



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

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

MATTER OF L-A-T-

DATE: SEPT. 23, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a photographer, seeks classification as an “alien of extraordinary ability” in the arts. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before us on appeal. The appeal will be sustained.

The classification the Petitioner seeks makes visas available to foreign nationals 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 determined that the Petitioner had satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria, but the Director found that the Petitioner did not demonstrate that he was one of the small percentage who has risen to the very top of his field and has sustained national or international acclaim. On appeal, the Petitioner submits a brief and additional documentation. For the reasons discussed below, we find that the Petitioner meets the statutory and regulatory requirements for the classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who has risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The 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 achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9<sup>th</sup> Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. at 376 (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

## II. ANALYSIS

### A. Evidentiary Criteria

We find that the Petitioner's evidence meets the following four categories of evidence under 8 C.F.R. § 204.5(h)(3).

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The Director determined that the Petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "the alien's receipt" of a prize or award that is "nationally or internationally recognized" as "prizes or awards for excellence in the

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field of endeavor.” A review of the record of proceeding reflects that the Petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). Therefore, the Director’s determination on this issue will be withdrawn.

The Petitioner submitted documentary evidence reflecting that he received the [REDACTED] at the [REDACTED] in the “Words & Pictures” category for the article, [REDACTED] published in [REDACTED]. The Director’s decision cited to the [REDACTED] website reflecting that the “Words & Pictures” category honors “[a]ny article that relies for its impact on the successful integration of text and visuals as inseparable elements,” and the Director found that the Petitioner did not demonstrate that his award was based on excellence. A review of the Petitioner’s documentation, including [REDACTED] website, reflects that the Petitioner received the top award, and the Petitioner submitted sufficient documentary evidence, such as national and international media coverage, reflecting that the [REDACTED] qualify as lesser nationally or internationally recognized awards for excellence in the field.

Accordingly, based on the preponderance of the evidence, the Petitioner meets the plain language of this regulatory criterion.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien’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.*

The Petitioner submitted documentation of [REDACTED] published material about him in professional or major trade publications or other major media relating to his photography field including an article in [REDACTED]. Accordingly, the evidence supports the Director’s finding that the Petitioner meets this regulatory 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.*

The Petitioner submitted documentation showing that he served as a judge for photography competitions such as the Mobile Photography Awards. Accordingly, the evidence supports the Director’s finding that the Petitioner meets this regulatory criterion.

*Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.*

The Petitioner submitted documentation reflecting that he displayed his work at artistic exhibitions or showcases including the [REDACTED] in [REDACTED] Canada. Accordingly, the evidence supports the Director’s finding that the Petitioner meets this regulatory criterion.

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## B. Summary

The Petitioner has submitted the requisite initial evidence, in this case, evidence that satisfies four of the ten regulatory criteria.<sup>1</sup>

## C. Final Merits Determination

The next step is a final merits determination that considers all of the evidence in the context of whether or not the Petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20.

In the present matter, the Petitioner has submitted extensive documentation of his achievements in the photography field and has demonstrated a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The evidence provided is sufficient to demonstrate the Petitioner’s sustained national and international acclaim as a photographer, and that his achievements have been recognized in the field of expertise. Based on a preponderance of the evidence, the submitted documentation shows that the Petitioner is among that small percentage who has risen to the very top of the field of endeavor.

The Petitioner received the [REDACTED] a nationally and internationally recognized award for excellence in his field, and a number of lesser known awards for his work including the [REDACTED] and several Applied Arts Awards. Furthermore, the Petitioner has published material about him in magazines, such as [REDACTED] and has judged recent photography competitions including the [REDACTED] and the [REDACTED]. Moreover, the Petitioner has displayed his work at a number of diverse international exhibitions and showcases. In addition, the Petitioner submitted reference letters that highlight his achievements and demonstrate his sustained national and international acclaim in his field. The Petitioner has been a frequent photographer for [REDACTED] as well as for some other notable publications such as [REDACTED] and [REDACTED]. [REDACTED] Senior Photo Editor for [REDACTED] indicated that the magazine has utilized the Petitioner’s “signature [REDACTED]” and one of his photographs was later deemed as “one of our Best Photos of [REDACTED].” Also, [REDACTED] Deputy Photo Editor for [REDACTED] stated that she has commissioned the Petitioner several times for his “beautiful and unique” portrait photography. While we need not accept unsupported conclusory assertions,<sup>2</sup> the evidence of record, including evidence not discussed in this decision, supports these conclusions.

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<sup>1</sup>Although the Petitioner asserted his eligibility for the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner did not submit sufficient documentary evidence demonstrating that he met the plain language of the regulatory criterion.

<sup>2</sup>*See 1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

In light of the evidence discussed above and other corroborating evidence of record, the Petitioner's achievements are commensurate with sustained national and international acclaim at the very top of his field.

### III. CONCLUSION

The Petitioner has submitted evidence qualifying under at least four of the ten categories of evidence and established a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and "sustained national or international acclaim." The Petitioner's achievements have been recognized in his field of expertise, and he has shown that he seeks to continue working in the same field in the United States. The Petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, he has established eligibility for the benefit sought under section 203 of the Act.

In visa petition proceedings, 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

**ORDER:** The appeal is sustained.

Cite as *Matter of L-A-T-*, ID# 13336 (AAO Sept. 23, 2015)