



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

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

MATTER OF X-L-

DATE: OCT. 25, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an artist, 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 Texas Service Center denied the petition, concluding that the Petitioner had satisfied only two of the regulatory 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

*Matter of X-L-*

- (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 lectures in the fine arts department of the [REDACTED] and has exhibited his work in China and the United States. 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 met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the display criterion under 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains that he also meets the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), 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.

Matter of X-L-

A. Evidentiary Criteria<sup>1</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).*

On appeal, the Petitioner indicates that he received the following awards: (1) silver award from the 2010 [redacted] by the [redacted]

(2) second place from the [redacted]

[redacted] by the [redacted] and [redacted]

(3) selection for the [redacted]

by the [redacted]

and (4) first place in the [redacted]

by [redacted] Although the Petitioner documented

his receipt of these awards, he did not offer sufficient information or evidence establishing that the awards are nationally or internationally recognized for excellence in the field as required by this regulatory criterion.

The record of proceedings also reflects that the Petitioner received a full fellowship at the [redacted]

based on winning its [redacted]

[redacted] On appeal, the Petitioner presents various screenshots regarding background information for artist-in-residence programs. In addition, the Petitioner submits a letter from [redacted] program director, who stated that acceptance to the residency is not for students but "a program designed to supporting working artists by providing all the necessary space and time for them to focus on creating their own art in the studio provided." While [redacted] describes the residency program, as well as the selection criteria for the fellowship, the evidence does not show that the [redacted] fellowship is a nationally or internationally recognized prize or award for excellence consistent with the plain language of the regulation. For the reasons discussed, the Petitioner has not met his burden of demonstrating eligibility for this criterion.

*Documentation of the alien'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. 8 C.F.R. § 204.5(h)(3)(ii).*

The Petitioner contends on appeal that his position as executive director for the [redacted] [redacted] meets this criterion. The Petitioner's role as executive director, however, is similar to a job position rather than a membership in an association. Although we will consider the Petitioner's membership with [redacted] under this criterion, we will review the nature of his role for [redacted] below under the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii).

The record contains [redacted] bylaws reflecting that an applicant for membership must meet, in part, at least one of the following requirements: (1) partook in important national art exhibitions at least

<sup>1</sup> We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

*Matter of X-L-*

twice or won at least one; (2) participated in [REDACTED] academic exhibitions at least twice or won at least one; (3) achieved a senior title in prominent oil painting research; or (4) made outstanding contributions in carrying out academic activities in painting at the provincial, municipal, or district level. Further, an applicant is required to submit an application with two references from [REDACTED] directors. While [REDACTED] has membership requirements, the Petitioner did not demonstrate that they are equivalent to outstanding achievements consistent with the plain language of this regulatory criterion. For instance, the Petitioner did not show the stature of [REDACTED] academic exhibitions, so as to reflect that participation in its own exhibitions is considered an outstanding achievement. In addition, the Petitioner did not establish that [REDACTED] directors are recognized national or international experts as required by the regulation. Accordingly, the record does not reflect that the Petitioner meets 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. 8 C.F.R. § 204.5(h)(3)(iii).*

The record indicates that the Petitioner submitted publications, such as [REDACTED] (2008 and 2009), [REDACTED] and [REDACTED] which contained samples of his works. On appeal, the Petitioner presents background information regarding [REDACTED] and states that he tried to obtain circulation data in writing but was told it was a trade secret in China.

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. Although the above-mentioned publications include samples of the Petitioner's work, they are not "about" him. Besides crediting him as the artist of the works, there is no discussion of the Petitioner. The submission of publications that include examples of his works, without a discussion about him, is not tantamount to published material about the Petitioner consistent with the plain language of this regulatory criterion. Therefore, the Petitioner has not shown that he meets 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. 8 C.F.R. § 204.5(h)(3)(iv).*

The Director found that the Petitioner met this criterion. Based on a review of the record of proceedings, however, we must withdraw the Director's findings for this criterion. In the Petitioner's cover letter at the initial filing of the petition, he indicated that in the capacity of vice dean, he "served as the judge of the Entrance Examination for the painting and art design program at [REDACTED]. The record includes a translation of an email from [REDACTED] to the Petitioner requesting him to "keep the judge list and exam question secret."

(b)(6)

*Matter of X-L-*

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the petitioner has served as “a judge” of the work of others. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The email does not include sufficient information to support the Petitioner’s claim that he served as a judge for the university’s entrance examination. The email does not indicate whether the Petitioner served in the capacity of “a judge,” or describe who or what was being judged. Not every instance of reviewing work as part of one’s job duties falls under this criterion. Accordingly, as the Petitioner has not met his burden of demonstrating eligibility for this criterion, we withdraw the Director’s findings for this criterion.

*Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).*

The record contains a letter from the [REDACTED] indicating approval for the Petitioner’s project, [REDACTED]. In addition, the Petitioner submitted a [REDACTED] reflecting inclusion of his article, [REDACTED] in the book, [REDACTED]. Further, the Petitioner presented documentation indicating publication of his article, [REDACTED] in [REDACTED].

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of scholarly articles in the field.” Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. As the record does not include his project and articles<sup>2</sup>, the Petitioner did not demonstrate that they were peer-reviewed, contain any references to sources, or were otherwise considered “scholarly.” For these reasons, the Petitioner did not establish that he meets 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).*

The Petitioner documented the display of his work at artistic exhibitions. For instance, the Petitioner’s work was shown at the [REDACTED] and at [REDACTED]. Thus, the Director concluded that the Petitioner satisfied this criterion, and the Petitioner’s documentation supports that finding.

*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).*

---

<sup>2</sup> The Petitioner claimed that he submitted a photograph depicting two pages for his articles from [REDACTED] however, the Petitioner did not include an English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3).

(b)(6)

*Matter of X-L-*

On appeal, the Petitioner indicates that he meets this criterion based on his roles as executive director for [REDACTED] and as vice dean for the [REDACTED]. The Petitioner submits letters from [REDACTED] honorary president for [REDACTED] and from [REDACTED] dean and professor of [REDACTED].

In general, a leading role should be apparent by its position in the organizational hierarchy and the role's matching duties. Here, [REDACTED] defines the Petitioner's role as executive director for [REDACTED] as "the core administration in the organization" and describes his responsibilities as being in-charge of communicating, coordinating, and serving painters on behalf of [REDACTED]. [REDACTED] characterizes the Petitioner's role as vice dean at [REDACTED] as leading the teaching business in the department of fine arts, including determining policy, direction, and budgets. In addition, the Petitioner answered directly to the vice president of the university and dean of the art college. Based on the preponderance of the evidence, the Petitioner submitted sufficient evidence to demonstrate that he performed in a leading role for [REDACTED] and [REDACTED].

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires the organizations or establishments to have a distinguished reputation. Regarding [REDACTED] the Petitioner did not show that [REDACTED] enjoys a distinguished reputation. The record, for example, does not contain evidence of [REDACTED] standing in the field to demonstrate that it is considered a distinguished or eminent organization.

Regarding [REDACTED] the Petitioner submitted a screenshot from [REDACTED] regarding [REDACTED] [REDACTED] for China. The screenshot indicates that such rankings were based on the "[i]nstitutions [that] were evaluated based on their research performance and their ratings by members of the academic community." [REDACTED] ranked [REDACTED] out of [REDACTED] universities in China and globally ranked [REDACTED]. The Petitioner, however, has not established that such rankings demonstrate [REDACTED] distinguished reputation consistent with the meaning of this regulatory criterion. For these reasons, the Petitioner has not met his burden of demonstrating his eligibility under this criterion.

#### B. Summary

As explained above, the record satisfies only 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

*Matter of X-L-*

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 X-L-*, ID# 99069 (AAO Oct. 25, 2016)