



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

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

MATTER OF M-A-

DATE: JULY 15, 2016

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). 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 one initial evidence criterion, when evidence satisfying at least three criteria is required.

The Petitioner appeals the matter to us and submits additional evidence and a brief. He indicates that he has satisfied at least three initial evidence criteria and has shown that he has extraordinary ability as a photographer.

Upon *de novo* review, we will dismiss 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,

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- (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, a national of Iran, has stated that he "is a well-known photographer who has won many awards both nationally and internationally and is well-established in the field of photography." The Director found the Petitioner did not submit the necessary initial evidence because he did not demonstrate his receipt of a major, internationally recognized award or 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 agree that the Petitioner has not submitted sufficient initial evidence.

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.

The Director found that, although the Petitioner showed he received recognition at photography competitions, he did demonstrate he received nationally or internationally recognized awards for excellence in his field of endeavor. On appeal, the Petitioner notes that he submitted documentation that he was "[redacted] in the [redacted]

The material provided includes a letter from [redacted] a "[redacted]

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confirming the Petitioner won the award. The Petitioner states that this competition is “the highest event in the field of photography of Iran,” however, he provided no further information to corroborate this characterization. Statements made without supporting documentation are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Without more, the Petitioner has not established that he received nationally or internationally recognized prizes or awards. He did not, for example, provide evidence regarding the reputation or renown of either the competitions or the awards he received. As a result, the Petitioner did not give sufficient evidence to satisfy this criterion.

Documentation of the individual’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.

The Petitioner provided a certificate indicating he is a member of the

A letter from the Chairman of the Board of Directors states:

[The] society accepts its members through a complex process and the membership of the individuals shall be examined by a committee selected from the Members of the Board of Directors and their membership shall be declared after observation of the applicants’ works and investigation of their artistic & cultural records, number of their awards and their creativity.

The Director found this explanation insufficient to show that the organization requires outstanding achievements of its members. On appeal, the Petitioner states that this letter satisfies the criterion because it refers to “a complex process” and indicates they “will only accept members who have [a] significant body of work and number of awards.”

Despite the letter’s reference to a complex process for acquiring membership, neither it nor other evidence in the record provides additional details regarding this process. Although the letter indicates that the selection committee considers applicants’ works and awards, it does not show that outstanding achievements are required. The Petitioner has not provided sufficient information regarding the criteria used to evaluate an individual’s body of work or the degree of selectivity used in considering an individual’s accomplishments. He has therefore not shown that membership requires outstanding achievements. In addition, the letter states that membership is determined by the Board of Directors, but details are not provided regarding those individuals’ qualifications. As a result, the Petitioner has not demonstrated that prospective members’ achievements are evaluated by national or international experts in the field.

¹ The Petitioner submitted a document entitled “ ” issued at the “ ” in the “ ” by the “ ”

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The Petitioner also provided documentation showing his membership in the [REDACTED]. The record does not contain details, however, regarding the requirements for membership in that organization. As a result, the evidence provided does not satisfy this criterion.

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.

On appeal, the Petitioner notes that his photographs and their accompanying commentary are published in [REDACTED] a photography quarterly. The Petitioner provided copies of the pages related to his work, which contain the title, date, and author of the material. As the entry focuses on the Petitioner's photography, it is sufficiently about him and his work in the field. As a photography quarterly, [REDACTED] is a professional publication. For these reasons, 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 noted that the Petitioner provided a letter informing him of his appointment to be a member of the jury for [REDACTED] in the field of photography. The Director concluded, however, that this document did not satisfy the criterion because it does not indicate that the Petitioner actually served as a judge. Upon reviewing the record, we note that neither the letter nor any other materials contain information regarding the event or the Petitioner's involvement in it. In addition, while the letter referenced an "attached description of duties" that he would be required to perform, the Petitioner did not provide a copy of that attachment. On appeal, the Petitioner states: "It is an unusual request to place the burden on [the Petitioner] to show he participated in that event." We disagree with this statement. The regulations clearly put the burden of proof on the Petitioner to demonstrate eligibility for the benefit sought. Section 291 of the Act. In addition, this criterion specifically requires evidence of the Petitioner's participation as a judge. The Petitioner states that the regulations do not specifically require him to provide transportation tickets or video of his presence. We note that petitioners are free to submit any relevant documentation to establish eligibility. Without evidence indicating the Petitioner did in fact act as a judge, however, he has not met the burden of proof necessary to satisfy this criterion.

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

The Petitioner did not previously claim this criterion. On appeal, however, he indicates that he created a new style of photography. He cites evidence showing that the [REDACTED] registered a postcard of his, and that he had an individual exhibit in [REDACTED] in [REDACTED] of 2015 entitled ' [REDACTED] '.

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This criterion requires original contributions of major significance. Although the Petitioner states that he created a new style of photography, he does not elaborate further on this contention. Without an explanation and supporting evidence, the Petitioner has not shown that he made original contributions of major significance. As evidence of his registered postcard, the Petitioner provided a notice indicating that he deposited and registered it at the [REDACTED]. The postcard is called ‘ [REDACTED] and contains “a picture of an [REDACTED] outside and a [REDACTED] inside the [REDACTED] in an orange background, in dimensions of 10x15cm.” The Petitioner did not provide other information about the work to demonstrate the significance of its registration at the [REDACTED]. Without more, acceptance of an artist’s postcard does not show that he or she has made original contributions of major significance.

Similarly, the Petitioner does not explain how his 2015 individual exhibit demonstrates that he has made original contributions of major significance in the field. Regardless, the Petitioner must demonstrate eligibility at the time of filing. He filed the instant petition on January 6, 2014, a year prior to the exhibition. As the event had not yet occurred at the time of filing, it cannot demonstrate his eligibility. For these reasons, the Petitioner has not provided sufficient evidence to meet this criterion.

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

The Director found the Petitioner met this criterion. Upon review, we note that the Petitioner’s work has been displayed in several artistic exhibitions. As a result, we agree that he has satisfied this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The Petitioner did not previously claim this criterion. On appeal, however, he indicates that several of his photographs have sold or are for sale. As an initial matter, we note that this criterion requires evidence of commercial success in the performing arts. The Petitioner is a photographer. Although photography is a field within the arts, it is not a performing art. As a result, the material provided by the Petitioner does not meet this criterion.

Furthermore, even if this criterion was not specifically limited to the performing arts, the documentation provided does not establish the Petitioner’s commercial success. The Petitioner provided a certification stating that three of his works were purchased by the [REDACTED] in 2005. The certification does not list the amounts paid for the pieces. On appeal, he also submits certificates dated April 20, 2015, for the purchase of two of his works from the [REDACTED]. The Petitioner must demonstrate eligibility at the time of filing. The Petitioner filed the instant petition on January 6, 2014. As a result, these two certificates were not in existence at the time of filing and therefore cannot be used to demonstrate eligibility. Furthermore, the invoices show he sold the pieces for a total price of 31,000,000 Iranian Rials, equivalent to

approximately \$1097.09.² We find the evidence of these sales insufficient to establish his overall commercial success. Lastly, the Petitioner provided Internet printouts showing that his photographs are currently for sale. Without more, evidence that the Petitioner's photographs are for sale does not indicate commercial success.

B. Summary

As indicated above, we find that the Petitioner satisfied two initial evidence criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Had the Petitioner satisfied 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 individual is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) that the individual “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.

III. CONCLUSION

The Petitioner has not provided the requisite initial evidence to establish extraordinary ability, as required by regulation. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-A-*, ID# 17034 (AAO July 15, 2016)

² The amount shown in dollars is an estimate used only for purposes of general comparison. The conversion was obtained using the estimated historical exchange rate of .00003539 U.S. dollars per Rial. *See* XE Currency Converter, <http://www.xe.com/currencyconverter/#converter> (last accessed June 29, 2016).