



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

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

MATTER OF D-G-

DATE: JULY 6, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a technology design director, seeks classification as an “alien of extraordinary ability” in business. *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, Texas Service Center, denied the petition. The Director concluded that the Petitioner submitted documentation meeting only two initial evidence criteria, when evidence satisfying at least three criteria is required.

The Petitioner appealed the matter to us and submitted additional evidence and a brief. He indicated that he has satisfied at least three initial evidence criteria and has shown that he has extraordinary ability as a technology design director. After an initial review, we questioned aspects of the documentation presented and issued a notice of intent to dismiss the appeal. The Petitioner now submits a timely response and a satisfactory explanation.

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

I. LAW

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

(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.

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 sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories 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 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

The Petitioner is a technology design director. The Director found the Petitioner did not submit the necessary initial evidence because he did not provide documentation satisfying at least three of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Upon *de novo* review, we find that the record contains evidence meeting at least three of these criteria. In addition, in a final merits determination, the Petitioner demonstrated that he is one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

A. Evidentiary Criteria¹

Published material about the individual in professional or major trade publications or other major media. The materials must relate to the individual's work in the field for which

¹ As the Petitioner meets at least three of the evidentiary criteria, we do not have occasion to address additional criteria claimed by the Petitioner. The relevant documentation provided under these criteria was examined and considered, however, in the final merits determination.

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classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The Director found that, although the Petitioner provided several articles, none meets this criterion. He indicated that “[REDACTED]” which appeared in [REDACTED] did not qualify because it is not primarily about the Petitioner. On appeal, the Petitioner states that the material need not be primarily about him to meet the requirements of this criterion.

The web-based article in question features a different page for each of the 75 individuals chosen. The Petitioner appears at [REDACTED]. The posting shows a picture of him, his title of design director at [REDACTED] and the rationale for his selection. The explanation includes details about his current role, what is unique about his approach, and his accomplishments. While the article is not solely about the Petitioner, it does not merely mention his name or one of his projects. The piece contains sufficient substantive information about the Petitioner and his work that we consider it to be about him. In addition, the Petitioner provided information showing that [REDACTED] is the most read business news website, with 103,300,000 monthly visits and 63,900,000 monthly unique visits. This source therefore qualifies as major media. For these reasons, we find that the Petitioner has satisfied this criterion.

Evidence of the individual’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 found the Petitioner met this criterion. The Petitioner provided documentation showing that he served as a judge for 1) the [REDACTED] created to “recognize the unique and resonant nature of the European Internet community,” 2) the 2011 [REDACTED] contest sponsored by the [REDACTED] and 3) the [REDACTED] given for creative excellence. We therefore agree that the Petitioner has satisfied this criterion.

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

The Director found the Petitioner met this criterion. The Petitioner provided documentation showing that he served as Design Director at [REDACTED] a company named as one of [REDACTED] advertising and marketing in 2015. He demonstrated his position as head of the design department with responsibilities ranging from hiring and training, to operations and work process flow. We therefore agree that the Petitioner has satisfied this criterion.

B. Merits Determination

As the Petitioner has submitted the necessary initial evidence, we conduct a final merits determination that considers the entire record in the context of whether or not the Petitioner has demonstrated extraordinary ability as a technology design director by showing that he enjoys a level of expertise indicating he is one of a small percentage who has risen to the very top of the field of

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endeavor. Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Based on the filings, the Petitioner has made the requisite showing.

The Petitioner has provided evidence of continued recognition of his abilities across numerous companies and industry groups. He has shown accolades and awards resulting from his efforts. His speaking engagements and judging at competitions also serve as acknowledgements of his accomplishments. The Petitioner provided letters from past and present colleagues, clients, and leaders in the industry. All speak extremely highly of the Petitioner's work and abilities as a design director and credit his work with awards received by his employers.

As indicated above, the Petitioner was featured on [redacted] list of the [redacted] in technology, compiled in 2013. He is currently Design Director at [redacted] a [redacted] based online marketing company. [redacted] named [redacted] on its list of the [redacted] advertising and marketing in 2015.² A letter from [redacted] CEO, [redacted] discusses the importance of the Petitioner's role in the company. [redacted] explained that the Petitioner is in charge of the design department, that he developed the workflow for its creative process, and that he manages project budgets of up to \$10 million. Copies of contracts show the Petitioner signs major documents on behalf of [redacted] also noted that the Petitioner leads several events at the company, such as [redacted] a regularly occurring expert panel.

Prior to joining [redacted] the Petitioner worked at [redacted] a marketing agency in [redacted] Chairman of [redacted] wrote that the Petitioner led the strategy and execution of several very important campaigns, including those for [redacted] and [redacted] The Petitioner's work on the [redacted] campaign earned the company recognition at the 2011 [redacted] an industry awards competition designed to honor creativity and excellence in advertising. [redacted] also stated that the Petitioner helped generate over one million dollars in new business.

From 2005 to 2010, the Petitioner worked for [redacted] an English online digital marketing company. The Petitioner provided evidence that [redacted] is hired by major businesses, such as the [redacted] for marketing and brand management. A letter from [redacted] founder of [redacted] states that the Petitioner was a central figure in a number of award winning projects and campaigns, such as those for [redacted] and the [redacted]

The honors received by these campaigns are detailed below.

[redacted] was a [redacted] winner and a [redacted] honoree due to two of the Petitioner's campaigns. In 2007, [redacted] won a [redacted] in the banking/bill paying category for [redacted] In 2010, The [redacted] was a [redacted] honoree in the online film and video category. The [redacted] are given

² In 2014 [redacted] had a circulation of 806,367 and was deemed [redacted] at the [redacted] See ' [redacted] 2014 Winners Announced,' [redacted] (May 1, 2014), [redacted]

A copy of the announcement has been printed and incorporated into the record.

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for excellence on the Internet, issued by the [REDACTED] as judged by over one thousand industry experts in multiple categories. [REDACTED] are hailed as the Internet's [REDACTED]³ and 2016 winners include [REDACTED] and [REDACTED]⁴

[REDACTED] credits the Petitioner with conceiving the design for the [REDACTED] website. An article from [REDACTED] "how" section contains the Petitioner's explanation for the creative process behind a Flash app on the website. In 2011, the site won a [REDACTED] in the sports website category. [REDACTED] are issued by [REDACTED] the same body responsible for the [REDACTED] and focus on European excellence on the Internet. Lastly, the [REDACTED] website won the [REDACTED] for [REDACTED] in 2011.⁵

The Petitioner's work also made [REDACTED] a [REDACTED] in the [REDACTED] category at the 2008 [REDACTED] for the game [REDACTED] developed for a client company, [REDACTED]. On the [REDACTED] website, the Petitioner is credited as a designer for the game. These awards were founded in 1986 and state they are "[REDACTED] of its kind honoring advertising in the realms of film, television, print, and radio." In 2014, the competition had 14,817 entries from 80 countries.

The Petitioner has demonstrated a pattern of recognition of his work by major industry groups in national and international level competitions. The consistent acclaim garnered by his projects suggests that the Petitioner's ability in technology design far exceeds that of others in the field. As the Petitioner has transitioned from employer to employer, accolades have followed. This history of recognition shows the Petitioner's place among the small percentage of those who has risen to the top of the field of endeavor.

As noted in the initial evidence analysis above, the Petitioner has also served as a judge for the [REDACTED] the 2011 [REDACTED] contest sponsored by the [REDACTED] and the [REDACTED] for creative excellence. In addition, the Petitioner's status as a leader in the industry is demonstrated through his involvement as an expert panelist for conferences and speaker series, such as [REDACTED] an event with past speakers that include heads of design at [REDACTED] and [REDACTED]. A letter from [REDACTED] founder, confirms that its sponsoring organization, [REDACTED] invited the Petitioner to present at [REDACTED] in 2010 and to sit on a panel of experts to mentor up-and-coming designers in 2013.

³ [REDACTED] Apr. 20, 2008, at 36, available at [REDACTED]. A copy of the article has been printed and incorporated into the record.

⁴ [REDACTED] Apr. 26, 2016, [REDACTED]. A copy of the article has been printed and incorporated into the record.

⁵ [REDACTED] are an annual awards ceremony hosted by the [REDACTED] designed to recognize those in commercial sports. See "About Us," [REDACTED] (Jun. 29, 2016), [REDACTED]. A copy of the page has been printed and incorporated into the record.

Based on the above considerations, we find that the Petitioner has demonstrated that he is in that small percentage that has risen to the very top of the field of his endeavor. He has shown that he has sustained national or international acclaim and that his achievements have been recognized in the field of expertise. For these reasons, he has established by a preponderance of the evidence his extraordinary ability as a technology design director.

III. CONCLUSION

The Petitioner has shown his extraordinary ability by satisfying at least three regulatory criteria, as well as demonstrating a level of expertise indicating he is one of that small percentage who has risen to the very top of the field of endeavor. Section 203(b)(1)(A)(i) of the Act. The Petitioner has shown that he seeks to enter the United States to continue to work in his area of extraordinary ability. Section 203(b)(1)(A)(ii) of the Act. By demonstrating that he seeks to continue to work in his area of extraordinary ability, and there being no indication otherwise, we are satisfied that the Petitioner's entry will substantially benefit prospectively the United States. Section 203(b)(1)(A)(iii) of the Act. Therefore, the Petitioner has met the burden of proof necessary to establish eligibility for the benefit sought. Sections 203(b)(1)(A), 291 of the Act.

ORDER: The appeal is sustained.

Cite as *Matter of D-G-*, ID# 16383 (AAO July 6, 2016)