] awards are recognized locally or statewide, rather than nationally or internationally.

On appeal, the Petitioner emphasizes that awards under this category must be nationally or internationally *recognized*, not nationally or internationally *distributed*. While we acknowledge the distinction, the evidence provided nevertheless does not support a finding that the [redacted] award is nationally or internationally recognized. Therefore, the Petitioner has not established eligibility under this criterion.²

Published material about the individual in professional or major trade publications or other major media, relating to the individual's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.³ The Petitioner asserted that [redacted] published materials about him.

The [redacted] 2021 [redacted] article contains an interview conducted with the Petitioner. Although this article is about the Petitioner's photographs, the record contains little to no evidence to support a finding that [redacted] is a professional or major trade publication or other major media. Rather, the evidence demonstrates that [redacted] is an individual's online blog, not a major

² The evidence suggests that the [redacted] award may be given for a level of achievement in journalism, which differs from the Petitioner's field of claimed extraordinary ability (photography). While we need not discuss this issue, as the evidence does not support a finding of the national or international recognition of the [redacted] award, we conclude that for this additional reason, the [redacted] award does not support the Petitioner's eligibility under this criterion.

³ See generally USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

medium. In addition, the evidence does not show that [redacted] is a professional publication or a major trade (photography) publication. The [redacted] printout evidences a [redacted] 2016 announcement that the Petitioner will provide photographic news coverage of the [redacted] soccer event. Although the announcement introduces the Petitioner as the photographer selected for the soccer games, the evidence does not sufficiently establish that the article is *about* the Petitioner. Rather, the announcement appears to be for the purpose of generating excitement at the historic participation of a particular team in the [redacted] games. Although the [redacted] article contains three questions for the Petitioner and his responses to those questions in an interview-style format, the article is undated and does not establish eligibility at the time of filing.⁴ Similar to [redacted] the record contains little to no supporting evidence to establish that [redacted] are professional or major trade publications or other major media. Accordingly, the Petitioner has not established eligibility under this criterion.⁵

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)

In order to demonstrate eligibility for this criterion, a petitioner must show that his work was on display, and that the venues were artistic exhibitions or showcases. By regulation, the exhibition or showcase must have been “artistic.”⁶

We acknowledge that online and print media outlets published the Petitioner’s photographs; however, the Petitioner did not demonstrate that any of the media featuring his photographs were “artistic” consistent with this regulatory criterion. *See Kazarian*, 596 F.3d at 1122 (finding that self-publishing a textbook, lecturing at a community college, and presenting at conferences were not displays at artistic exhibitions or showcases consistent with the relevant regulatory language). The publication of his photographs in the media are the result of newsworthy events and not necessarily because of the artistic nature of the photograph or the event. In other words, the record reflects that the media feature his photographs because he covers particular events. On appeal, the Petitioner emphasizes that the media featuring the Petitioner’s work are major publications. While we acknowledge this assertion, the criterion here involves *artistic exhibitions or showcases*, not major publications. The Petitioner has not presented evidence that his photographs appeared in venues such as a gallery, museum, or other artistic context. Accordingly, the evidence does not support eligibility under 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 must establish that he has performed in a leading or critical role. For a “leading” role, we consider evidence establishing that a petitioner is (or was) a leader within the organization or

⁴ 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). The Petitioner did not include the date of the material. The inclusion of the title, date, and author of the material is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii). In addition, the English translation of this article contains the date December 12, 2021, which is after the filing date of the petition.

⁵ Additionally, parts of the printouts appear to be untranslated and are therefore not in accordance with 8 C.F.R. § 103.2(b)(3).

⁶ *See generally* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9.

establishment.⁷ For a “critical” role, we look to evidence that establishes a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities.⁸ While the Director determined that the Petitioner established eligibility under this criterion, for the reasons below, we withdraw that finding.

The Petitioner asserted that:

As a lead Photographer, [the Petitioner] is responsible for the overall look and success of these publications as he oversees and coordinates all aspects of the photography for the particular publication; ensuring that it is perfect for audiences and consumers to enjoy. Therefore, each time [the Petitioner] works to produce quality photographs for these major media establishments, he is performing in a leading and critical role for them as the success and attraction of the publications ultimately depend on the quality and selection of his work. . . . Throughout his career, he has served in leadership positions for major organizations responsible for overseeing the creation of photographic imagery and content for their publications.

(emphasis removed). Although the Petitioner provided evidence that his photographs appeared in media, such as the [redacted] he has not provided evidence that he served in a leading or critical role within the [redacted] or other organizations. The letters from [redacted] [redacted] current and former photojournalists with the [redacted] respectively, state that the Petitioner served as an intern at the [redacted]. The letters also state that the Petitioner serves as a contract photographer for [redacted]. While the Petitioner did not provide information on what a contract photographer is or does, it appears as though he may work for a third-party that contracts his photography services out to various media, of which [redacted] may be one. While both letters praise the Petitioner’s talents and abilities, neither letter provides sufficient detail concerning how the Petitioner’s role was leading or critical.

Although the Petitioner may assert that photographers *in general* are critical to the functioning of media, the Petitioner has not sufficiently documented how his role within the media organizations was leading or critical.⁹ The Petitioner asserted that “the success and attraction of the publications ultimately depend on the quality and selection of his work;” however, he has not provided sufficient evidence to substantiate this claim. He has not provided evidence that, for instance, he is the only photographer at the events and the only source of photographs for a particular medium. Nor has he offered sufficient evidence to demonstrate, for example, that people subscribe to and read the media publications due to his photographs, as opposed to the written content of the publications.

The record contains a list of images the Petitioner purportedly submitted to numerous different media sources. The Petitioner provided little explanation for the significance and evidentiary relevance of this list. We cannot, for example, determine whether the list: (1) suggests that the Petitioner works for a third-party that contracts with media organizations for photographic coverage services; (2) demonstrates that the Petitioner attends events to take photographs, but the media may or may not

⁷ See generally USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

⁸ *Id.*

⁹ Here, it “is not the title of the person’s role, but rather the person’s performance in the role that determines whether the role is (or was) critical.” *Id.*

select the Petitioner's photographs; (3) shows that the Petitioner works for one media organization, such as [redacted] which may sell the Petitioner's photographs to other media outlets; or (4) demonstrates that the Petitioner works for each individual media outlet listed. In addition, the evidence does not support the Petitioner's assertion that he "oversees and coordinates all aspects of the photography for the particular publication" and "served in leadership positions for major organizations." Although the Petitioner provided evidence that his photographs appeared in media, he has not provided sufficient evidence to demonstrate that he performed in a leading or critical role for organizations or establishments.¹⁰

B. 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 the Petitioner's occupation.¹¹ Here, we must consider whether the regulatory criteria are readily applicable to the Petitioner's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation.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 show why he cannot offer evidence that meets at least three criteria. In fact, the Petitioner asserted that he has already established eligibility under four criteria, that of 8 C.F.R. § 204.5(h)(3)(i), (iii), (vii), and (viii), which we analyzed above. Simply because the Petitioner's evidence does not establish eligibility under one or more criteria does not mean that the criteria are not readily applicable to the photographer occupation. Nevertheless, because the Director's explanation regarding comparable evidence is both confusing and contradictory, we provide the below analysis.

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).

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the Petitioner's "authorship of scholarly articles in the field, in professional or major trade publications or other major media."¹⁵ In general, the article(s) should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed.¹⁶ For other fields, a scholarly article should be written for learned persons in the field. Learned persons include all persons having profound knowledge of a field.¹⁷

¹⁰ Because the evidence does not support a finding that the Petitioner performed in a leading or critical role for organizations or establishments, we need not analyze whether the organizations or establishments have distinguished reputations.

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

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See generally USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

¹⁶ *Id.*

¹⁷ *Id.*

Here, the Petitioner has not claimed, nor submitted, evidence that he has written any articles. Rather, he stated that he “is not placed in a position where he has the opportunity to teach about photography via a scholarly article or text.” Instead, the Petitioner submitted evidence that his photographs appeared in various media publications and asserted that the wide readership of the media is comparable evidence to the authorship of scholarly articles in the field, in professional or major trade publications or other major media. Specifically, he stated that he “communicates with his audience and transmits information in an even more effective way than he would if he were drafting articles . . .”

Although the Petitioner could have written scholarly articles about photography techniques or cameras and specifically acknowledges that “photographers can publish scholarly articles,” he requested that we accept comparable evidence instead. While we do not doubt the legitimacy and power of visual communication, this criterion pertains to the authorship of scholarly articles in professional or major trade publications or other major media. As “photographers can publish scholarly articles,” he has not demonstrated that this criterion does not readily apply to him. Furthermore, the Petitioner has not established how the evidence he provided is comparable.¹⁸

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 Petitioner asserts the readership figures of the media in which his images are published is comparable evidence under 8 C.F.R. § 204.5(h)(4). Specifically, he explained that “his success is measured in terms of readership figures and his “broadcasts” are exhibited to an audience who sees his work on various print and digital media . . . success as a news photographer lies in the amount of people his work is exposed to” While we acknowledge this argument, the “commercial successes” criterion does not refer to readership figures or the number of people exposed to his work.¹⁹ Rather, criterion (x) concerns the commercial success of projects in which the individual participated, documented by evidence such as box office receipts for films or record sales. Even if we view his photographs as performing arts projects, readership figures would not establish commercial success. The purchase price of the copyrights to specific photographs could be more probative evidence of “commercial successes,” but even this would not constitute “box office receipts or record, cassette, compact disk, or video sales” as the regulation requires. Accordingly, the Petitioner has not established how the evidence he provided is comparable.

¹⁸ Although we do not discuss the merits of the “comparable” evidence, we note that even if we considered it, the Petitioner has not established how it would meet the definition of scholarly. The media publications cover sports, local news, and breaking news, among other topics. The general public is the intended audience of the articles and images in the media. The Petitioner has not submitted evidence that his work is scholarly in nature, as news articles for general public consumption do not necessarily demonstrate that the intended audience is learned on a particular topic, let alone photography specifically.

¹⁹ For instance, the Petitioner offered little evidence to establish that the Petitioner’s specific photographic contributions drive the overall readership figures for a particular medium, as opposed to the written content or other photos within a medium driving the readership figures. To further illustrate, the commercial success of, or widespread attendance at, an event, such as the Kentucky Derby or the Orange Bowl, does not have any apparent connection to the photographers hired to cover the event.

We conclude the Petitioner has not shown why he cannot offer evidence that meets at least three criteria. His assertions that he has already established eligibility under four criteria reinforce this conclusion. Simply because the Petitioner's evidence does not establish eligibility under one or more criteria does not mean that the criteria are not readily applicable to the photographer occupation.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement award 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 reviewed the record and conclude that, in the aggregate, it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

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.

ORDER: The appeal is dismissed.