



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

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

MATTER OF R-S-

DATE: NOV. 16, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a photographer, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner did not satisfy, as required, at least three of the ten initial evidentiary criteria.

On appeal, the Petitioner submits a brief and additional documentation, stating that he meets at least three of the ten criteria. In addition, he maintains that he has established eligibility for the classification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified foreign nationals with extraordinary ability 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 regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification’s initial evidence requirements. First, a petitioner can demonstrate 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 documentation that meets at least three of the ten criteria 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material in a final merits determination and assess whether 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. *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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle 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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The Petitioner is a fashion and glamour photographer,<sup>1</sup> who seeks to enter the United States to work for a Maryland business specialized in wedding photography. As he has not stated or established his receipt of a major, internationally recognized award, as initial evidence, he must present documents satisfying at least three of the ten criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). Upon a review of the record in its entirety, we find that he has satisfied one criterion relating to the display of his work at artistic exhibitions. *See* 8 C.F.R. § 204.5(h)(3)(vii). He, however, has not satisfied the initial evidentiary requirement of meeting at least three of the ten criteria.

*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).

The Director determined that the Petitioner did not meet this criterion. The record supports this finding. Specifically, while the Petitioner has submitted documentation showing that a number of organizations honored him, he has not established that these accolades constitute nationally or internationally recognized awards or prizes. On appeal, he has not challenged the Director’s determination or presented qualifying evidence. He therefore has not satisfied this criterion.

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<sup>1</sup> The Petitioner explained in his response to the Director’s request for evidence that “glamour photography is a genre of photography wherein subjects are portrayed in erotic poses ranging from fully clothed to nude.”

*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).*

On appeal, the Petitioner maintains that he meets this criterion because he is a member of the [REDACTED] and the [REDACTED]. While he has submitted documents verifying his membership, he has not offered evidence showing how he became a member or confirming that he did so after recognized national or international experts judged his outstanding achievements.

According to a December 2015 statement from [REDACTED] the Petitioner is “a well renowned glamour photographer in Nepal” and “introduce[d] glamour photography [to] Nepal.” The document, however, does not point to any evidence substantiating these claims. More importantly, as relating to this criterion, the statement does not explain how the Petitioner became a member, or if the organization requires outstanding achievements of its members as judged by qualifying experts.

In addition, the record includes a March 2017 letter from the [REDACTED] confirming the Petitioner's membership. The letter states that the association relies on a panel of “senior and prominent public personalities [in] the film and journalism sector” to review membership applications, and that it only admits professionals who have at least five years of experience and who have “contributed greatly to their respective fields.” The document, however, does not discuss the types of qualifying contributions or explain if they rise to the level of “outstanding achievements,” as specified in the regulation.

The letter from the [REDACTED] notes that it admitted the Petitioner as a member because his “photographs have played a key role in introducing and establishing many new talents” and that he “goes out of his way to promote deserving talents supporting them even on a person level” and, finally, that “artists consider it an honor to work with and be photographed by [him].” Neither the Petitioner nor the letter, however, explains how the aforementioned events constitute “outstanding achievements.” While the letter states that the Petitioner has made “long standing and pioneering contributions” to the field and that his “contribution . . . is one of a kind and cannot be compared to none other,” it does not point to evidence that substantiates such broad statements.

Finally, the Petitioner is a member of other organizations, including the [REDACTED] and the [REDACTED]. He offers letters from these entities praising his achievements as a photographer, but does not present documents, such as the organizations' bylaws or membership applications, that confirm that these associations require outstanding achievements of their members as judged by recognized national or international experts. As such, he has not satisfied 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).*

While the Director concluded that the Petitioner met this criterion, the record does not support this finding. The Petitioner has offered a number of articles about him, relating to his work as a photographer. He, however, has not submitted sufficient documents demonstrating that the articles appeared in professional or major trade publications or other major media.

The Petitioner has presented articles that appeared in newspapers, magazines, and websites, including [REDACTED] and [REDACTED]. He, however, has not offered sufficient evidence demonstrating that these publishers constitute professional or major trade publications or other major media.

The record contains information on some of the publishers, but not others. For example, the Petitioner has presented a [REDACTED] online printout, indicating that both [REDACTED] and [REDACTED] are English-language publications in Nepal. He, however, has not offered circulation data on these two general interest newspapers, which is relevant to whether they constitute major media. In addition, according to a U.S. State Department document, which the Petitioner has submitted, most people in Nepal speak Nepali and regional and indigenous languages. The record does not reveal the percentage of the population that read English newspapers, which is relevant in determining whether English-language newspapers constitute major media in Nepal.

The Petitioner has also submitted an August 2014 document from [REDACTED] indicating that publications such as [REDACTED] and [REDACTED] have an "A" classification "based on standards." Neither the document nor other evidence in the record explains how a publication attains the "A" classification or includes circulation information. The record has some information on [REDACTED] and [REDACTED] but does not establish that these English-language magazines are qualifying publications under the criterion. In light of the above, specifically, the lack of sufficient documentation confirming that the newspapers, magazines, and websites qualify as professional or major trade publications or other major media, the Petitioner has not satisfied 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).*

On appeal, the Petitioner states that he meets this criterion because he was a judge for a number of beauty pageants, including the 2012 [REDACTED] event, during which he selected the [REDACTED] winner. The record is insufficient to demonstrate that he satisfies this criterion. According to a letter from [REDACTED] the Petitioner was on the panel that selected her as [REDACTED]

\_\_\_\_\_ at the 2012 \_\_\_\_\_. The Petitioner, however, has not submitted documents, such as a letter or statement from the event organizers, confirming \_\_\_\_\_ or his involvement in the event.

Regardless, assuming the Petitioner did evaluate contestants in the 2012 \_\_\_\_\_ he has not shown that he judged the work of others in photography or an allied field. \_\_\_\_\_ indicates that the “title of \_\_\_\_\_ is of great importance to any aspiring model or film artist as it endorses the aspirant’s competence in the desired field.” A letter from \_\_\_\_\_ a creative consultant, states that as a judge, the Petitioner had to “envision the contestant’s aptitude and ability to contribute to the glamour sector.” Statements from both \_\_\_\_\_ and \_\_\_\_\_ illustrate that the judges assessed the contestants’ abilities. The Petitioner has not presented documents demonstrating that beauty pageants, modeling or film acting are allied to the field of photography. In addition, the record does not establish that the Petitioner judged the work of the photographers. Rather, he evaluated the appearance or competence of the pageant contestants to select a \_\_\_\_\_ winner.

In addition to the 2012 \_\_\_\_\_ the Petitioner has judged other beauty contests, including the 2015 \_\_\_\_\_ the 2015 \_\_\_\_\_ and the \_\_\_\_\_ events. While the record illustrates that he has participated as a judge in these pageants, it does not establish that he judged the work of photographers or people in an allied field. As such, he has not satisfied this criterion.

*Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner indicates that he has worked with show organizers, models, artists, and celebrities in Nepal, who have offered their support for his petition. In his response to the Director’s request for evidence, he stated that he “broke the glass ceiling of Nepal photography by launching the \_\_\_\_\_ the first of its kind, featuring 12 top-ranking actresses and models.” He also claimed in his initial filing that he “introduced the concept of post cards, posters and calendars featuring models [and] actors in Nepal.” Some of his references called him Nepal’s first glamour photographer. Although the record shows that he is an experienced photographer, it does not support a finding that he has made contributions of major significance in the field.

The Petitioner shot photographs for the \_\_\_\_\_ which \_\_\_\_\_ called it \_\_\_\_\_. The record, however, does not illustrate how the calendar has influenced the field of fashion and glamour photography. The \_\_\_\_\_ article explains that the calendar “is sponsored by \_\_\_\_\_ and “has 11 beauties gracing each month of the Nepali year.” It further notes, “the calendar is not for sale but for complimentary distribution by \_\_\_\_\_ and \_\_\_\_\_. Even assuming this was Nepal’s first calendar that used glamour photographs, the Petitioner has not shown how it has affected the field. For example, the record does not include evidence demonstrating that a high number of photographers worked on or published glamour calendars because of the Petitioner’s

work. Further, he has not explained how the calendar's influence rises to the level of "major significance in the field."

Similarly, even assuming that the Petitioner was the first glamour photographer in Nepal and had "introduced the concept of post cards, posters and calendars featuring models [and] actors," the record does not sufficiently demonstrate his impact in the field as a whole, or confirm that his influence qualifies as "major significance." Being the first to enter a field or to complete certain work in a field might demonstrate originality of the Petitioner's work, but without more, it does not illustrate he has made contributions of major significance in the field.

The record also contains documents verifying the Petitioner's receipt of awards. As discussed, these awards are not nationally or internationally recognized and do not satisfy the criterion under 8 C.F.R. § 204.5(h)(3)(i). Regardless, while these accolades recognize his work, they do not specifically explain what he has done that constitutes major significance in the field of photography. Likewise, while the Petitioner has received some media attention, which as discussed, does not meet the criterion under 8 C.F.R. § 204.5(h)(3)(iii), he has not shown that the published articles confirm that his photographs have had a significant impact in the field.

The Petitioner has also offered other evidence, including a number of reference letters. These documents, however, do not demonstrate his work has impacted the field. For example, [REDACTED] states that "[the Petitioner] gave his contribution to strengthen the glamour photography in Nepal." [REDACTED] from the [REDACTED] in New York, indicates that the Petitioner is "a prominent photographer from Nepal," who "has 25 years of experience in photography and good command in digital photography." A number of people in the film industry, including [REDACTED] praise the Petitioner for his photographs. While the letters in the record, including those not specifically mentioned, establish that he is an experienced photographer who has produced satisfactory work for his clients and employers, they are insufficient to demonstrate that his impact in the field rises to the level of "major significance." *See Visinscaia*, 4 F. Supp. 3d at 135-36 (to meet this criterion, a petitioner must demonstrate impact beyond his or her clients or employers).

Moreover, the Petitioner has submitted a number of reference letters that include the following identical passages when discussing his contributions in the field.

[The Petitioner] is a truly exceptional glamour photographer. Anyone and everyone in the film industry is aware of his works and contributions to the industry. He is the pioneer of glamour photography in Nepal and is continually working and producing exceptional results till [sic] date. He has inspired many to pursue a career in glamour photography . . . .

. . . He is extremely popular and has worked extensively with both established and aspiring actors and models. His work has been instrumental in launching many new faces in the film and glamour industry. One of his first discoveries was actress

\_\_\_\_\_ who went on to achieve popularity and success in the Nepali film industry. There are many more names in the industry today who owe their break to [the Petitioner]. He is also instrumental in establishing the trend of portfolio photo shoots and product photo shoots. He is undoubtedly the highest paid photographer in Nepal . . . .

The abovementioned paragraphs appear in a number of reference letters, including those from \_\_\_\_\_ the chairperson of \_\_\_\_\_ the general secretary of the \_\_\_\_\_ and \_\_\_\_\_ the vice-chairperson of \_\_\_\_\_ The use of identical language in letters from diverse persons raises concerns over the letters' authenticity and the source of their contents. Regardless, the letters do not specify how the Petitioner's contributions have had a major impact on the field of photography.

The documents in the record, including those not specifically mentioned, primarily contain attestations of the Petitioner's status in the field without providing specific examples of how his contributions rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to satisfy this criterion. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d at 1122. In 2010, the *Kazarian* court reiterated that the U.S. Citizenship and Immigration Services' conclusion that the "letters from physics professors attesting to [a petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." Moreover, we need not accept primarily conclusory statements. *1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). For these reasons, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

*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 Director determined that the Petitioner did not meet this criterion and the record supports this finding. Specifically, while the Petitioner has submitted some evidence of his authorship, he has not established that his work constitutes "scholarly articles" or has appeared in "professional or major trade publications or other major media." On appeal, he has not challenged the Director's finding or presented qualifying evidence. He therefore does not meet 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 Director concluded that the Petitioner met this criterion. The record supports this finding. Specifically, the Petitioner has been a photographer for many years, and his work has appeared in lifestyle and fashion magazines, including \_\_\_\_\_ and \_\_\_\_\_. When publishing his photographs, these publications credited him as the photographer. He therefore 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 states that “he has played a leading or critical role for organizations in Nepali film industry, glamour industry and photography industry.” His appellate brief, however, does not specifically name any of the organizations or explain what role he has performed for them that qualifies as leading or critical. In addition, he has not pointed to any documents in the record verifying that these entities have a distinguished reputation, as required under the criterion.

Documents in the record indicate that he has worked for a number of organizations, including [REDACTED] a publisher; [REDACTED] an event that recognizes and honors women in Nepal; [REDACTED] a non-governmental organization; and [REDACTED] an organization for young leaders and entrepreneurs. He, however, has not shown that he performs a leading or critical role for these entities. In general, a leading role is evidenced from the role itself, and a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. Although the Petitioner has worked as a photographer for these entities, he has not demonstrated how he led them or was critical to their success or standing. Moreover, the record does not include sufficient documents, such as media reports, illustrating that these organizations have a distinguished reputation. As such, the Petitioner has not satisfied this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).*

On appeal, the Petitioner indicates that “he undoubtedly is the highest paid photographer in Nepal.” He argues that “various letters submitted,” “the commercial success” of his work, and his “contract with [REDACTED] sufficiently demonstrate that he meets this criterion. We disagree.

The Petitioner has presented a document from [REDACTED] noting that in Nepal, the average monthly salary for someone in the “Advertising/Graphic Design/Event Management” field is 29,500 Nepalese rupees (NPR). The record includes letters from the Petitioner’s employers stating that his monthly income as a photographer and a photography teacher exceeds 29,500 NPR. He, however, has not demonstrated that “Advertising/Graphic Design/Event Management” properly describes his field, which is photography. Moreover, although he has offered a number of reference letters stating that he is the highest paid photographer in Nepal, neither he nor the letters point to evidence in the record that substantiates this claim.

The record includes a letter from [REDACTED] the director of [REDACTED] stating that the Petitioner is “highly paid,” “commanding a fee between 75,000 to 100,000 [NPR] per project/photoshoot.” Although [REDACTED] notes that he has worked with the Petitioner on projects, he does not specify how much he had paid the Petitioner, or explain how he learned of the Petitioner’s fees. In addition, neither the letter nor other documents in the record reveal what



constitutes “a high salary” or “other significantly high remuneration” for a glamour and fashion photographer in Nepal, which is relevant in determining if the Petitioner meets this criterion.

While the Petitioner urges us to consider his commercial success, he has not offered relevant information on the revenues or profits he received from his work. In addition, although the record includes a letter from [REDACTED] indicating that the company hired the Petitioner to shoot its [REDACTED] [REDACTED] which “was a big hit publicly,” the document does not specifically discuss his compensation or the commercial success of the calendar. Based on these reasons, the Petitioner has not shown that he satisfies this criterion.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x).*

The Director determined that the Petitioner did not meet this criterion and the record supports this conclusion. Specifically, the Petitioner has not shown that he is in a performing arts field or that he has had commercial successes. On appeal, he does not challenge the Director’s finding or offer qualifying evidence. He therefore does not meet this criterion.

### III. CONCLUSION

The Petitioner is an experienced photographer who seeks to enter the United States to work for a business, specializing in wedding photography. Although he satisfies one criterion, he has not submitted the required initial evidence establishing that he meets at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed the record in the aggregate, and conclude that it does not sufficiently demonstrate the Petitioner’s sustained national or international acclaim or that his achievements have been recognized in the field through extensive documentation. Accordingly, he has not established he is an individual of extraordinary ability.

**ORDER:** The appeal is dismissed.

Cite as *Matter of R-S-*, ID# 664599(AAO Nov. 16, 2017)