



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

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

MATTER OF N-B-

DATE: FEB. 28, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an actor, 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, Texas Service Center, denied the petition, concluding that the Petitioner had satisfied only one 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 a brief stating that he meets at least 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

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(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 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 is an actor who has performed in several movies in Nepal. As the Petitioner has not indicated or 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).

A. Evidentiary Criteria

The Director found that the Petitioner met the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii). A review of the record of proceedings contains an article from the [REDACTED] that discusses the Petitioner relating to his acting career. As the article meets the plain language of this regulatory criterion, we concur with the Director's decision.

Although the Director did not find that the Petitioner met any other criteria, the record indicates that the Petitioner satisfies two additional criteria. Specifically, the Petitioner received the 2011 [REDACTED] Film Award for [REDACTED] As the record reflects this

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award is nationally recognized for excellence in Nepal, the Petitioner meets the plain language for the awards criterion at 8 C.F.R. § 204.5(h)(3)(i).

In addition, the Petitioner's movies have premiered at artistic exhibitions, such as [REDACTED] at the [REDACTED] in [REDACTED] Australia. Therefore, the Petitioner satisfies the artistic display criterion at 8 C.F.R. § 204.5(h)(3)(vii). Accordingly, the Petitioner has provided the required initial evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will conduct a final merits determination. Specifically, we evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who has risen to the very top of the field of endeavor. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown his eligibility.

The record indicates that the Petitioner first received attention as a model, winning [REDACTED] by the [REDACTED] in 2006 and then later receiving the [REDACTED] title in the Philippines that same year. The Petitioner debuted as an actor in the movie, [REDACTED] in 2009, earning him the 2011 [REDACTED]. Since then, the Petitioner has performed in over a half dozen movies and has received a lesser known [REDACTED] in 2014 from the [REDACTED]. As discussed further below, a significant portion of the Petitioner's documentation relates to his former profession as a model. Moreover, the Petitioner has garnered limited attention from several movies rather than a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Although the Petitioner offered several newspaper articles, most of them are exclusively about his former modeling career at least 10 years ago rather than about his current profession as an actor. In addition, the Petitioner submitted a few articles that are about his acting in [REDACTED] and the [REDACTED] that do not contain the author as required by the published material criterion. The Petitioner presented one 2010 article discussing his acting career, from the [REDACTED] that meets all the regulatory requirements. The Petitioner did not demonstrate that a single article published approximately 5 years prior to the filing of the petition is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. Even if we were to consider the totality of the other articles that relate to him as an actor, the Petitioner has not shown that his press coverage is indicative of a level of success consistent with being among "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

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The petitioner also presented evidence of his membership with the [REDACTED]. However, the Petitioner did not establish that [REDACTED] membership requires outstanding achievements, as judged by recognized national or international experts. As he has not shown, for example, that he is a member of acclaimed associations that limit membership to actors and actresses with renowned accomplishments, his membership evidence does not demonstrate that his “achievements have been recognized in the field of expertise.” See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

In addition, the record reflects that the Petitioner participated in judging fashion and talent contests, such as the 2006 [REDACTED] 2007 [REDACTED] and 2014 [REDACTED]. An evaluation of the significance of the Petitioner’s judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this classification. Without evidence that sets the Petitioner apart from others in his field, such as documentation that he has served as a judge of professional and renowned actors rather than aspiring students or amateurs, the record relating to this criterion does not demonstrate that he “is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Further, although he submitted photographs with captions indicating his presence at movie premieres and promotional tours, the Petitioner did not identify or provide information regarding the venues. The Petitioner did present evidence reflecting that [REDACTED] and [REDACTED] premiered at [REDACTED] in [REDACTED] Nepal, and at the [REDACTED] in [REDACTED] Australia, respectively. While he did not include information about the [REDACTED] the Petitioner offered evidence that [REDACTED] is a cinema “to watch a movie in a decent environment.” The Petitioner did not demonstrate that his movies premiered at distinguished or highly acclaimed venues, and they garnered attention reflecting that his “achievements have been recognized in the field of expertise.” See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). For example, the record is not indicative of his premieres bringing critical acclaim, drawing record crowds, or receiving a high amount of press coverage.

Moreover, the Petitioner provided a letter from [REDACTED] stating that four of his movies [REDACTED] and [REDACTED] are “blockbusters” earning about 30 million rupees each or about \$280,000, two of his movies ([REDACTED] and [REDACTED]) are “hits” earning about 21 million rupees each or about \$196,000, and one movie [REDACTED] is “average” earning about 15 million rupees or about \$140,000.¹ The regulation at 8 C.F.R. 204.5(h)(3) requires “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and this his or her achievements have been recognized in the field of expertise.” The Petitioner has not shown that his box office earnings are remarkable or that his movies drew a significant level of attendance compared to other movies in the industry in a manner consistent with sustained national or international acclaim.

¹ See <http://www.xe.com>.

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In summary, the Petitioner's evidence confirms that he works in the film industry as an actor. This experience, however, is not sufficient to establish that he has garnered sustained national or international acclaim, or that he is one of the small percentage at the very top of his field of endeavor. We find that the record as a whole does not reflect extensive documentation showing that the Petitioner's achievements have been recognized in the field. *See* section 203(b)(1)(A)(i) of the Act.

III. CONCLUSION

For the foregoing reasons, the Petitioner has not shown that he is eligible for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of N-B-*, ID# 234493 (AAO Feb. 28, 2017)