



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

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

MATTER OF W-C-

DATE: AUG. 19, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a photographer, seeks classification as an alien 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 Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of the ten evidentiary criteria.

On appeal, the Petitioner asserts that the Director did not consider evidence in the record.

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 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).

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 Director found that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to the display of his work at artistic exhibitions or showcases. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to lesser nationally or internationally recognized awards, published material about him and his work, and the authorship of scholarly articles in his field. After reviewing all of the evidence in the record, we find that it meets the requisite three evidentiary criteria, but does not establish the Petitioner’s sustained national or international acclaim and that he is one of that small percentage at the very top of the field of photography.¹

A. Evidentiary Criteria

Documentation of the individual’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 submitted evidence of five awards in the field of photography for which he was either selected or nominated. Because the plain language of this criterion calls for receipt of prizes or awards, nomination or selection as a finalist for an award is not considered qualifying under this criterion. Therefore, the evidence showing that he and his wife were “short-listed” for the [redacted] Award for photobooks in 2016 for [redacted], and for the 2016 [redacted] Photography Award, does not establish that the Petitioner meets this criterion.

¹ The Director found that the evidence submitted under each of the evidentiary criteria claimed by the Petitioner included foreign language documents which were not accompanied by certified English translations as required under 8 C.F.R. § 103.2(b)(3). Upon review, we have determined that unless otherwise noted, the foreign language documents in the record have been properly translated in accordance with the regulation.

Also submitted was evidence that the Petitioner received two “Outstanding Works of Art” awards for the photographs he submitted to the [redacted] Photography Exhibition in [redacted] 2010. Supporting evidence indicates that they were among 80 such awards in the Art category that year, and that a single “Master Collection” prize and ten “Collection” prizes were also awarded. In addition, the evidence indicates that both the call for submissions for the exhibition and the announcement of the awards were posted on Tencent News, but does not provide sufficient information about the specific website or location where these notices appeared to support the degree of recognition these awards received. Further, the resumes of three other photographers who were awarded at the exhibition were also submitted, but only one of these resumes mentions the award. This evidence does not sufficiently demonstrate that these two awards received by the Petitioner are nationally or internationally recognized.

Evidence of two additional awards received by the Petitioner was also submitted. These are the 2015 [redacted] New Talent Award and the 2016 [redacted] Emerging Photographers Award. This evidence indicates that the photographs submitted for both of these awards were judged by a panel of well-known experts in the field, that the Petitioner’s receipt of these awards received coverage in professional and major media, and that the work was subsequently displayed in public venues. As such, this evidence establishes that the Petitioner meets this criterion.

Published material about the individual 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)

Copies of several articles obtained from websites were submitted as evidence in support of the Petitioner’s qualification under this criterion. Some of these, such as the two articles from *Lens Culture*, were not about the Petitioner and his work, either because they were written by him or because the focus of the material was a larger group of artists. Others, including materials from *Vice China*, *IMA Magazine*, [redacted] Center, *Xitek*, and *Guyu Report*, are about the Petitioner and his work, and generally include examples of his photographs, but the evidence does not establish that all of these can be considered as professional, major trade or other major media. For instance, the material from [redacted] Center, which details a solo exhibit of the Petitioner’s photographs in its gallery, originates from its social media page (WeChat.) But the evidence does not establish that the primary audience for this media consists of professional photographers, as opposed to art enthusiasts or the general public, or that this particular format generates sufficient readership to qualify as major media.

Similarly, the media from *IMA Magazine* includes both a short article about the Petitioner which appeared in the print version and a longer version on its website. However, the evidence about the magazine indicates that it is written for photography connoisseurs and collectors rather than photographers, and that its relatively limited circulation does not reach a wide enough audience for it to be considered as major media. The evidence concerning the websites for *Xitek* and *Guyu Report* also include insufficient evidence to establish those media as one of the qualifying types under this criterion.

The evidence from the media kit of *VICE China*, which indicates that its website and social media platforms have millions of subscribers and tens of millions of visitors, is sufficient to establish it as major media. Accordingly, we find that the Petitioner meets this criterion based upon the article about him and his work which appeared in that publication.

Evidence of the individual'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)

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.

The Petitioner submitted several reference letters from experts in the field, including professors, curators and fellow photographers.² [redacted] of the University of [redacted] [redacted] writes that she encountered the Petitioner's work [redacted] when it was exhibited at the [redacted] Photography Festival in 2016, and has included images of this work in her lectures about trends in photography. [redacted] also states that she considers [redacted] as "part of the cutting edge of global artistic practice."

[redacted] Deputy Director of the [redacted] art museum in Beijing, indicates that he met the Petitioner at the [redacted] Photography Festival, and selected his work for a group exhibition at [redacted] in 2018. He writes that [redacted] "is an exceptional art practice in contemporary China," and compares it to the work of other "leading international artists."

Another letter in the record is from [redacted] a photography researcher and curator, who selected the Petitioner and his wife among eight artists for a project displayed in the [redacted] Museum. Similarly, [redacted] explains how he selected [redacted] for a solo exhibit at [redacted] Center. Other letters praise the Petitioner's work and confirm its display and awards received.

These letters confirm that the Petitioner's original work [redacted] has been awarded and displayed at artistic venues, but they do not establish that it is a contribution of major significance in the field of photography. In particular, while some of them compare this work to that of famous photographers, they do not suggest that it has influenced the work of other photographers or otherwise made an impact upon the field of photography. Therefore, this evidence does not establish that the Petitioner 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)

In his decision, the Director found that the evidence of the Petitioner's books, [redacted] [redacted] and [redacted] did not meet this criterion because it did not establish their scholarly nature. The Director noted that scholarly articles are typically written for

² We thoroughly reviewed all of the reference letters in the record, but not all of the letters are analyzed in this decision.

learned individuals and report on original research or philosophical discourse. On appeal, the Petitioner asserts that this represents too narrow an interpretation of what constitutes a scholarly article, and that these books, as well as the Petitioner's article about [redacted] which was published in *Lens Culture*, as comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4). That provision allows for comparable evidence if the listed criteria do not readily apply to an individual's occupation.³ When submitting evidence that it wishes to be considered as comparable evidence, a petitioner should explain why they have not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence they have included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).⁴

Here, the Petitioner has in fact presented evidence which meets at least three of the evidentiary criteria. In addition, the Petitioner has not explained why these materials, which consist in two cases of collections of personal photographs with an autobiographical narrative, should be considered as comparable to scholarly articles published in professional or major trade media or other major media. Accordingly, the Petitioner has not established that this evidence should be considered as comparable evidence under this criterion, or that it otherwise establishes 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 Director found that the Petitioner meets this criterion. Based upon the evidence of the display of the Petitioner's work in a solo exhibition at [redacted] Center, group exhibition at [redacted] Museum, and in several national and international photography festivals, we agree with the Director.

B. Final Merits Determination

As detailed above, the Petitioner has submitted the requisite initial evidence and established that he meets at least three of the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). We will therefore evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of the small percentage of photographers at the very top of the field. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine whether it is sufficient to demonstrate that he has extraordinary ability.

We first note that while the regulation requires sustained acclaim in order to demonstrate extraordinary ability, the evidence indicates that acclaim for the Petitioner's work has been relatively short-lived. Although his work was initially recognized in 2010 with what the record indicates were lesser awards, he did not achieve higher-level national acclaim until 2015, with [redacted] receiving nationally-recognized awards and appearing in solo and group exhibitions, mainly in China. Also, it is only this earlier work that has been recognized by prizes or awards; the Petitioner's later work, including his book [redacted] and the material created for exhibition at the [redacted] Museum, has received some level of media attention, but the evidence does not demonstrate that it has been a critical or commercial success. For instance, a portion of [redacted] was posted on the English language

³ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

⁴ *Id.*

website of *Sina News*, which the evidence indicates “aggregates feeds from other news providers,” and a “report of tax” states that the book has sold slightly more than half of the 5000 copies printed. But this evidence, which is not accompanied by readership or comparative sales data, does not show that the media attention or book sales relating to this work reached a level sufficient to establish national or international acclaim.

Similarly, the evidence indicates that the Petitioner’s solo exhibition of [redacted] at [redacted] Center, and the display of [redacted] in a group exhibition at the [redacted] Museum, both received some coverage in arts media in China. However, these exhibits took place in 2016 and 2017, respectively, and thus do not establish that the display of the Petitioner’s work has garnered national or international acclaim over a sustained period.

In addition, although the evidence of media coverage confirms that the awards the Petitioner received for [redacted] were recognized on the national level, it does not establish that those awards were top awards open to all professional photographers. Both the 2015 [redacted] New Talent Award and the 2016 [redacted] Emerging Photographers Award are limited to young or previously unknown photographers,⁵ thereby excluding more experienced or well-known artists from consideration. This evidence does not therefore establish that the Petitioner is one of that small percentage at the top of his field, as opposed to one of the top few young or emerging photographers.

Upon review of all of the evidence in the record, it is apparent that the Petitioner’s photography has been noticed and appreciated in arts circles in China, and to a lesser extent in the general public. This includes reference letters from experts in the field who praise his work, describe him as a “promising young artist,” and predict that he would continue to produce exceptional photography in the United States. However, the evidence of record does not establish that he has sustained acclaim as a photographer, or that he has risen to be one of the few photographers at the very top of the field.

III. CONCLUSION

The Petitioner submitted the required initial evidence, but a review of the totality of the evidence does not establish that he has achieved the requisite sustained national or international acclaim and is among the small percentage of photographers at the very top of the field. For these reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

⁵ The “call for photos” for the [redacted] Emerging Photographers Award states that one requirement is that entrants “having [*sic*] no experience of solo exhibition,” and similar evidence relating to the [redacted] New Talent Award indicates that eligible entrants must be Chinese, younger than 35 years old and have used a Canon camera.

Matter of W-C-

ORDER: The appeal is dismissed.

Cite as *Matter of W-C-*, ID# 3817161 (AAO Aug. 19, 2019)