



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

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

MATTER OF C-T-

DATE: AUG. 2, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner is a college television station. It seeks to classify the Beneficiary, a cinematographer and broadcast associate, 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 classification 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, Nebraska Service Center, denied the petition. The Director determined that the Petitioner has not satisfied the initial requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitates either 1) evidence of the Beneficiary's receipt of a one-time major achievement, or 2) documentation that shows he meets at least three of ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

The matter is now before us on appeal. In its appeal, the Petitioner submits no new evidence but argues that the Director erred in concluding that the Beneficiary did not meet the lesser nationally or internationally recognized prizes or awards criterion, the published material about the Beneficiary criterion, the original artistic contributions of major significance criterion, and the display at exhibitions or showcases criterion. *See* 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (vii).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner may establish his eligibility by demonstrating extraordinary ability through sustained national or international acclaim and achievements that have been recognized in the field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states, in pertinent part:

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.

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 regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of his achievements in the field through a one-time achievement (that is a major, internationally recognized award). If a petitioner does not submit this documentation, then it must provide sufficient qualifying evidence indicating that the beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that United States Citizenship and Immigration Services (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<sup>1</sup>

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not claimed or shown that the Beneficiary is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, the Petitioner must provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

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<sup>1</sup> We have reviewed all of the Petitioner's evidence and will address those criteria it indicates the Beneficiary meets or for which it has submitted relevant and probative documentation.

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

On appeal, the Petitioner maintains that the Beneficiary meets this criterion because three films with which he was associated won multiple awards at a variety of film festivals. The plain regulatory language requires that the Petitioner show not only that the Beneficiary has won prizes or awards, but that these accolades are nationally or internationally recognized, and are awarded for excellence in the field of endeavor. The Petitioner has not made the requisite showing.

The Petitioner indicated that three of the Beneficiary's films received nationally or internationally recognized awards. It stated the film [REDACTED] received a variety of awards, such as the [REDACTED] at the [REDACTED] and the [REDACTED] for the [REDACTED]. Although the Petitioner claims in the appellate brief that [REDACTED] won four awards at film festivals, it provided an [REDACTED] printout that identified only three awards that [REDACTED] received: [REDACTED] at the [REDACTED] the [REDACTED] for the [REDACTED] at the [REDACTED] and the [REDACTED] for [REDACTED] at the [REDACTED]. [REDACTED] appears to have been nominated for a [REDACTED] at the 2013 [REDACTED] but there is no evidence that it received the award.

The Petitioner provided no corroborating evidence, such as trophies, certificates, or pictures depicting the Beneficiary's receipt of these awards. Further, while the Petitioner states in a letter which accompanied the appellate brief that he submitted "documentation of selection criteria, applicant pool, and the level of international recognition of each of these awards;" this evidence is not present in the record. Rather, the record contains a list from [REDACTED] for [REDACTED] identifying the three awards and other nominations for this film. The Petitioner provided no information about the three festivals that granted the awards.

For [REDACTED] the Petitioner submitted some background information from the websites of various film festivals with archived lists of past award recipients. Some of the websites identify the countries from which submissions are made (e.g. [REDACTED] and the [REDACTED]). Others identify the requirements for submitting entries (e.g. [REDACTED]).

However, none of the websites identify the criteria used to grant the awards or prizes or the specific pool of candidates from which competitors are drawn. Further, the Petitioner provided no evidence demonstrating the national or international recognition of the awards granted by any of these festivals, with one exception. The Petitioner provided some historical background on the [REDACTED] as well as a list of past award recipients and some information which suggests a level of international recognition within certain film genres (documentaries, animated films and short fiction films). However, the record shows that judges at this festival presented the [REDACTED] award for the Director of the [REDACTED] specifically to [REDACTED]. The evidence does not show that this award applied to any other aspect of the production of the film.

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\_\_\_\_\_ executive director of the petitioning organization, states that the film \_\_\_\_\_  
\_\_\_\_\_ “was chosen as an \_\_\_\_\_ and won the \_\_\_\_\_  
\_\_\_\_\_ at the \_\_\_\_\_. However, the record contains no evidence to substantiate  
this statement. According to the list of \_\_\_\_\_ which appears on \_\_\_\_\_  
while \_\_\_\_\_ was nominated for a \_\_\_\_\_ in 2012, the film did not win the  
award.<sup>2</sup> The Petitioner must resolve any material inconsistencies in the record by competent,  
objective evidence. Unresolved material inconsistencies may lead the AAO to reevaluate the  
reliability and sufficiency of other evidence submitted in support of the requested immigration  
benefit. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

With respect to \_\_\_\_\_ the Petitioner presented a screen print from what appears to be an  
online news publication entitled \_\_\_\_\_. The article, \_\_\_\_\_  
\_\_\_\_\_ contains a sentence which reads, “The award for the \_\_\_\_\_ went to  
\_\_\_\_\_. However, this brief mention is not corroborated by actual evidence of the award.  
Further, according to the \_\_\_\_\_ website, \_\_\_\_\_ was nominated but did not win the award. In  
addition, although the Petitioner offered some background information on \_\_\_\_\_ none of the  
documentation identifies \_\_\_\_\_ as the recipient of any awards issued by that entity.  
Uncorroborated affirmations are insufficient to meet the Petitioner’s burden of proof. *See Matter of*  
*Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California* 14  
I&N Dec. 190 (Reg’l Comm’r 1972)).

\_\_\_\_\_ also claims that the Beneficiary functioned as the cinematographer “for the 2007  
\_\_\_\_\_ which won numerous awards “including the \_\_\_\_\_  
\_\_\_\_\_ at the 2007 \_\_\_\_\_. However, the record includes an \_\_\_\_\_ list of  
films in which the Beneficiary is credited and \_\_\_\_\_ is not among them. The Beneficiary is identified  
as the cinematographer on the film \_\_\_\_\_ but there is no evidence in the record demonstrating that this  
film won any awards. Given the multiple inconsistencies present in \_\_\_\_\_ letter, we have  
reason to doubt the reliability of the letter in its entirety. *See Ho*, 19 I&N Dec. at 582 and 591.

For these reasons, the Petitioner has not satisfied the burden of proof in meeting this 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.*

To meet this criterion, the Petitioner relies upon a single newspaper article as well as reviews of a  
film with which the Beneficiary was associated. In general, in order for published material to meet  
this criterion, it must be about the beneficiary and, as stated in the regulations, be printed in  
professional or major trade publications or other major media. To qualify as major media, the  
publication should have significant national or international distribution. Some newspapers, such as

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<sup>2</sup> [http://www.imdb.com/event/\\_\\_\\_\\_\\_/\\_\\_\\_\\_\\_](http://www.imdb.com/event/_____/_____) (accessed July 6, 2016), a copy of which is incorporated into the record.

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the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>3</sup> Furthermore, the regulation requires that “such evidence shall include the title, date, and author of the material, and any necessary translation.” 8 C.F.R. § 103.2(b)(3).

The Petitioner cites the article “ [REDACTED] from a [REDACTED] 2012 issue of [REDACTED] as written material about the Beneficiary. However, the article is about the film [REDACTED] detailing the musical experiences of the main character, [REDACTED]. The article only briefly mentions the Beneficiary as having “greatly contributed to the movie by being in charge of various tasks – among other things, he was a chief of lighting . . .”

The Petitioner makes reference to movie reviews for the film [REDACTED] as indicative of the Beneficiary’s work in the field, even though the reviews do not mention the Beneficiary by name. However, the regulations require that published material be about the Beneficiary and relating to his work in the field. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). All of the reviews analyze the story of [REDACTED]. None mention the Beneficiary or reference any contribution that he made to the film.

Additionally, the Petitioner included seven articles about the film [REDACTED] from foreign language newspapers. Though each article included a certified statement from the translator, attesting that the translations are complete and accurate, there were omissions in the text as illustrated by numerous ellipses. As the documents are not complete, they do not conform to the regulation at 8 C.F.R. § 103.2(b)(3), which requires any document containing foreign language submitted to USCIS to be accompanied by a full English language translation which the translator has certified as complete and accurate. Because the Petitioner did not submit properly certified translations of the documents, we cannot determine whether the evidence supports the Petitioner’s claims. Further, of the material which was translated, none mentions the Beneficiary or his work on the film. Moreover, the Petitioner provided no evidence demonstrating that any of the newspapers in which the articles appeared are professional or major trade publications or other major media.

For these reasons, the Petitioner has not provided evidence which satisfies 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.*

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)(iv) requires “evidence of the alien’s

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<sup>3</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, does not meet this criterion.

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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.” A review of the record of proceeding, however, does not reflect that the Petitioner submitted sufficient documentary evidence establishing that the Beneficiary meets the plain language of the regulation as outlined below. We therefore withdraw the Director’s determination for this criterion.

The Petitioner filed the instant petition in April 2015. With the initial submission, the Petitioner did not claim that the Beneficiary met this criterion and provided no evidence that he served as a judge of the work of others. However, in response to the Director’s request for evidence (RFE), the Petitioner indicated that the Beneficiary was invited to serve as a judge for the 2015 [REDACTED]. As evidence of this invitation, the Petitioner submitted a letter, dated in October 2015, from [REDACTED] the awards director for the [REDACTED]. In her letter, [REDACTED] confirmed that the Beneficiary was invited to serve as a judge of the [REDACTED] and that he participated in judging entries in categories including photography, sports, arts/entertainment. However, [REDACTED] did not identify the date upon which the award ceremony was held or the date upon which the Beneficiary performed his judicatory duties. A review of the website for the [REDACTED] shows that the award ceremony was held in [REDACTED] 2015,<sup>5</sup> [REDACTED] after the filing of the instant 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). A petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Izummi*, 22 I&N Dec. at 176.

The award ceremony which forms the basis of the Petitioner’s eligibility claim for this criterion was held one month after the filing of the instant petition. The Petitioner provided no evidence showing that he functioned in the role of a judge prior to that event or prior to the filing of the petition. Without such evidence, the Petitioner has not demonstrated that the Beneficiary met the requirements of the criterion at the time the petition was filed. *Id.*

Since the Petitioner has not demonstrated that the Beneficiary met the plain language of this criterion at the time of filing, we withdraw the Director’s determination on this criterion.

*Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

<sup>4</sup> The [REDACTED] are awards granted by the [REDACTED] [REDACTED] is one of 19 regional chapters and the [REDACTED] are distinct from the [REDACTED] which corresponds with the [REDACTED] or [REDACTED]

<sup>5</sup> [REDACTED] (accessed July 28, 2016), a copy of which is incorporated into the record.

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On appeal, the Petitioner maintains that the Beneficiary meets this criterion because, rather than being responsible for a “particular piece of equipment or specific method,” the Beneficiary is “unique in his artistic use of the camera.” To satisfy this criterion, a petitioner’s contributions must be both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term “original” and the phrase “major significance” are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003).

The Petitioner submitted letters from individuals who have worked with the Beneficiary, attesting to his work in the field. We have reviewed all of the letters submitted as evidence, including those which are not mentioned here, and found that they do not demonstrate that the Petitioner was responsible for an original artistic contribution of major significance in his field. For example, [REDACTED] a director of single cam comedies for [REDACTED] described the Beneficiary’s cinematographic work, stating that it “encompasses strategic and innovative use of camera angles and lighting that surpasses many in the field.” She noted that the Beneficiary was also involved in the film [REDACTED] in which he “did an excellent job of capturing the immigrant experience in the United States.” [REDACTED] the co-director of [REDACTED] [REDACTED] noted the Beneficiary’s involvement in short films such as [REDACTED] in which his “technical skills and knowledge of lighting and camera work was invaluable to the completion of the film.” According to [REDACTED] the Beneficiary’s “unique vision and artistry has contributed significantly to the field.” [REDACTED] described the Beneficiary as an “extraordinarily talented cinematographer, editor and film producer specializing in public broadcasting and independent films.” According to [REDACTED] the Beneficiary “has been invaluable to the [Petitioner’s] success” and his “artistic talents and technical skills have earned him international recognition in his field.”

The regulations require that the Petitioner provide evidence of the Beneficiary’s “original . . . artistic contributions of major significance in the field.” The authors of all of the letters spoke very highly of the Beneficiary, noting his artistic capabilities in framing shots for film-making as well as his use of camera angles and lighting. However, none claimed that any of the Beneficiary’s artistic activities, including his use of the camera and lighting, are original or constituted new techniques which have been emulated throughout the industry. Further, none of the authors described any explicit influence which the Beneficiary has had on the field of cinematography or film-making, as a whole, or point to specific individuals or companies that have adopted his camera or lighting techniques. The opinions of the Petitioner’s references are not without weight; however, we are ultimately responsible for making the final determination regarding eligibility for the benefit sought. See *Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r 1988). Thus, the content of references’ statements and the basis of their opinion regarding the Petitioner’s reputation are important considerations. Specifically, USCIS need not accept primarily conclusory affirmations. *1756, Inc. v. Att’y Gen. of the United States*, 745 F. Supp. 9, 15 (D.D.C. 1990).

The Petitioner also provided an evaluation of the Beneficiary’s work in the field, prepared by [REDACTED] a professor emeritus at the [REDACTED]



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\_\_\_\_\_ based his evaluation upon a review of the Beneficiary's curriculum vitae and the testimonial letters written on behalf of the Beneficiary. \_\_\_\_\_ noted that the Beneficiary's record displayed "an energetic and entrepreneurial engagement with the field." He went on to cite the authors of the various testimonial letters, noting that the Beneficiary "has earned a prominent level of recognition and professional admiration from his peers and from professionals in the field." Further, \_\_\_\_\_ noted that the Beneficiary "has a broad array of experience and achievements that are highly valued by his colleagues, employers, and professional award-granting organizations." Finally, \_\_\_\_\_ concluded his letter by stating that the Beneficiary has achieved "a degree of skill and recognition that is significantly above that which is ordinarily encountered in this field." However, as stated previously, it is USCIS's responsibility to determine and individual's eligibility for the immigration benefit sought; we cannot delegate that responsibility. *Caron Int'l*, 19 I&N Dec. at 795.

Since the Petitioner has provided no evidence to demonstrate that the Beneficiary is responsible for original artistic contributions of major significance in his field of endeavor, it has not satisfied this criterion.

*Evidence of the display of the individual's work in the field at artistic exhibitions or showcases.*

The Director determined that the Petitioner did not satisfy this criterion. The plain language of this regulation requires evidence of the display of the Beneficiary's work in the field at artistic exhibitions or showcases. The Petitioner submitted articles and brochures confirming that films upon which the Beneficiary worked were shown at film festivals: \_\_\_\_\_ at the \_\_\_\_\_ and \_\_\_\_\_ at the \_\_\_\_\_. As a result, the Petitioner has satisfied the plain language of this criterion.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The Director found that the Petitioner satisfied this criterion. Upon review of the record, we agree that the Petitioner has provided sufficient evidence of the Beneficiary's critical role for the petitioning organization. \_\_\_\_\_ the Petitioner's executive director attests that the Beneficiary has performed as a cinematographer for numerous of the Petitioner's broadcasts, and that the Beneficiary's skills are "essential to the success of" the Petitioner's programming. Additionally, the Petitioner submitted evidence to show that it is an award winning institution and "the largest public university TV station in the country." As a result, the Petitioner has satisfied the plain language of this criterion.

### III. CONCLUSION

The documents submitted in support of extraordinary ability must show that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. Had the Petitioner provided evidence satisfying at least three



evidentiary categories, the next step would be a final merits determination that considers all of the filings in the context of whether or not the Petitioner has demonstrated: (1) a “level of expertise indicating that the Beneficiary is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) that the Beneficiary “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20 (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). Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-T-*, ID# 17471 (AAO Aug. 2, 2016)