



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

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

MATTER OF A-P-

DATE: MAY 8, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a photographer, seeks classification as an individual of extraordinary ability in the arts. 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 two of the ten initial evidentiary criteria, of which he must meet at least three, and he did not demonstrate that he will continue to work in his area of extraordinary ability.

On appeal, the Petitioner submits an additional document and a brief, arguing 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 he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’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 most recently worked as a photographer for two magazines and a broadcasting company in Georgia.¹ 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 only fulfilled two of the evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv) and artistic display under 8 C.F.R. § 204.5(h)(3)(vii). The record reflects that the Petitioner served on a jury for a television fashion contest and displayed his work in magazines and at galleries. Accordingly, we agree with the Director that the Petitioner met the judging and artistic display criteria.

On appeal, the Petitioner maintains that he fulfills an additional criterion. 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.

¹ The Petitioner indicated on Form G-325A, Biographic Information, that he has not been employed since July 2015.

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 his membership with the [redacted] (APG). The record contains letters from [redacted] president of APG, who confirmed the Petitioner's membership and described APG's eligibility requirements, such as a minimum of ten years of professional experience, a minimum of six newspaper covers printed in a Georgian popular newspaper, master classes or lectures, existent professional portfolio, and an autobiography emphasizing the achievements in depth. In addition, [redacted] stated that APG's jury "is drawn from delegates nominated annually by the national organizations within their relevant QEP [Qualified European Photographer] and Master QEP holders." On appeal, the Petitioner submits an additional letter from [redacted] who provided the professional background for two of APG's jury members.

In order to satisfy this criterion, the 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.² Although [redacted] discussed APG's professional experience requirements, the Petitioner did not demonstrate that an applicant's accomplishments or achievements rise to the level of "outstanding" consistent with this regulatory criterion. For instance, the Petitioner did not establish that condition of a "minimum [of] six newspaper covers printed in [a] Georgian popular newspaper with a glossy print" is viewed as an outstanding achievement in the field, nor did he define or expand upon the "professional portfolio" and "autobiography" requirements. Moreover, while [redacted] claimed that two of the jury members are "world recognized," the Petitioner did not present supporting evidence reflecting their national or international recognition in the field.

In addition, the record contains screenshots from APG's website, photographers.ge. A further review of the website, however, does not corroborate the statements made by [redacted]³ Specifically, "the candidate must fill the Application form and submit the electronic version of the signed document" and "after covering [the] membership fee his/her status on the portal will be changed (amateur or professional)." Moreover, "[p]rofessional photographer status will be given to a person whose income is the source from photographic activity." Thus, according to APG's website, membership is based on filing an application and paying the membership fee, and professional photographer status is based on source of income. The website does not reveal the membership requirements claimed by [redacted] Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Here, the

² 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 AD 11-14 6-7* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (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).

³ Accessed on May 8, 2019, and incorporated into the record of proceedings.

Petitioner did not submit the bylaws or other similar documentation to support the statements of

Finally, the Petitioner contends that he “was hailed by the former First Lady of Georgia as one of the best and top rated photographers in Georgia” and “his Royal Highness and Princess selected [him] as their photographer.” The Petitioner, however, did not demonstrate how his selection qualifies him as a member of an association that requires outstanding achievements, as judged by recognized national or international experts in the field.

For the reasons discussed above, the Petitioner did not establish that he fulfills this criterion.

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.⁴ 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 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 A-P-*, ID# 3097143 (AAO May 8, 2019)

⁴ As the Petitioner has not demonstrated his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether he intends to continue working in the area of extraordinary ability under section 203(b)(1)(A)(ii).