



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

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

MATTER OF K-H-

DATE: MAR. 1, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a composer, seeks classification as an individual 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, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals who can demonstrate extraordinary ability through sustained national or international acclaim and achievements that have been recognized in the area of expertise through extensive documentation. The Director determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitate a one-time achievement or evidence that meets at least three of ten regulatory criteria. On appeal, the Petitioner submits a legal brief and additional material.

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.

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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 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 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 our proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that we appropriately applied the two-step review); *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 we examine “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 received a Master’s Degree in Music Composition from the [REDACTED] at [REDACTED] in 2009 and a Ph.D. in Music Composition from the [REDACTED] in 2014.

A. Evidentiary Criteria¹

The Petitioner stated he met six criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Director found the Petitioner met only two of the necessary three. We address the criteria the Petitioner discusses below.

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 found the Petitioner met this criterion. The Petitioner submitted evidence showing that he judged youth music contests. As a result, we agree that the Petitioner has met the plain language requirements of this criterion.

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

¹ We have reviewed the record in its totality and will address the criteria and evidence raised by the Petitioner on appeal.

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The Director found the Petitioner met this criterion. The Petitioner submitted evidence confirming that he wrote the music for short films that appeared in the [REDACTED] and the [REDACTED]. As a result, we agree that the Petitioner has met the plain language requirements of this criterion.

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 states that he satisfied this criterion with evidence of his receipt of "the award from the [REDACTED] along with descriptions of other awards." With his initial submission, the Petitioner provided copies of the following certificates from the [REDACTED]

- Honorary Associate of the [REDACTED] (2011);
- Advanced Certificate in Music Composition (2010); and
- [REDACTED]

In the denial, the Director stated that these awards did not satisfy the criterion because the pool of potential winners appeared to be limited to students. On appeal, the Petitioner does rebut this observation, but notes that he received his Master's degree (but not his Ph.D.) prior to winning the awards, indicating he himself had already attained professional status in music composition. Regardless of the student or professional status of the awards' applicant pools, this criterion requires that the awards be nationally or internationally recognized. The word "national" in the title of the certificate or the name of the conferring organization is not sufficient to establish the necessary recognition. In this case, the Petitioner has not offered evidence demonstrating the national or international recognition of these certificates beyond the awarding institution. Other than copies of the certificates, the Petitioner provided two internet print-outs that list his name as an Honorary Associate for the [REDACTED] and a [REDACTED]

One of the printouts stated: "Honorary Associateship is an advanced grade of honorary membership of the Academy and is conferred on professionals and academics who have met a very high standard of achievement." The submitted pages do not derive from a website for the [REDACTED] or any other entity. Rather, both pages have weebly.com URLs, the address given to webpages created for free through [REDACTED]

The Petitioner did not provide other documentation regarding the [REDACTED] to show its qualifications to grant such designations. In addition, the record does not contain information regarding the awards themselves, such as the pool of candidates, the level of competition, or the qualifications of those who make the award selections. Finally, the Petitioner did not include published material in trade or other major media covering the selection of awardees or

[REDACTED] "About Us" page reads: [REDACTED] is a [REDACTED]-based, global platform that lets people easily create a unique website, blog or online store." A copy of this page has been printed and incorporated into the record. See "About Us," [REDACTED]

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similar evidence demonstrating national or international recognition of the awards in the field. Although he references on appeal an unidentified “published article about [his] receipt of the award from the [REDACTED]” a review of the record does not reveal any such article. As a result, the Petitioner has not established that the certificates qualify as nationally or internationally recognized awards for excellence in the field.

The Petitioner also corroborated that he has received several academic scholarships. As a general rule, academic scholarships are given only to those already admitted to the institution and recognition of the award does not extend beyond the granting institution itself. In this case, the Petitioner has not provided evidence to suggest the scholarships he received are known more broadly throughout the field. Without more, he has not shown they are nationally or internationally recognized awards for excellence in the field of endeavor. For these reasons, the Petitioner has not satisfied the plain language of 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.

On appeal, the Petitioner states that he has satisfied this criterion with the “Mini Bio” section he submitted for himself on IMDb.com (Internet Movie Database). The Petitioner asserts that IMDb constitutes major media and that, although he wrote and posted the biography himself, there is nothing prohibiting self-written items in the relevant regulation.³ The Petitioner reiterates that *Kazarian*, 596 F.3d 1115, requires us to apply only the plain language of the regulation when considering whether the evidence meets a given criterion. Although raised in the Director’s denial, the Petitioner does not address the regulation’s requirement that the material be published.

We recognize that the nature of media is fluid and must take into account the characteristics of the Internet. In addition, we fully recognize the significance of IMDb overall as a popular resource. We evaluate each submission on a case by case basis. IMDb, as its name indicates, is a database of film credits and information about film production and those involved in the process. Similar to Wikipedia, IMDb encourages all users to register and act as contributors to the site. For this reason, the Petitioner was able to submit a paragraph to the “Mini Bio” section of his IMDb entry.⁴

Publishing by professional or major trade publications or other major media generally involves fact checking, editing, and an author with established credibility in journalism or the relevant field. In contrast, posts to IMDb are made by anyone with internet access for the purpose of making the

³ Marketing or promotional materials, however, are excluded from meeting this criterion. USCIS Policy Memorandum PM-602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the *Adjudicator’s Field Manual (AFM)* Chapter 22.2, *AFM* Update AD11-14 7 (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>. It is reasonable to consider posting professional accomplishments on an online database of film and television credits promotional.

⁴ See “IMDb Conditions of Use,” IMDb.com, <http://www.imdb.com/conditions>, accessed February 4, 2016, and incorporated into the record of proceeding.

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database more complete. The biography field or “Mini Bio” section is one of many fields of data collected by IMDb. The site gives specific instructions regarding what to include, indicating the Mini Bio is one of many types of information collected by IMDb.⁵ We have consistently held that competition results and other types of database entries do not constitute published material about the foreign nationals. As a result, we decline to consider user posted content on open source internet databases published material about the Petitioner. In addition, the post does not contain a date, as required by the regulation. For these reasons, the Petitioner’s IMDb post does not satisfy this criterion.⁶

The Petitioner also references an article about his work that appeared in [REDACTED]. As noted by the Director, this article is dated [REDACTED] 2015, and therefore did not exist at the time of filing. The Director cited *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971), for the proposition that a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. On appeal, the Petitioner states the Director did not provide a regulatory citation in support of this tenet. The relevant regulatory provisions are found at 8 C.F.R. § 103.2(b)(1), (12). In addition, although the Petitioner implies that eligibility at the time of filing is required only for lower preference visas that are currently oversubscribed, we reiterate that eligibility at the time of filing is required for all petitions. *Id.*; see also *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm’r 1998) adopting the holding in *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” The case law further supports a universal application of this principle. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg’l Comm’r 1978) (applying this requirement to a non-immigrant petition, for which priority dates do not exist.) As a result, this article published after the petition’s filing date cannot be used to meet this criterion. Regardless, even if we accepted this article, the Petitioner has not demonstrated that [REDACTED] is a professional or major trade publication or other major media, for example by providing circulation data.

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

To satisfy this criterion, the documentation provided must establish that the Petitioner’s contributions are not only original, but rise to the level of major significance in the field as a whole. See 8 C.F.R. § 204.5(h)(3)(v); see also *Visinscaia*, 4 F.Supp.3d at 135-136. In support of this criterion, the Petitioner submitted four letters from professionals in his field.

⁵ See “Submission Guides: Biographical Information,” IMDb.com, https://contribute.imdb.com/updates/guide/bio_all_guides#bio, accessed February 24, 2016, and incorporated into the record of proceeding.

⁶ Even if we were to concur with the Petitioner that this bio technically meets the plain language requirements at 8 C.F.R. § 204.5(h)(3)(iii), and we do not, we would not find it to be persuasive in the final merits determination. While IMDb as a whole may be a major website with considerable viewership, not every page on that site is widely visited. The Petitioner did not provide viewership information for his individual page. Ultimately, information the Petitioner himself posted on an open-source webpage for which the Petitioner did not submit viewership numbers (as opposed to the parent website as a whole) is far less persuasive evidence of national or international acclaim than independent journalistic coverage of the Petitioner in major news media or on specific webpages with significant viewership.

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noted that the Petitioner's abilities impressed him and that he therefore invited the Petitioner to finish his graduate studies in California. A letter from Assistant Professor at indicated the Petitioner wrote music for his Masters in Fine Arts thesis project, as well as for a film directed under the Fellowship Program. described the Petitioner's successful composition of music that conveyed the desired moods in his films. A letter from Assistant Professor at the similarly expressed how he asked the Petitioner to compose music for two films he recently directed. affirmed that he was dissatisfied with the score originally provided and consulted with the Petitioner upon recommendation by his editor. He sought the Petitioner's composition services and was very impressed and happy with the Petitioner's ability to convey the correct mood through music. Lastly, the Petitioner supplied a letter from President of also wrote about the Petitioner's work for the film which he plans on submitting to major film festivals.

Each of these letters described positive impressions of the Petitioner's abilities, as well as instances in which the Petitioner performed successfully as a composer. However, contributions of major significance in the field as a whole require an impact beyond the Petitioner's circle of colleagues and collaborators. The letters provided indicate the Petitioner has a respected reputation for quality work. They do not, however, demonstrate contributions to the field of music composition as a whole. Simply producing original works in the field is not sufficient to meet this criterion. The Petitioner must prove that his original contributions are of major significance. In addition, the Petitioner must show that his contributions are already of major significance; the potential for future impact does not satisfy this criterion.

The record includes references to the awards won by for which the Petitioner was a musical apprentice. The evidence presented does not identify any particular contribution the Petitioner made to this film. Given his position as an apprentice, we cannot infer that it was his original contributions that lead to the film's honors. noted that two films to which the Petitioner contributed have been selected for screening at film festivals. We have credited the Petitioner with these appearances under the criterion for displays of his work in artistic showcases, addressed above. However, the Petitioner does not offer documentation to explain why the screening of these films means the Petitioner's contributions are of major significance in the field. Without more, the Petitioner has not met the plain language definition of this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

This criterion requires evidence that the Petitioner authored scholarly articles, and that these articles appeared in professional or major trade publications or other major media. On appeal, the Petitioner indicates he satisfied this criterion with corroboration that the Bill and Melinda Gates Foundation posted the short film for which he composed music, on YouTube. On appeal, the Petitioner provides his rationale for considering YouTube major media, and also states the

Director did not contest the asserted scholarly nature of the film. We agree with these observations, but note, however, that they represent only two aspects of the criterion. More importantly, the Petitioner does not address on appeal the central concern raised by the Director, namely, the fact that a short film is not a scholarly article.

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the inclusion of comparable evidence to satisfy a criterion if the “standards do not readily apply to the beneficiary’s occupation.” To rely on this provision, however, the Petitioner must explain why the regulatory criteria are not readily applicable to his occupation, as well as how the **items provided** are “**comparable**” to the documents required at 8 C.F.R. § 204.5(h)(3)(i)-(x). In this case, the Petitioner does not clarify why this criterion is not applicable to the field of music composition, or why the film submitted is comparable to a scholarly article. As a result, he has not satisfied the requirements necessary to use the comparable evidence portion of the regulation.

B. Summary

As noted above, the documentation provided satisfies only two of the three required criteria. As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

The items supporting a petition for 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 satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the submissions 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 alien 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.⁷

⁷ We maintain *de novo* review of all questions of fact and law. In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

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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. § 291 of the Act. Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of K-H-*, ID# 15594 (AAO Mar. 1, 2016)