



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

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

MATTER OF D-S-Y-P-

DATE: JULY 2, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a creative director, 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief, arguing that he fulfills 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).

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 creative director at [redacted] in [redacted] New York. 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 fulfilled only one of the initial evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv). The record contains evidence showing that the Petitioner participated as a judge at an annual reports design competition. Accordingly, we agree with the Director that the Petitioner met the judging criterion.

On appeal, the Petitioner maintains that he meets six additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the 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 he “submitted detailed information about more than 30 (thirty) design awards,” and “[i]t is custom of the competition to grant the award to the creative agency or design team.” In order to fulfill this criterion, the Petitioner must demonstrate his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.¹ Here, the

¹ See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions;

Petitioner did not receive the awards from [redacted], [redacted], [redacted], and [redacted]. Rather, the company employing the Petitioner, [redacted], is the named recipient of the awards. The description of this type of evidence in the regulation provides that the focus should be on “the alien’s” receipt of the awards or prizes, as opposed to his or her employer’s receipt of the awards or prizes.²

Moreover, this regulatory criterion requires the prizes or awards to be nationally or internationally recognized for excellence in the field of endeavor.³ Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field including, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.⁴ Although the Petitioner provided screenshots from the awarding entities [redacted] [redacted]⁵ regarding background information, he did not offer supporting evidence to corroborate the claims, such as widespread media coverage of the awards in major newspapers or other evidence showing the awards’ national or international significance in the field. For instance, the screenshot from [redacted] claimed that “[t]he Awards are globally recognized, providing a platform for the highest standards in the annual report industry.” The Petitioner, however, did not offer independent, objective evidence reflecting the national or international recognition of the awards for excellence in the field.

Further, the record does include evidence showing that the Petitioner received [redacted] “Certificate of Design Excellence” in 2006. Thus, contrary to the Petitioner’s assertion, the record shows that awards may be granted to individuals rather than exclusively to creative agencies or design teams. Notwithstanding, the Petitioner did not demonstrate the award’s national or international recognition for excellence in the field. Again, while the Petitioner submitted an “About Us” screenshot from [redacted] indicating that its “Print Regional Design Awards” is “one of the most well-respected design competitions in the industry,” he did provide objective, corroborating documentation to establish the award’s national or international recognition of excellence in the field.

For the reasons discussed above, the Petitioner did not demonstrate that he meets this criterion.

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).

The Petitioner argues that he meets this criterion based on membership with the Art Director’s Club (ADC) and the American Institute of Graphic Arts (AIGA). In order to satisfy this criterion, the

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 *Id.*

³ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 6.

⁴ *Id.* (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance).

⁵ The Petitioner did not provide any documentation relating to [redacted] awards.

Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.⁶ The record reflects that the Petitioner submitted “What is ADC?” and “About AIGA” screenshots from the associations’ websites.⁷ Although the screenshots relate to the background and history of ADC and AIGA, the Petitioner did not provide the membership requirements, so as to demonstrate that their memberships require outstanding achievements, as judged by recognized national or international experts in their field consistent with the regulation at C.F.R. § 204.5(h)(3)(ii).

As such, the Petitioner did not establish 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 claims eligibility for this criterion based on “submitted articles about his original work.” In order to meet this criterion, the Petitioner must demonstrate published material “about the alien” in professional or major trade publications or other major media, as well as the title, date, and author of the material.⁸ In the case here, the Petitioner presented screenshots about branding, marketing, and design projects for various companies, such as [redacted] [redacted] [redacted] [redacted] [redacted] and [redacted] rather than published material about him. Articles that are not about a petitioner do not fulfill 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).⁹ In fact, the screenshots never mention the Petitioner, let alone reflect published material about him.

Accordingly, the Petitioner did not show that he satisfies 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).

In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that he has made original contributions of major significance in the field.¹⁰ 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 in the field. Here, we

⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

⁷ The Petitioner also provided screenshots confirming his memberships.

⁸ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

⁹ *Id.* (finding that the published material should be about the petitioner relating to his or her work in the field, not just about his or her employer or another organization with whom he or she is associated).

¹⁰ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

will address the Petitioner's arguments on appeal and determine whether he has demonstrated original contributions of major significance in the field consistent with this regulatory criterion.

The Petitioner contends that he "is clearly responsible for many contributions with major significance to graphic and commercial designs as well as marketing and finance through his work creating marketing campaigns, corporate annual reports, corporate identities as well as Style Guides, re-brandings and original artwork and publications" and points to his portfolio reflecting samples of his work. While his portfolio demonstrates the originality of his work, the Petitioner did not show how his designs have been of major significance in the field. Although work may be "original," this fact alone is not sufficient to establish that the work is of major significance.¹¹

Moreover, the Petitioner claims that his portfolio "provides detailed information on each design project and [his] leading role on the project as well as awards the projects have won." The Petitioner's role on projects with [redacted] and others is more relevant to the leading or critical role category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), a separate and distinct criterion that will be discussed later. Consistent with the regulatory requirement that a petitioner meet at least three separate criteria, we will generally not consider evidence relating to the leading or critical role criterion. Regardless, the Petitioner did not establish how his role with [redacted] and others demonstrates the unusual influence in the overall field beyond his employer.¹²

Further, the Petitioner did not show that the awards received by [redacted] reflect that his work has risen to the level of major significance in the field consistent with this regulatory criterion. As discussed under the awards criterion, the Petitioner did not establish the national or international recognition or significance of the awards in the field. He did not demonstrate, for example, the substantial impact his designs have had in the greater field or explain how they are otherwise majorly significant in the field.

Likewise, the Petitioner argues that his work "garnered positive reviews for their innovativeness from design and business publications" and references the media articles discussed under the published material criterion. Although the articles report on companies rebranding their names, images, logos, and etc., the media reports do not discuss how the Petitioner's work has unusually influenced the greater field. For example, the Petitioner provided an article entitled, [redacted] [redacted] from New York Magazine in which the company's annual report is complimented as being "good-looking."¹³ Here, the article does not indicate that the Petitioner's design significantly impacted the overall field beyond [redacted].¹⁴ Moreover, the Petitioner did not demonstrate that his work received significant attention from the press in a manner with major significance in the field.

¹¹ See USCIS Policy Memorandum PM 602-0005.1, supra, at 8.

¹² See USCIS Policy Memorandum PM 602-0005.1, 8-9; see also *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

¹³ While we discuss an example article, we have reviewed and evaluated each one.

¹⁴ The record also contain a letter from [redacted] vice president at [redacted] who also indicated that the Petitioner "help[ed] communicate [redacted] narrative and the year's achievements and trends through a distinctive theme, often with infographics, text and interactive displays using digital design." While [redacted] discussed the Petitioner's work contributing to [redacted] he did not indicate or show how the work is of major significance in the overall field.

Finally, the Petitioner claims that letters written on his behalf show “the tremendous significance his original designs have in a variety industry.” Although the letters confirm his work on design projects and praise his talents and abilities, they do not explain or indicate how the Petitioner’s work is considered original contributions of major significance in the field. For instance, [redacted] founder and creative director for [redacted] stated that the Petitioner “was instrumental in the design and production of the year 2000 annual reports for [redacted] and [redacted]” and “is a remarkable talent who not only possesses an impressive creative mind but also true sense how business works and how to apply his abilities to help clients reach their business goals.”¹⁵ Here, [redacted] did not articulate the significance of the Petitioner’s work in the greater field. Further, having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. Rather, the record must be supported by evidence that the Petitioner has already used those skills and abilities to impact the field at a significant level, which he has not shown.

Moreover, the letters generally assert that the Petitioner made original contributions of major significance in the field. For example, [redacted] managing director for [redacted] and [redacted] president of [redacted], both claimed that the Petitioner “is responsible for many original contributions of major significance to the fields of design, commercial graphic design, branding, annual report design, editorial design, and web design for his projects and the projects of his clients.” The identical language calls into question whether the letters were independently prepared by the authors, and therefore diminishes their probative value in establishing that the Petitioner’s original contributions qualify for this criterion. Moreover, repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Regardless, the letters do not contain detailed, probative information that identify the Petitioner’s contributions and explain their major significance in the field.

Here, the Petitioner’s letters do not reflect detailed information explaining how his original contributions are tantamount to major significance in the field. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value.¹⁶ On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.¹⁷ Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

¹⁵ Although we discuss a sampling of letters, we have reviewed and considered each one.

¹⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

¹⁷ *Id.* at 9. See also *Kazarian*, 580 F.3d at 1036, *aff’d* in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

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).

The Petitioner contends that he “played a leading and critical role not only as a creative director at [redacted] his employer from 2002 to October 2018, but also as a senior graphic designer at [redacted] in [redacted] and [redacted] in [redacted] and as a senior art director at [redacted] in [redacted] and references recommendation letters. As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.¹⁸ Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. It is not the title of a petitioner’s role, but rather the performance in the role that determines whether the role is or was critical.¹⁹

The letters, however, do not establish that he held a leading position, nor do they contain specific information signifying the Petitioner’s essential roles to the companies.²⁰ For instance, [redacted] claimed that the Petitioner “played a leading role at our agency and also served as a design and communications expert to client companies with prominent reputations in the creation and use of corporate and cultural literature, annuals reports, promotional and marketing pieces, and design solutions for Canadian companies.” Moreover, [redacted] indicated that the Petitioner “worked closely with our creative director as a member of a design team involved in work for such noted companies as [redacted]” Further, [redacted] stated the Petitioner “played a leading role at [redacted] and “managed client accounts and projects including the design and execution of annual reports and corporate identity systems.” Although the letters confirm the Petitioner’s employment, they do not reflect detailed, probative information demonstrating the specific nature and outcomes of his roles with the respective businesses.

On the other hand, [redacted] principal for [redacted], detailed the Petitioner’s responsibilities and specified his accomplishments contributing to the overall successes of the company. Therefore, the Petitioner demonstrated that he performed in critical role for [redacted]

However, this regulatory criterion also requires that a petitioner perform in a role for organizations or establishments that have a distinguished reputation.²¹ While the record contains screenshots from [redacted]’s website, they do not indicate that the business enjoys a distinguished reputation. In addition, the self-promotional website includes “About Us,” “Testimonials,” and “News & Views” screenshots without showing the reputation of the company. Moreover, as discussed under the awards criterion, the Petitioner presented evidence of the company’s receipt of various awards, but he did not demonstrate the significance or relevance of them. Further, although he stresses that “[t]he client

¹⁸ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

¹⁹ *Id.*

²⁰ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner’s leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

²¹ *Id.* at 10-11 (defining *Merriam-Webster’s Dictionary* definition of “distinguished” as marked by eminence, distinction, or excellence).

companies are regularly recognized as leaders in their industries by receiving the Fortune 100 or Fortune 500 designations,” the Petitioner did not show that working on projects for other companies with distinguished reputations necessarily establishes that [redacted] also enjoys such a reputation. Here, the Petitioner did not submit sufficient evidence portraying [redacted]’s standing in the field.²²

Accordingly, the Petitioner did not demonstrate that he fulfills 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 a 2017 letter from [redacted] who stated that “[w]e asked [the Petitioner] to join [redacted] in 2002 as a senior graphic designer,” and “[w]e promoted [the Petitioner] to creative director.” Moreover, [redacted] indicated that “[t]he position of Creative Director is a high-ranking position within design firms.” Further, [redacted] specified that the Petitioner’s annual salary is \$126,000 and his “performance also always qualifies him to receive our highest paid bonus.” In addition, the Petitioner submitted Form W-2 for 2016 and 2017 reflecting gross wages, tips, and other compensation of \$145,000 and \$144,500, respectively. In order to satisfy this criterion, a petitioner must demonstrate that he commands a high salary or other significantly high remuneration for services in relation to others in his field.²³ Although the Petitioner provides comparative salary information, discussed below, he does not argue, nor does the record include, evidence demonstrating that any of his additional bonuses or other incentives are significantly high in relation to others. Thus, we will evaluate the record to determine whether the Petitioner commanded a high salary (\$126,000) compared to others in his field without considering any bonuses or other compensation as part of his salary.

The Petitioner provided screenshots from flcdatcenter.com for salaries of graphic designers from various geographic locations in the United States, including [redacted] and from designcensus.org for salaries of overall designers in the United States. However, the Petitioner’s position with [redacted] is a creative director, and he earns a salary as a creative director. Thus, the Petitioner did not compare his salary as a creative director “in relation to others in the field.” See Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); see also Grimson v. INS, 934 F. Supp. 965, 968 (N.D. III. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); Muni v. INS, 891 F. Supp. 440, 444-45 (N. D. III. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

In addition, the Petitioner argues that the screenshots from onetonline.org includes the position of creative directors with graphic designers. However, as indicated in [redacted]’s letter, the positions of graphic designer and creative director have distinguished responsibilities and receive different compensation. Moreover, the fact that onetonline.org combines multiple job titles into one does not establish that the Petitioner earns a high salary as a creative director compared to the website’s definition of a graphic designer. Regardless, the screenshots only reflect the national median wages

²² In addition, the record does not contain corroborating evidence establishing the distinguished reputations for [redacted]

²³ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

of graphic designers rather than the high salaries of creative directors in the [redacted] New York area.

Similarly, the Petitioner presented screenshots from aiga.org reflecting that the 2014 national median total cash compensation for agency or design directors was \$100,000 and in-house creative or design directors was \$75,000. Notwithstanding that the Petitioner provided outdated data, the information relates to national median compensation rather than evidence of high salaries of creative directors in the [redacted] New York area.

Finally, the Petitioner submitted a screenshot from payscale.com reflecting that the average national salary for creative directors is \$86,735. In addition, the screenshot shows that the average salary range of creative directors in the United States is between \$46,108 and \$154,325, with the 75th percentile earning around \$120,000, similar to the Petitioner's salary. Thus, even considering average national salaries, the Petitioner did not demonstrate that he commands a high salary in relation to other creative directors.²⁴

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

B. Comparable Evidence

The Petitioner argues that “a commercial graphic designer is closely related to business as it forms a key part of each advertising and marketing campaign as well as representing the identity of the business through visual communications.” Moreover, he contends that “documentation showing [his] membership in professional associations and major media coverage of his design projects also can be considered comparable evidence.” The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation.²⁵ A petitioner should explain why he has 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 he has included is “comparable” to that required under 8 C.F.R. § 204.5(h)(3).²⁶

Here, the Petitioner has not shown why he cannot offer evidence that meets at least three criteria. The fact that the Petitioner did not provide documentation that satisfies at least three is not evidence that a creative director could not do so. Again, the Petitioner claimed to fulfill seven criteria. Furthermore, the Petitioner did not establish why his evidence, which did not demonstrate his eligibility for the membership and published material criteria, should then be considered as comparable evidence under

²⁴ We note that the Director indicated that “[i]t is worthwhile to remark that payscale.com indicates that creative directors in [redacted] New York can earn up to \$164,143 [for total pay].” The Petitioner does not contest or address the Director's finding on appeal.

²⁵ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

²⁶ *Id.*

those same criteria. In addition, the Petitioner did not show how his evidence is “truly comparable” to the criteria listed in the regulation.²⁷

For these reasons, the Petitioner did not establish that he qualifies for additional criteria through the submission of comparable evidence.

C. 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.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility 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, the petitioner bears

²⁷ *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

Matter of D-S-Y-P-

the 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.

ORDER: The appeal is dismissed.

Cite as Matter of D-S-Y-P-, ID# 3627741 (AAO July 2, 2019)