



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

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

MATTER OF S-A-X-

DATE: MAY 15, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a  seeks classification as an individual of extraordinary ability in the arts. 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 Petitioner's Form I-140, Immigrant Petition Alien Worker. We subsequently dismissed the Petitioner's appeal.<sup>1</sup>

The matter is now before us on a motion to reopen. Upon review, we will deny the motion.

### I. LAW

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 submits qualifying evidence under at least three criteria, we will then determine whether the totality of 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.<sup>2</sup>

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<sup>1</sup> See *Matter of S-A-X-*, ID# 1567873 (AAO Sept. 24, 2018).

<sup>2</sup> 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).

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. PROCEDURAL HISTORY

The Director denied the petition, finding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three. In dismissing the appeal, we determined that the Petitioner fulfilled only two 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).<sup>3</sup> On motion, the Petitioner submits a new document relating to the awards criterion under 8 C.F.R. § 204.5(h)(3)(i).

## III. ANALYSIS

In order to fulfill the awards criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i), the Petitioner must demonstrate his “receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.”<sup>4</sup> In our decision, we determined that the Petitioner did not establish that his receipt of the “Best [redacted] of Pakistan” at “[redacted]” in 2006 and 2008 fulfilled this criterion. Specifically, we found that the Petitioner’s evidence did not show that the awards are nationally or internationally recognized for excellence in the field consistent with the regulatory criterion.

On motion, the Petitioner presents a letter from [redacted] president of marketing and sales for [redacted] Network, who provided background information and viewership data regarding [redacted] Network and [redacted]. In addition, he stated that “[redacted] instituted an award for excellence in music for which it awards to the best musician of Pakistan,” and “[t]his is an award recognized for its national standing and the recipient is truly the best in the country for that year.” However, [redacted] did not explain or support his letter showing how the network’s award is “recognized for its national standing.” Furthermore, the Petitioner did not demonstrate through independent, objective evidence that [redacted] Network’s awards are nationally or internationally recognized for excellence in the field.<sup>5</sup> For these reasons, the Petitioner did not establish that he satisfied the awards criterion.

## IV. CONCLUSION

The Petitioner has not demonstrated that the evidence on motion establishes that he has fulfilled at least three of the evidentiary criteria. In visa petition proceedings, it is the petitioner’s burden to

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<sup>3</sup> As the Petitioner had not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we found that we did not have to determine whether he intended to continue to work in the United States in his area of expertise. See section 203(b)(1)(A)(ii) of the Act and 8 C.F.R. § 204.5(h)(5).

<sup>4</sup> See also 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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

<sup>5</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (stating that relevant factors regarding whether the basis for granting the prizes or awards was excellence in the field include, but not limited to, the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize recipients as well as any limitations on competitors).

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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 motion to reopen is denied.

Cite as *Matter of S-A-X-*, ID# 3071133 (AAO May 15, 2019)