



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

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

In Re: 5192140

Date: NOV. 14, 2019

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an advertising agency, seeks to classify the Beneficiary 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 petition, concluding that the Petitioner established that the Beneficiary had satisfied only one of the ten initial evidentiary criteria for this classification, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that the Beneficiary meets five of the ten criteria and qualifies as an individual of extraordinary ability.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

II. ANALYSIS

The Petitioner has employed the Beneficiary as an associate creative director since 2017, and he has previously held copywriter and creative director positions with other advertising agencies in Argentina and New Zealand.

A. Evidentiary Criteria

Because it has not indicated or established that the Beneficiary 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 Beneficiary fulfilled only one of the initial evidentiary criteria, participating as a judge of the work of others in his field, under 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the Petitioner maintains that the Beneficiary meets four additional criteria, discussed below. We have reviewed all of the evidence in the record and find that it does not support a finding determination that the Beneficiary satisfies the requirements of at least three criteria.

Documentation of the individual’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)

In order to fulfill this criterion, the Petitioner must demonstrate that the Beneficiary’s prizes or awards are nationally or internationally recognized for excellence in the field of endeavor.¹ Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, 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.²

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

² *Id.*

The Petitioner claims eligibility based on the Beneficiary's receipt of the following awards and recognition for his work:

- The [redacted] International Festival of Creativity ([redacted]): "Silver Lion" (one), "Bronze Lion" (one) and "Shortlist" (two)
- [redacted] Festivals International Advertising Awards ([redacted] Festivals): "2nd Prize Award" (one) and "Finalist" (one)
- [redacted] Awards: 2013 (six), 2011 (three), 2010 (two), 2009 (four)
- [redacted] *Lapiz de Oro* ("Golden Pencil") Diploma (one)
- [redacted] Annual Advertising Exhibition: "Award of Excellence" (one)
- [redacted]'s "The One Show": "Merit Award" (two)

The Petitioner provided the [redacted] festival's media kits for its 2018 and 2019 festivals, as well as an article published by *The Guardian* regarding the 2016 festival, noting that "the industry descends on the [redacted] to recognize the best advertising in the world." As it relates to the [redacted] Festivals, the Petitioner provided an online article from AdHugger.net regarding the festival's announcement of its Finalists, which are selected by a grand jury in approximately 20 categories. The article notes that "[redacted] Festivals recognizes exceptional contributions by individual companies within the international advertising community" and holds an annual ceremony and gala to celebrate "the winners of the World's Best Advertising." While this media coverage establishes that these two festivals draw international competitors in the Beneficiary's field and are recognized outside the awarding organization, they do not address the awards that the Beneficiary won.

With respect to the remaining award-issuing entities, the Petitioner submitted a screenshot from the website of [redacted] indicating that it "organizes the most prestigious and recognized prizes of the [redacted] advertising industry: The Gold Pencil and the Platinum Pencil. And the highest award for excellence in communications: the Jerry Goldenberg Award."³ A letter from the [redacted] states that the organization "awards the most creative work in advertising" at its annual [redacted] ceremony, and that its awards "are respected throughout the industry." Finally, a letter from [redacted] describes its "The One Show" awards competition, noting that "to be selected for a Pencil is a great honor."⁴ The Petitioner did not submit independent evidence from a source other than the organizations themselves regarding the national or international recognition accorded to the awards they issue.

While the record contains sufficient evidence to establish that the aforementioned competitions are national or international in scope, the issue here is not the scope of the Beneficiary's competitions, but rather whether his specific awards are "nationally or internationally recognized prizes or awards for excellence in the field."

The record reflects that the awarding entities, including [redacted] and [redacted] Festivals, issue different levels of awards. The Petitioner did not demonstrate that the specific awards the Beneficiary received are nationally or internationally recognized for excellence in the field consistent with this

³ Elsewhere, the Petitioner described the *Lapiz de Oro* as "an award granted to the best TV and Radio Commercials in [redacted] each month" as "judged by professionals of advertising agencies and marketers."

⁴ As noted, the record reflects that the Beneficiary received "Merit Awards" from The One Show, rather than the "Pencil" award mentioned in the letter from the awarding entity. The letter did not address the significance of the "Merit Award."

regulatory criterion. For instance, the Petitioner did not establish that his receipt of “Silver” and “Bronze” awards and “Shortlist” recognition from [redacted] or a “2nd Prize” award and “Finalist” recognition from [redacted] Festivals are acknowledged by his field as national or international awards for excellence relative to garnering the top awards from each awarding entity. On appeal, the Petitioner points to evidence indicating that in 2018, only 1186 entries (out of 32,372, approximately 3.5%) received [redacted] awards, thereby suggesting that any [redacted] award should satisfy this criterion.

However, the submitted evidence indicates that that the top prize issued by [redacted] in each category or subcategory is the “Grand Prix,” while the [redacted] Festivals award “Grand Prize” and “Best of Show” awards in addition to first, second and third place awards. The record does not contain a breakdown of how the awards are structured, such as the total number of bronze, silver, gold, and Grand Prix winners recognized and how the entries and awards are distributed among subcategories, of which there appear to be many.⁵ Further, the Petitioner did not show that the issuance of numerous awards below the top category is indicative of a nationally or internationally recognized award “for excellence” in the field of endeavor. As noted, the number of awardees or prize recipients is a relevant consideration when evaluating whether a given award meets this criterion.⁶

In addition to the awards discussed above, the record contains additional evidence related to this criterion. The Petitioner submitted photographs of a 2013 [redacted] Festivals Gold World Medal, a 2013 [redacted] Award (Film Category) trophy, and a 2013 Golden Award [redacted] (Gold – Category Winner), all of which were awarded to [redacted] for a Coca-Cola commercial.⁷ 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. The Petitioner did not submit any corroborating evidence from these three awarding entities confirming that they awarded these prizes to the Beneficiary or otherwise recognized him individually.⁸ Therefore, the Petitioner did not submit sufficient evidence that the Beneficiary received these awards or prizes and we will not further address them.

The Petitioner also states that the Beneficiary received a “2017 Silver [redacted] Award (New Zealand)” but it did not provide documentation to support that claim. It provided a screenshot of “Winners [redacted] Awards” from the website of the New Zealand [redacted] that includes links to the awards results for the years 2010 through 2016. The record also includes a photograph that appears to show a group of individuals from [redacted] the Beneficiary’s former employer, accepting a

⁵ For example, The [redacted] 2018 Media Kit indicates that 120 award subcategories were removed in 2018. The record does not contain comparable information regarding the number of entries and awards for the years in which the Beneficiary’s work was recognized. The media kit also describes an awards “point system” noting that under the new system, shortlist, bronze and silver awards would garner an agency 1, 3 and 7 points, respectively, as opposed to 15 points for a gold award and 30 points for a Grand Prix award.

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

⁷ The record does not reflect that the Beneficiary has ever been employed by [redacted]. However, the [redacted] festival recognized the Beneficiary’s work as copywriter on this Coca-Cola television ad (identifying [redacted] as the responsible agency), while other evidence in the record attributes the commercial to the Beneficiary’s claimed former employer, [redacted]. The Petitioner did not explain or document any connection between these two agencies.

⁸ A letter from the awards coordinator of [redacted] Festivals, dated November 2016, confirms only the Beneficiary’s 2nd Prize award received in 2014, and a “Finalist” recognition received in 2013.

“Grand [redacted]” This evidence does not document the Beneficiary’s receipt of a 2017 Silver [redacted] Award.

On appeal, the Petitioner emphasizes that the aforementioned Coca-Cola advertisement was one of ten commercials judged as a “winner” in the 2013 TED Initiatives [redacted]. The documentation from TED.com shows that it recognized both the brand and the Beneficiary’s former employer [redacted] for the commercial by including it on its winners list. However, the Petitioner did not submit any corroborating evidence from TED confirming that the Beneficiary himself received a prize or award for his work on this ad.

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

Published material about the individual in professional or major trade publications or other major media, relating to the individual’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 states that it provided evidence that “[the Beneficiary] and his achievements have been the topic of articles published by professional publications and media.” The Petitioner provided evidence that an interview with the Beneficiary was published on the website of *Campaign US* (www.campaignlive.com), as part its [redacted] series, described as a “weekly feature in which we learn about the media young people in the ad industry are currently consuming.” The Beneficiary’s photograph appears with the article, which contains responses to questions about his current favorite television programs, movies, music, books, and social media sites. While this article clearly features the Beneficiary and is about him, it does not relate to his work in the field as required by this regulation.

The Petitioner also submitted brief articles published on the website of *AdLatina*. One article, titled [redacted] announces that the Beneficiary and three other individuals were all promoted to the position of creative director with [redacted] and includes a quote from a company representative regarding their strong performance. The other article,⁹ titled [redacted] announces that the Beneficiary and another individual had recently joined [redacted] as creative directors. A quote from two executive creative directors at the agency describes the Beneficiary and his colleague as creative directors who “understand what a brand needs without borders” and have “good energy.” While the Petitioner provided evidence that the print version of *AdLatina* magazine qualifies as a professional publication, it did not demonstrate that these brief promotion and hiring announcements appearing on the AdLatina.com website can be deemed to be published material about the Beneficiary and his work in the field. In both instances, the body of the article refers to the Beneficiary only by his first name and does not mention or his work in the field beyond noting his promotion or transfer.

⁹ The Petitioner indicated that this same article appeared on the websites Dossiernet.com and LatinSpots.com and provided copies of partially illegible screenshots from those sites.

In addition to the aforementioned articles, the Petitioner provided screenshots indicating that the Beneficiary's advertising projects for well-known brands have appeared on various websites, including both industry-oriented websites that maintain databases of creative advertising work, and on general websites, such as NFL.com. The Petitioner also presented that the above-mentioned Coca-Cola ad, which was aired during the 2013 [redacted] was covered by various media outlets. The Petitioner did not provide full copies of articles covering the Coca-Cola commercial or evidence that the Beneficiary was mentioned in those articles.¹⁰ Further, evidence demonstrating that his work can be viewed online is not "published material" about the Beneficiary. Articles or other evidence that are not about a beneficiary 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).¹¹ In fact, the submitted evidence does not mention the Beneficiary, let alone reflect published material about him.

Finally, the Petitioner provided evidence that some of the awarded projects on which the Beneficiary worked appear in the archives of the awarding entities' websites. While this evidence identifies the Beneficiary by name as a member of the creative team behind the awarded project, it does not meet the plain language of the criterion as it is not "published material" about the Beneficiary.

For the reasons stated, the Petitioner did not provide evidence that satisfies this criterion.

Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

We agree with the Director's determination that the Petitioner met this criterion. The Petitioner provided evidence that the Beneficiary participated as a member of the jury in the "Direct Marketing" category at the 2006 [redacted] awards sponsored by the [redacted]

Evidence that the individual 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).

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.¹² 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.¹³

¹⁰ We acknowledge that several of the news outlets covering this project are major media (such as *CBS News* and *Daily Mail*), but, as noted, the evidence was incomplete and the Petitioner did not establish that the coverage was about the Beneficiary.

¹¹ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (finding that the published material should be about the Beneficiary relating to his work in the field, not just about his or her employer or another organization with whom he or she is associated).

¹² *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

¹³ *Id.*

The Petitioner's initial letter in support of the petition described the Beneficiary's duties as an associate creative director, noting that he leads creative efforts and develops communication strategies, writes TV scripts and campaigns across different media, supervises creative teams, develops proposals and works closely with executive creative directors and art directors to establish the identify of assigned products. The Petitioner emphasized that "having someone like [the Beneficiary] working at [the company] is essential to the development of the creativity that the agency is proud of, and led the agency to be [redacted] Agency of the Year."

The Petitioner later provided a letter from [redacted] a vice president and executive creative director, as evidence that the Beneficiary meets this criterion based on his current role as an associate creative director. [redacted] states that the Beneficiary's contributions "have directly impacted several of the agency's largest marquee clients" and emphasizes that the Beneficiary "has been a key player in our efforts to retain existing clients, specifically [redacted] which contributes approximately \$20MM in revenue to the agency annually." He specifies that two of the [redacted] ads on which the Beneficiary worked had been featured on [redacted] – a leading advertising press channel – and that such recognition "has helped [the Petitioner] maintain its profile as a leading agency brand."¹⁴ [redacted] references the Beneficiary's work on ad campaigns for another client, and also emphasizes that "he has been instrumental to the agency's new business efforts" and "continues to be critical to the success of our business."

While [redacted]'s statement indicates that the Beneficiary has been successful in the performance of his job duties and received assignments to one or more major accounts, his letter does not establish that the Beneficiary has held a leading position, nor does it contain specific information signifying the Petitioner's essential role to the company or its impact on the company's overall operations.¹⁵ The letter identifies the two main clients with which the Beneficiary has worked since joining the company, but it does not include detailed, probative information demonstrating the specific nature of his role with the business or the associated outcomes. For example, [redacted] does not explain why he considers the Beneficiary to be a "key player" with respect to the [redacted] account or why he deems him "critical" to the company's overall success. The evidence indicates that a large creative team is credited for any given project and some of the creative teams on which the Beneficiary has worked have included more than one associate creative director. Further, as it relates to a leading role, the Petitioner did not provide evidence to establish where the Beneficiary's position fits within its overall organizational hierarchy. However, we find sufficient evidence to establish that the Petitioner has a distinguished reputation in its field.

The Petitioner has also submitted letters from two of the Beneficiary's prior employers. [redacted] founder-president of [redacted] praises the Beneficiary's "ground breaking innovation and creativity" and stated that, as a result of his talents, he was assigned to high profile clients. Another

¹⁴ The Petitioner provided evidence that its television ads for [redacted] appear in the Creative Works section of [redacted]). Based on the information provided on the website, any company may submit their creative work for inclusion. While work is reviewed by an editorial board prior to being included in the database, the Petitioner did not establish that the Beneficiary's work was specifically "featured" by the website.

¹⁵ 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).

letter, from [redacted] a vice president with [redacted] states that the Beneficiary's "leading role in our agency as Creative Director was key to create, craft and sell creative campaigns." [redacted] further states that having the Beneficiary as a creative director was "critical for the development of the agency, as it gave a vast amount of positive publicity for our company." The record also includes a letter from [redacted] creative chairman of [redacted], where the Beneficiary worked as a creative copywriter. He states that the Beneficiary "was in charge of copywriting for a wide range of accounts," carried out his responsibilities "in the most relevant ways," and created "exceptional" content. Finally, he states his opinion that the Beneficiary "will greatly influence the work of any agency that [he] may work for." Although these letters confirm the Petitioner's employment and offer praise for his talents, they do not present detailed, probative information demonstrating the specific nature and outcomes of his roles with the respective businesses. Further, the Petitioner did not provide sufficient evidence reflecting the standing of these employers in the field.

Accordingly, the Petitioner did not establish that the Beneficiary satisfies this criterion.

Evidence that the individual 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 Petitioner states that it pays the Beneficiary an annual salary of \$147,000 and provided a copy of his IRS Form W-2 indicating that it paid him \$108,595 in 2017. The Director found that there was an inconsistency and relied upon the lower figure reported on the Beneficiary's Form W-2 when evaluating this criterion. However, the record reflects that the Beneficiary did not work for the Petitioner for the entire year in 2017, and, as such, the salary reported on his Form W-2 did not reflect his actual annual salary. After evaluating the submitted comparative salary information submitted by the Petitioner for the metropolitan area where the Beneficiary works, we find that the Beneficiary's \$147,000 salary meets this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved an O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, 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 Beneficiary 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 the Beneficiary’s 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 Beneficiary 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 the Beneficiary’s 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.

ORDER: The appeal is dismissed.