



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

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

MATTER OF C-A-F-G-

DATE: SEPT. 26, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a broadcast journalist, seeks classification as an individual of extraordinary ability. *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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner offers additional documentation and a brief, contending that he meets at least three of the ten criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants 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 implementing 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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to a beneficiary's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided 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 broadcast journalist who is currently employed by [REDACTED]

[REDACTED] Because he 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). In denying the petition, the Director found that the Petitioner did not meet any of the initial evidentiary criteria.

On appeal, the Petitioner maintains that he meets six criteria. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

A. Evidentiary 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 Petitioner contends that his receipt of [REDACTED] meet this criterion. In order to satisfy this criterion, a petitioner must demonstrate that his prizes or awards are

nationally or internationally recognized for excellence in the field.¹ He submits a letter from [REDACTED] creator of [REDACTED] who opined that it “is recognized as an international event that honors and awards outstanding professionals in their field” and “is now recognized, in the industry, as a global reference for outstanding and excellence in journalism.” In addition, [REDACTED] described the selection criteria, indicated others who received awards, and explained why the Petitioner garnered awards from 2004 to 2017.² Furthermore, the Petitioner provides a CD indicating that it “contains various videos including one of [REDACTED] and [REDACTED] saluting the [REDACTED] which are now a part of the [REDACTED] event landscape.” Moreover, the Petitioner presents various screenshots reflecting others who have received the awards, [REDACTED] sponsors, and planned events in Florida, Japan, Italy, and the United Kingdom.

Although [REDACTED] indicated his personal opinion of the awards and detailed the selection process, he did not demonstrate that [REDACTED] is nationally or internationally recognized for excellence in the journalism field. Further, while the Petitioner’s documentation reflects acknowledgment of [REDACTED] by politicians in Florida and planned events in other countries, he did not establish that the journalism field recognizes [REDACTED] as a national or international prize or award for excellence.

In addition, the Petitioner argues that his receipt of the [REDACTED] award in 1993 satisfies this criterion. The Petitioner offers a screenshot regarding the history of [REDACTED] a letter from an unidentified author of [REDACTED] confirming the Petitioner’s receipt of the award and describing the history of [REDACTED] and screenshots from espn.com.br announcing ESPN’s receipt of [REDACTED] awards in 2011, 2014, and 2017. The documentation, however, does not show that the award is nationally or internationally recognized for excellence in his journalism field. Furthermore, while the ESPN screenshots reflect that “[t]he award is the most important of sports journalism in [REDACTED] (emphasis added), the Petitioner did not establish that the [REDACTED] is nationally or internationally recognized for excellence in the field, nor does the record include other evidence demonstrating such recognition.

For these reasons, the Petitioner did not demonstrate that he fulfills 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 Petitioner argues that he “submits evidence demonstrating that there is published material about him in major trade publications & other major media, relating to his work in the field of broadcast

¹ See 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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

² The Petitioner offers two plaques from [REDACTED] evidencing his awards in 2015 and 2017.

journalism.” Specifically, the Petitioner references screenshots from gazetanews.com, tenistasemacao.com.br, and celebritypictures.wiki. The record, however, does not reflect published material about him in professional or major trade publications or other major media, which include the title, date, and author.³

As it relates to gazetanews.com, the Petitioner provides two screenshots. The first screenshot reflects published material about him; however, it does not include the required title and author. 8 C.F.R. §204.5(h)(3)(iii). The second screenshot is self-authored by the Petitioner regarding events in the Ultimate Fighting Championship and Super Bowl; it is not published material about him relating to his work. Articles that are not about a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Moreover, the article does not contain the required title and date. Further, the Petitioner claims that *Gazeta Brazilian News* “is one of the largest weekly Brazilian newspapers published in the United States reaching an average of 75,000 readers each week.” The Petitioner, however, did not include evidence of published material from *Gazeta Brazilian News*. Instead, as indicated above, the Petitioner presented screenshots posted on gazetanews.com, which he did not establish that the publication’s website is a major medium. Moreover, the Petitioner did not support his assertions regarding *Gazeta Brazilian News* with corroborating evidence and did not show that such readership statistics is consistent with a major medium.

Regarding tenistasemacao.com.br, the screenshots reflect a [REDACTED] 2018 partial transcript of a podcast for [REDACTED]. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Here, the podcast occurred after the initial filing of the petition. Moreover, the Petitioner did not include the required author. Further, without the full transcript, the Petitioner did not demonstrate that the podcast reflects published material about him, as the partial transcript only indicates that he will be the guest. He did not show whether the podcast was about him or whether he provided commentary regarding a tennis tournament. Finally, the Petitioner did not demonstrate that tenistasemacao.com.br is a major medium.

Relating to celebritypictures.wiki, the screenshots reflect photographs of the Petitioner rather than published material about him. In addition, the Petitioner did not include the required title, date, and author of the screenshots. Furthermore, the Petitioner did not establish that the website is a major medium.

For these reasons, the Petitioner did not demonstrate that he satisfies this criterion.

³ See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

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 Petitioner provides evidence that he was one of the judges for the [REDACTED]. He also presents documentation regarding background information for [REDACTED] a pioneer of soccer in Brazil. In addition, the Petitioner submits a screenshot from arquivosdofutebolbrasileiro.blogspot.com reflecting that the [REDACTED] was created “[t]o encourage players to seek the goal and play with discipline, to reward good referees and motivate Brazilian soccer fans.” Furthermore, sample awards include: most positive team, best player, best referee, top scorer, and best goalkeeper.

In order to satisfy this criterion, a petitioner must show that he participated in the judging of the work of others in the same or allied field of specialization.⁴ Here, the Petitioner did not demonstrate that judging soccer personnel is in the same or allied field of broadcast journalism. The Petitioner did not show, for example, that he judged other broadcast journalists, media personnel, or reporters. For these reasons, the Petitioner did not establish that he meets 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).

The Petitioner contends that his documentary film, [REDACTED] “expressively outlines the great importance and impact of the Portuguese language spoken outside of Brazil.” In addition, he argues that his documentary film of the musical group, [REDACTED] is a “major artistic contribution[] to the field of Journalism.” In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

Regarding [REDACTED] the Petitioner provides a copy of the documentary film and copies of screenshots from YouTube, indicating the it “is an unique documentary produced by [REDACTED] and sponsored by the [REDACTED]. Although the Petitioner is credited with being one of the producers, he did not demonstrate that the documentary film is an original contribution of major significance in the field of broadcast journalism. The Petitioner, for example, did not establish that the documentary film has significantly influenced broadcast journalism in a major way.

Similarly, as it relates to [REDACTED] the Petitioner presents a copy of the documentary film and copies of screenshots from YouTube and [REDACTED]. Again, while the evidence shows that the Petitioner created the documentary film and provides background history regarding the

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

musical group, he did not demonstrate that [REDACTED] has considerably impacted the broadcast journalism field or is otherwise viewed by his field as a contribution of major significance.⁵

For these reasons, the Petitioner did not establish that he meets 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 Petitioner argues that his documentary films discussed above fulfills this criterion. Further, he contends that this criterion “is in fact similar in nature to the previous criterion” because “[b]oth require that the alien prove the existence of articles in the field.” The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires his “authorship of scholarly articles in the field, in professional or major trade publications or other major media.”⁶ Furthermore, a scholarly article should be written for “learned” persons in the field. “Learned” is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field.⁷ On the other hand, the regulation at 8 C.F.R. § 204.5(h)(3)(v), which has already been discussed above, requires original contributions of major significance in the field; it does not require the existence of articles in the field as asserted by the Petitioner.

Here, the Petitioner did not establish that he authored scholarly articles in the field of broadcast journalism in professional or major trade publications or other major media. Instead, the record reflects that the Petitioner produced documentary films relating to the Portuguese language and a musical group. In addition, the Petitioner has not shown that his documentary films are for “learned” persons, rather for the general population. Moreover, the Petitioner did not demonstrate that his documentary films contain the characteristics of authored scholarly articles. Finally, the Petitioner did not show that he authored scholarly articles in professional or major trade publications or other major media.⁸

Accordingly, the Petitioner did not establish that he satisfies this criterion.

⁵ We note that the screenshots indicate that [REDACTED] was shown at the [REDACTED] Florida in September 2017, after the filing of the petition. See 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner did not demonstrate that the screening of his documentary is a contribution of major significance in the field of broadcast journalism.

⁶ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

⁷ *Id.*

⁸ The record does not reflect the publication or showing of [REDACTED] on a medium. Moreover, although the screenshots regarding [REDACTED] indicate that the documentary film originally aired on [REDACTED], the Petitioner did not provide supporting evidence demonstrating that the television show is a major medium.

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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 presents evidence reflecting that his documentary film, [REDACTED], discussed above, featured at an artistic exhibition. As such, he established that he fulfills this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

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. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought. For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of C-A-F-G-*, ID# 1580174 (AAO Sept. 26, 2018)