



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

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

MATTER OF A-L-O-

DATE: JAN. 2, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a multilingual voice over artist, 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 Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not shown that he met any of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he qualifies as an individual of extraordinary ability.

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). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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 multilingual voice over artist. As he has not received a major, internationally recognized award, the record must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Acting Director found that the Petitioner had not met any of the following six criteria raised by the Petitioner: awards, published material, display, leading or critical role, high salary, and commercial success under 8 C.F.R. § 204.5(h)(3)(i), (iii), (vii), (viii), (ix), and (x), respectively. On appeal, the Petitioner maintains that he meets the criteria for awards, published material, leading or critical role, and high salary. Upon reviewing all of the evidence in the record, we find that the record does not support a finding that the Petitioner satisfies at least three 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 Acting Director held that the Petitioner had not established that he met this criterion because he was not named as a recipient of the awards for the film or advertising projects in which he played a role. The record contains documentation about the [REDACTED] award at the 2012 [REDACTED] [REDACTED] with evidence demonstrating that he was listed among the creative team members credited in the campaign. The record reflects that the [REDACTED] won the [REDACTED] award for the [REDACTED], co-chief executive officer and executive creative director for [REDACTED] Mexico, which oversaw the campaign, states that the Petitioner's talents helped the organization win multiple awards, including the [REDACTED] award in 2012. [REDACTED] states, "[REDACTED] is

the world's biggest annual awards show and festival for professionals in the creative communications industry.”

In a letter from [REDACTED], the creative director for [REDACTED] during the [REDACTED] campaign, she states that she knew she needed to request the Petitioner for the voiceover and original music for the campaign. She indicates, “[The Petitioner] was an integral part of this creative team and without his participation and role in this project, we may not have receive the multiple international awards and accolades to this campaign.” We find that the record indicates that the Petitioner’s work was sufficiently tied to the success of the overall production for him to be considered a recipient of this award. The record contains media coverage pertaining to the [REDACTED] [REDACTED] establishing that this represents a lesser nationally or internationally recognized award for excellence in the field. Therefore, the Petitioner has established that he 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 contains the transcript of the [REDACTED] in which the Petitioner was interviewed as a guest on the program. However, according to a letter from [REDACTED] the producer and director of [REDACTED] the Petitioner was not interviewed until November 2017, and the interviews would not be published until January 2018. 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). Thus, the Petitioner cannot establish eligibility with the interviews that were published after the filing of the instant petition.

The record contains an article published on the website Style by Shock Visual entitled, [REDACTED] [REDACTED] [the Petitioner]” about his work as a voice over artist and musician. The record also contains articles about the Petitioner published in *EstiloDF* as well as on *ovaciones.com* and *informate.com*. While these articles are about the Petitioner and his work in the field, the Petitioner has not established that they are professional or major trade publications or other major media. The record does not contain evidence regarding the target audience or the circulation details for these publications. While the Petitioner notes that his own website averages 7,469 hits per month, he has not established that the material on his website constitutes published material about him relating to his work in the field in professional or major trade publications or other major media. Therefore, the Petitioner has not established that he 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).

For a leading role, the evidence must establish that the petitioner is or was a leader.¹ If a critical role, the evidence must establish that the petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the petitioner's performance in the role is or was important in that way. It is not the title of the petitioner's role, but rather her performance in the role that determines whether the role is or was critical.²

On appeal, the Petitioner asserts that he has performed a critical role for multiple international brands. He states in the appeal brief that "a voice-over artist is critical to the success of an advertising or public service campaign." [REDACTED] states that during his tenure at [REDACTED] he has worked with the Petitioner in multiple campaigns for [REDACTED] among others." He indicates that his voice over talent and music production services have helped with multiple awards for the [REDACTED] and [REDACTED] campaigns.

The Petitioner contends that his work on the [REDACTED] campaign represents a critical role, noting in his brief that articles in the record demonstrate that not only did this campaign win awards but "also helped champion the cause of encouraging employment of many disabled Mexicans in Mexico." The Petitioner does not provide evidence from the [REDACTED] demonstrating that his role was critical to the activities of that organization or that it has a distinguished reputation. Rather, he provides evidence from [REDACTED] the advertising company that ran the campaign. [REDACTED] states, "[the Petitioner] was an integral part of this creative team and without his participation and role in this project, we may not [have] received the multiple international awards and accolades attached to this campaign." Likewise, [REDACTED] states that "the participation of [the Petitioner] was fundamental because our client [REDACTED] was able to reach its goal, which was to raise employment offers for people with disabilities." The record does not demonstrate that the executives at [REDACTED] can attest to the significance of the Petitioner's impact on its clients' activities. Similarly, with respect to the [REDACTED] campaign, the record does not establish how the Petitioner's role was of significant importance to its company.

The Petitioner claims that he has provided leading or critical roles to other companies. [REDACTED] states in his letter that in Mexico the Petitioner "is the voice of [REDACTED] among others." He then adds that in the United States, the Petitioner "is the main voice of brands like [REDACTED] and the state of California." In a letter from [REDACTED] founder of a voice over agency called [REDACTED], she states that the Petitioner "has been the institutional voice of [REDACTED] in Mexico for six years." We note that the record

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 10* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

² *Id.*

contains a receipt for voice over services the Petitioner provided to [REDACTED] but he has not shown that the amount he was paid for these services is an indication that his work was critical to the organization. He has not provided other evidence from [REDACTED] demonstrating how his work has impacted the company to show that it was of significant importance to the outcome of the organization's activities.

The record contains a letter from [REDACTED] who partnered with [REDACTED] in [REDACTED] to connect individuals at all levels of voice talent with the "industry's leading coaches." She indicates that the Petitioner "was and still is, exactly the kind of coach we require in this new project and he has certainly proven to be an incredible asset to the organization." While [REDACTED] and [REDACTED] speak highly of the Petitioner's expertise as a voice over artist, this evidence tends to show that was a featured guest on this program rather than a regular contributor. The Petitioner has not shown how his contributions have been of significant importance to the organization's activities, or that [REDACTED] is an organization with a distinguished reputation.

The Petitioner also references a letter by [REDACTED], a Latin America Spanish voice over artist and Director of [REDACTED]. He states that she selected him to be one of ten male voices in a voice bank for [REDACTED]. However, her letter does not indicate that he is a part of [REDACTED] or what his role entails or how his work has impacted the organization's activities. Additionally, the record does not demonstrate that [REDACTED] has a distinguished reputation.

In a letter from [REDACTED] the director of show production with the [REDACTED] and director of media at [REDACTED] he states that the Petitioner has completed all of his Spanish translation and voiceover work for all of his projects. He states, "My clients love him, his work is top notch, and we will continue to request his services for many years to come." While this shows that the Petitioner provides high quality services to these companies, the record does not demonstrate that his translation or voice over services are of significant importance to the outcome of these organizations' activities. The record does not demonstrate how much of a presence these companies have in Spanish speaking countries and how the Petitioner's services contribute to this aspect of these companies. In addition, the record does not demonstrate that [REDACTED] or [REDACTED] are organizations with distinguished reputations. Therefore, the record does not demonstrate that the Petitioner meets 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).

The record contains documents from the Petitioner's accountant attesting to his yearly salary for 2013 through 2016. The record lacks evidence corroborating the Petitioner's income. The record contains samples of invoices of some voice over services he provided, but the Petitioner has not shown the complete extent of his salary each year. Even if the record did contain this evidence, or additional corroborating details from his accountant, this amounts to salaries of \$82,710 for 2013, \$93,135 for 2014, \$29,406 for 2015, and \$61,898 for 2016. The Petitioner indicates that the voice actor website at gravyforthebrain.com states that the top ten percent of voice actors earn \$90,000 and above. We note that this document is undated and does not explain the source of its information.

While the record contains documentation from the U.S. Department of Labor indicating that the top ten percent of actors earn over \$100 per hour as of May 2016, the record does not contain sufficient evidence of the sources of the Petitioner's annual salary in that year to use this benchmark to establish that he meets this criterion.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying 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), or comparable evidence establishing his eligibility. Thus, we do not need to fully address the totality of the materials in a final merits determination. *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.

ORDER: The appeal is dismissed.

Cite as *Matter of A-L-O-*, ID# 1846296 (AAO Jan. 2, 2019)