



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

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

MATTER OF B-S-D-F-

DATE: NOV. 23, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a photographic re-toucher, seeks classification 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 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 of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three.

The matter is now before us on appeal. In his appeal, the Petitioner submits additional documentation and a brief maintaining that he meets three criteria.

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,
- (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 that 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) (including items such as awards, published material in certain media, and scholarly articles).

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), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *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 U.S. 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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

II. ANALYSIS

The Petitioner currently works with various magazines and publications in Brazil and the United States as a photographic re-toucher. As the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the Petition, the Director found that that the Petitioner did not meet any of the criteria. On appeal, the Petitioner maintains that he meets the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii), and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). We have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

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

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shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. Furthermore, the regulation requires the title, date, author, and necessary translation. On appeal, the Petitioner submits pages from the Brazilian versions of [REDACTED] and [REDACTED] acknowledging those who contributed to the cover photographs, including their photographs and brief blurbs and biographies. Although the Petitioner is credited as the photographic re-toucher, neither submission includes the title and author of the material, as required. In addition, the photographs with accompanying captions identifying the Petitioner are not published material about him consistent with the plain language of this regulatory criterion. The Petitioner, for example, did not submit articles that featured him or were otherwise about him. Similarly, the record contains various publications, such as [REDACTED] and [REDACTED] which include the Petitioner's photographic re-touching. Besides crediting the Petitioner as the photographic re-toucher, however, there is no discussion of him relating to his work. Therefore, the Petitioner has not established eligibility for this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

As indicated above, the Petitioner submitted documentation showing that his re-touched photographs have been displayed in magazines such as [REDACTED] and [REDACTED]. Accordingly, we find the record demonstrates that the Petitioner meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner indicates that he performed in critical roles "for each magazine and the publishing houses" that published his re-touched photographs. The Petitioner also refers to recommendation letters from photographers and editors, and cites to the submission of his before-and-after photographs. In general, a critical role is evident from its overall impact on the organization or establishment.

Regarding his recommendation letters, [REDACTED] editor-in-chief for [REDACTED] (Brazil), stated that the Petitioner has "collaborat[ed] as a guest in post-production and retouch, responsible for many covers and fashion stories." [REDACTED] art editor for [REDACTED] (Brazil), indicated that the Petitioner "is one of the most competent and unique retouchers in the fashion area," and the magazine has worked with him for covers and editorials with top photographers. In addition, [REDACTED] photographer, pointed out that the Petitioner's "work always brings the best in each photograph and it is the final touch an image receives before it goes out to the world." Although the letters praise the Petitioner for his work and confirm his freelance assignments, they do not reflect the overall impact of his re-touched photographs on the publications. For example, the

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record does not show that the publications had higher sales or garnered attention when the Petitioner's re-touched photographs appeared in them.

Further, the Petitioner mentions the acknowledgment pages from the Brazilian versions of [REDACTED] and [REDACTED] previously discussed under the published material criterion, as well as a [REDACTED] credit page thanking him "for making the pictures even more beautiful." While we recognize that the Petitioner's re-touched photographs appeared on covers of magazines, including multiple covers for [REDACTED] the Petitioner has not provided sufficient information or documentation to establish that his role as a freelance photographic re-toucher was essential to the success or standing of the publications. Accordingly, the record does not support a finding that the Petitioner meets this criterion.

B. Summary

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

III. CONCLUSION

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. 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.

For the above stated reasons, the Petitioner has not met his 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).

ORDER: The appeal is dismissed.

Cite as *Matter of B-S-D-F-*, ID# 100152 (AAO Nov. 23, 2016)