



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

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

MATTER OF W-S-

DATE: JUNE 5, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a 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 shown that he only met two 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 meets three 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). 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 journalist. 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 Director found that the Petitioner did not meet the criteria for awards or membership under 8 C.F.R. § 204.5(h)(3)(i) and (ii), respectively, but that he did meet the criteria for published material and scholarly articles under 8 C.F.R. § 204.5(h)(3)(iii) and (vi). On appeal, the Petitioner maintains that he meets the membership criterion.¹ Upon reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies at least three criteria.

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 claims that he meets this criterion on account of his membership in the Brazilian Writer's Association (UBE). The Director held that the Petitioner had not established that his membership in the UBE met the requirements of this criterion, noting that the articles of incorporation for the UBE do not require outstanding achievements for membership in the association. The Director

¹ The Petitioner has not raised the issue of the awards criterion on appeal. In addition, the Director noted that the Petitioner submitted documentation of his book sales as comparable evidence under 8 C.F.R. § 204.5(h)(4) to the commercial success criterion at 8 C.F.R. § 204.5(h)(3)(x). The Director stated that this evidence would not be considered because the Petitioner had not established why the standards of commercial success do not readily apply to his occupation. The Petitioner has not raised this issue on appeal.

also held that the Petitioner had not submitted evidence to establish that UBE's membership applications were judged by recognized national or international experts in the field.²

On appeal, the Petitioner provides the directory of the board of directors for the UBE with a description of each member's background and career history. The Petitioner highlights the section of the UBE articles of incorporation which state that the directors will approve the membership applications. We note that the documentation about the directory of the board of directors is a computerized translation and lacks the required certification of accuracy. Any document in a foreign language must be accompanied by a full English language translation in which the translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Here, the Petitioner has not submitted such a certification for us to validate the accuracy of the translation.

We note that these articles of incorporation are for the [redacted] Chapter of the UBE, but neither the Petitioner's UBE identification card nor any other evidence in the record indicates that he is a member of that chapter. Nor does the record demonstrate that these articles of incorporation apply to the entire UBE organization. The Petitioner must resolve these discrepancies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, the record does not demonstrate that the members of the board of directors, identified as part of the [redacted] Chapter, approve membership applications for entire organization, or that those who judged the Petitioner's achievements are recognized as national or international experts in their field.

Even if the Petitioner resolves the concerns noted above, he must establish that the UBE requires outstanding achievements as a prerequisite for membership. The articles of incorporation state six criteria that may qualify an individual for membership. Specifically, they allow for evidence that the applicant is an author of certain items under paid copyright, including being an author of literary books, of at least 20 articles in magazines or newspapers, or of a theatrical work or similar artistic work performed on stage. Other criteria allows for membership where, within the past five years, the individual has published scientific or technical work in a book or has authored a screenplay for a movie that has been filmed. A final criterion allows for evidence showing that the applicant is an author of any unpublished work that "has been awarded or achieved an honorable mention in any reputed literary contest." If none of the above apply, the articles also indicate that someone can join through attestation by other members that that the individual is a writer. Here, although the Petitioner claims that being an author under paid copyright demonstrates outstanding achievement, he has not submitted evidence to support his position. Accordingly, the record does not reflect that the UBE requires outstanding achievements of its members. Therefore, the Petitioner has not established that he has membership in an association that requires outstanding achievements as judged by nationally or internationally recognized experts in the field in order to meet the requirements of this criterion.

² We note that the Director also addressed the Petitioner's membership in the International Press Association (IPA), concluding that the evidence submitted from the IPA did not satisfy the requirements of this criterion. The Petitioner has not raised this issue on appeal and therefore, we will not consider it.

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 Director noted that the record contains articles about the Petitioner that were published in *Mix Cultural*, *Todo Dia*, and *Tribuna Liberal*, concluding that this latter publication is a professional or major trade publication or other major media. Accordingly, the Director held that the Petitioner met this criterion.

Here, we disagree with the Director and find that the published material in *Tribuna Liberal* is not about the Petitioner.³ One article from that publication, entitled [REDACTED] references the Petitioner as the director, screenplay, and editor, but focuses on the film and the individual who inspired it. The record also contains a *Tribuna Liberal* article entitled, [REDACTED]. This article quotes the Petitioner as he discusses the project, but the theme of the article is about the film. Articles that are not about a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV820-ECR-RJJ at* 1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Thus, while these articles mention the Petitioner, they do not constitute published material about him.

Similarly, the Petitioner asserts that the record contains articles about him in *Correio Popular*. One discusses the [REDACTED] but the Petitioner has not shown how this constitutes an article about himself. Another article published in *Correio Popular*, entitled [REDACTED] focuses on the Petitioner's second novel, but only mentions him once in its final paragraph. As such, the Petitioner has not established that these articles are about him, as required by the regulation.

We agree with the Director's conclusion that the articles published in *Mix Cultural* and *Todo Dia* are about the Petitioner. We further find that the record contains articles published in *Cultura* and *Folha Da Regiao On-line* that are about the Petitioner. For all four of these publications, however, the Petitioner has not submitted evidence identifying the intended audience or showing that their circulation is high compared to other publications to demonstrate that they are professional or major trade publications or major media.⁴

Finally, other evidence of published material in the record is insufficient to establish eligibility. The Petitioner submitted photographs appearing to depict him being interviewed on EM CENA, a television show, but the record does not contain a transcription of this interview or other evidence of the context of this photograph. In addition, the record contains several articles, such as one about his fictional works published in *Lumiere* and another entitled [REDACTED] that do

³ One article published in *Tribuna Liberal*, entitled [REDACTED] does not state the name of the author, as required by the regulation. 8 C.F.R. § 204.5(h)(3)(iii).

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

not contain the date or name of the author, as required under 8 C.F.R. § 204.5(h)(3)(iii). Therefore, for the reasons discussed above, the Petitioner has not established that he meets the requirements of 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 Director held that the Petitioner met this criterion. We disagree. A scholarly article in the academic arena “reports on original research, experimentation, or philosophical discourse” and “should have footnotes, endnotes, or a bibliography.”⁵ For other fields, a scholarly article should be written for learned persons in the field, which means individuals “having or demonstrating profound knowledge or scholarship.”⁶

Here, the record contains an article written by the Petitioner entitled, [REDACTED] [REDACTED] that was published in 2006, and another article co-authored by the Petitioner that was published in 2008 entitled, [REDACTED] [REDACTED] both of which were published in the magazine *UFO*. These are journalistic articles that contain interviews from individuals describing certain events. The Petitioner has not established that these constitute scholarly articles in the academic arena or in any other fields. Therefore, the Petitioner has not demonstrated that he meets the requirements of 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). 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.

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.

ORDER: The appeal is dismissed.

Cite as *Matter of W-S-*, ID# 2756032 (AAO June 5, 2019)

⁵ USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

⁶ *Id.*