



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

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

In Re: 30233386

Date: APR. 17, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, who seeks employment as a creative director, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 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)(A) of the Act makes immigrant visas available to individuals with 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. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit 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 their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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. If those standards do not readily apply to the individual’s occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we 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 asserted that, after earning an associate's degree in public relations in 2011, he founded "a business development company" in Nigeria involved in media production and advertising. The Petitioner has served as his company's chief executive officer (CEO) and creative director. The Petitioner stated that his company produced radio and television programs and a record album. The Petitioner has been in the United States since he entered as a B-2 nonimmigrant visitor in July 2021.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or shown 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 initially claimed to have satisfied four of these criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner had not met any of the claimed criteria. On appeal, the Petitioner does not contest the Director's conclusions regarding the criterion for leading and critical roles, and therefore we consider that issue to be abandoned.<sup>1</sup> The Petitioner maintains that he meets the other three claimed criteria. As discussed below, we agree with the Director that the Petitioner has not established eligibility for the classification he seeks.

*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).

Initially, the Petitioner claimed to be "an accredited member of APCON," the Advertising Practitioners Council of Nigeria. He submitted a copy of a certificate indicating that he participated in a "Professional

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<sup>1</sup> *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

Development Seminar/Workshop” conducted by APCON, but he did not submit evidence identifying him as a member of APCON, or establishing that APCON requires outstanding achievements of its members as judged by recognized national or international experts. The Petitioner has not further pursued this claim.

The Petitioner is a member of the Electronic Media Content Owners Association of Nigeria (EMCOAN). The Petitioner submitted a letter from EMCOAN officials describing the organization and attesting to the Beneficiary’s service in various capacities. But the Petitioner’s initial submission did not include evidence of EMCOAN’s membership requirements.

In a request for evidence (RFE), the Director instructed the Petitioner to submit documentation of EMCOAN’s membership requirements and evidence to establish that recognized national or international experts are responsible for admitting new members. In response, the Petitioner submitted a copy of EMCOAN’s Constitution. Article 5 of that Constitution reads:

1. Membership of EMCOAN shall be open to any natural or legal person who is an owner of programmes solely intended for broadcast on television, radio, online and sundry new media.
2. There shall be two categories of membership of EMCOAN:
  - a. Corporate members
  - b. Associate Members
3. Corporate members shall be those who have joined with duly registered companies with the CAC [Corporate Affairs Commission] and have paid the prescribed corporate membership fees.
4. Associate Members shall be categorised as any person with a verifiable and proven track record of Media Content producing in the Nigerian industry over a period of 6 months prior to application/registration and have joined the association as an individual without a registered company.

Article 8 indicates that membership applications are “submitted to the General Secretary of EMCOAN and . . . directed to the Executives,” who, “if satisfied, shall present the application at its next General meeting for ratification. . . . The approval of the application shall be decided upon by simple majority of the members present and voting.” The Constitution does not specify any criteria that voting members must consider, other than the factors listed in Article 5.

Background information furnished by EMCOAN described the organization as “the umbrella body of Chief Executives [sic] Officers (CEOs) of Content Owners in Nigeria,” and stated: “EMCOAN and its members controls [sic] up to 80% of all the television and radio programmes in Nigeria.” Given this information, the Petitioner asserted: “it is clear that the leadership and the members are high powered and elite members in the broadcast industry in Nigeria.”

The Director denied the petition, stating that the evidence, including EMCOAN’s Constitution, “does not demonstrate that the association requires outstanding achievements of their members as judged by recognized national or international experts in their disciplines or fields.”

On appeal, the Petitioner asserts that, given the status of EMCOAN's membership, the association's admission process involves recognized national or international experts in the field. But while EMCOAN's membership and leadership includes "high powered and elite members in the broadcast industry," the Petitioner has not established that EMCOAN requires outstanding achievements of its members.

Under Article 5 of EMCOAN's Constitution, "any . . . person" who owns broadcast content qualifies for membership. The record indicates that the Petitioner joined EMCOAN as a corporate member; his membership certificate names his company, and therefore he did not join as an individual member "without a registered company." The Petitioner has not shown that the Beneficiary's ownership of a registered media production company is, itself, an outstanding achievement. Article 8 of EMCOAN's Constitution does not indicate that the membership application process involves weighing the achievements of applicants. The document requires executives "to state [their] reasons for" rejecting a membership application, but there is no similar requirement to justify their acceptance of an application.

Also, the record indicates that most Nigerian media content is created by EMCOAN members, and that EMCOAN considers itself "the umbrella body" for those creators. This information appears to indicate that most of Nigeria's content creators are EMCOAN members. Such a scope of membership does not tend to indicate that membership is, itself, an elite privilege reserved for those content owners with outstanding achievements.

On appeal, the Petitioner submits a letter attribute to the president of EMCOAN, acknowledging the requirements listed in the organization's Constitution, but adding that each candidate must also "be vetted by the existing membership determine if he or she is indeed part of the highest and most skilled echelons of the broadcasting professions." The Petitioner has not supported this new claim with documentary evidence to confirm that such vetting is part of the admission process. The new claim appears to conflict with the clause in the Constitution specifying that "[m]embership of EMCOAN shall be open to *any* natural or legal person who is an owner of programmes solely intended for broadcast" (emphasis added). The same EMCOAN official wrote an earlier letter in support of the petition, which did not indicate that the membership application process involved steps or requirements beyond those spelled out in the organizations' governing documents.

The Petitioner has not met his burden of proof to established, by a preponderance of the evidence, that he meets the requirements of this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).*

The Petitioner stated: "As a Creative Director the [Petitioner] makes approximately 3,600,000.00 Nigerian Naira annually. Salary reports from Nigeria report approximately ₦300,000 per month salary for Creative Directors. . . . Accordingly, the [Petitioner] earns more than others in the field." But ₦3.6 million per year is equivalent to, not higher than, ₦300,000 per month.

The Petitioner has not submitted consistent, reliable evidence to support the figures claimed above. Regarding his own compensation, the Petitioner did not directly document his salary with evidence such as pay receipts. The Petitioner submitted bank statements from his personal account and that of his

company from 2017 to 2022, but the documents do not show regular deposits consistent with salary payments. The Petitioner's personal statements show credits in varying amounts at irregular intervals from a number of different sources, including several from his own spouse. The Petitioner's company was the source of many of these payments from 2017 to 2021, but the Petitioner did not document the nature or purpose of these transactions to establish that they constitute salary or remuneration for services. The payments from the company to the Petitioner varied widely in terms of both amount and timing, and do not readily distinguish between base salary, bonuses, reimbursement for expenses, and payments for other reasons.

In the RFE, the Director stated that the Petitioner "did not provide supporting financial documentation (e.g., payroll records or income tax forms) demonstrating [his] actual earnings for any given period of time." In response, the Petitioner submitted additional copies of the same bank documents. He did not explain the absence of documentation to explain the purposes of the transactions, nor did he acknowledge this element of the RFE. The Petitioner noted the total credits into his personal account, but as noted above, those funds came from a number of different sources and the Petitioner did not establish which credits were related to remuneration for services. These totals vary widely, with the highest figure being nearly ₦24 million in 2017. The following year, 2018, the Petitioner's personal account received less than ₦800,000 from all sources combined.

To establish a basis for comparison with others in his field, the Petitioner initially submitted screen captures from two salary survey websites. *My Salary Scale* stated: "The average net salary for Creative Director in Nigeria is ₦286K," but this average was an estimate, derived from only 12 sample figures. The other screen capture, from *Salary Explorer*, indicated that monthly salaries for "a Creative Director in Nigeria" ranged from ₦174,000 to ₦498,000, averaging ₦327,000, which is higher than the Petitioner's claimed salary.

In the RFE, the Director stated that the Petitioner had not provided "official wage statistics as a basis for comparison" between the Beneficiary's compensation and that of others in his field. In response, the Petitioner submitted printouts from various survey sources. A report from *Salary Explorer* indicated that the yearly salary of a creative director in Nigeria ranges from ₦2.08 million to ₦5.97 million, with a mean salary of ₦3.93 million and a median salary of ₦3.54 million. The mean salary, roughly consistent with the less detailed *Salary Explorer* information submitted earlier, is higher than the ₦3.6 million that the Petitioner initially claimed to have earned per year.

The Petitioner also submitted a graph from *Payscale*, indicating a median annual salary of ₦1.75 million, and statistics from *Glassdoor* indicating that "[t]he estimated total pay for a Creative Director [in Nigeria] is NGN 407,000 per month," comprising ₦215,000 in base salary and ₦192,000 in additional pay such as "bonus, commission, tips, and profit sharing." As with the first set of figures, the newly submitted numbers are not consistent with one another, raising doubts about the comprehensiveness and accuracy of the surveys. The *Glassdoor* printout shows figures from various employers that are considerably higher than the Petitioner's initial claim of ₦3.6 million per year; one reported salary was ₦25 million per year, and two others were each ₦15 million.

In the denial notice, the Director concluded that the Petitioner's evidence did not distinguish his salary from other, unrelated income, and therefore the Petitioner has not established what his salary actually was. The Petitioner does not address this issue on appeal.

The Director also determined that the Petitioner had not established a reliable basis to compare the Petitioner's earnings with those of others in the same field. On appeal, the Petitioner asserts that "Nigeria . . . is still considered a developing country," and therefore "the evidence of high salary will not be as sophisticated [as the evidence available from] a developed country like the US." The Petitioner asserts that the wage survey data in the record should be sufficient to show that he has earned a comparatively high salary.

As shown above, the Petitioner submitted figures from four different sources, which provided very different figures, with no evidence to show which was the most reliable among them. Some websites provide user-reported salary data, which may not be a valid comparison if, for example, too few users reported their salaries or the data is otherwise not credible or reliable. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>.

Furthermore, all the survey data concerns individuals employed as creative directors. The Petitioner does not claim to have been employed solely as a creative director. Rather, he was the CEO of his own company, where the responsibilities of a creative director were only part of his duties. The Petitioner has not explained why it is appropriate to compare the salary he received as the CEO of his own company to those of individuals employed solely or primarily as creative directors.

For the reasons discussed above, the Petitioner has not established his salary or other remuneration, and he has not submitted adequate evidence to allow a meaningful comparison to others in the field. Therefore, the Petitioner has not satisfied the requirements of this criterion.

In light of the above conclusions, the Petitioner has not met the requirements of at least three of the criteria at 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criterion at 8 C.F.R. § 204.5(h)(3)(v), pertaining to original contributions of major significance in the field, cannot change the outcome of this appeal. Therefore, we reserve this issue.<sup>2</sup>

### 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 lesser 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 conclusion 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. U.S. Citizenship and Immigration Services 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 has established that his company has worked on publicity campaigns for some high-profile clients, but the record does not establish that the Petitioner has earned

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<sup>2</sup> *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

a degree of recognition sufficient to show the required sustained national or international acclaim or demonstrate 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 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 example, the Petitioner stated that he was involved in an advertising campaign that involved the construction of a 14-meter-high fiberglass beer bottle. The Petitioner discussed the originality of the concept, and submitted media articles about the bottle, but he did not show that the project resulted in acclaim or recognition for him personally as the statute and regulations require.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

**ORDER:** The appeal is dismissed.