



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

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

In Re: 5466540

Date: NOV. 21, 2019

Appeal of Nebraska Service Center Decision

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

The Petitioner, an actor, seeks classification as an alien 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 petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to aliens 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. A petitioner can either demonstrate a one-time achievement (that is, a major, internationally recognized award), or 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 qualifying 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

A. Initial Evidence

The Petitioner is an actor who has appeared on stage and television and in films. Because the Petitioner 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). The Petitioner claimed to have met five of the criteria. In denying the petition, the Director determined that the Petitioner met only one of the criteria. We find that the Petitioner met two others, as discussed below. As the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

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)

We agree with the Director that the Petitioner did not satisfy this criterion.

The Petitioner indicated that he satisfied this criterion through prizes and nominations relating to three stage productions, two films, and an advertising campaign. Only one of the listed items, however, is a prize or award that the Petitioner received (discussed below). The rest are prizes that went to overall productions or campaigns, or nominations for prizes that others actually received (the nominations were not in the Petitioner’s name). One play was a “*New York Times* Critic’s Pick,” but the Petitioner did not show that this is a prize or award, rather than a designation granted by that publication. For these various

reasons, the majority of the claimed honors do not meet the threshold requirement of “the alien’s receipt of . . . prizes or awards.”¹

The Petitioner contends that he was instrumental in an award-winning promotional campaign for [redacted] [redacted] because he featured in its online advertisements, and therefore he is largely responsible for the campaign’s award from PromaxBDA. The Petitioner is not a named recipient of that award, but even if he were, by regulation the prize or award must be “in the [petitioner’s] field of endeavor.” The Petitioner’s field of endeavor is acting. The PromaxBDA awards recognize “Promotion, Marketing & Design,” not acting. For all these reasons, a marketing award presented to third parties cannot establish the Petitioner’s receipt of prizes or awards in the field of acting.

There is only one prize or award that the Petitioner personally won. The Petitioner stated that he “received the 2017 *BroadwayWorld* award for [redacted] for his role in the [redacted] performance of [redacted].” A regional managing editor of *BroadwayWorld* attested to the size of *BroadwayWorld*’s readership, and quoted from a press release indicating that voting took place in “56 cities across the United States” and “a record-breaking 11 countries.” The editor did not indicate that the Petitioner received votes spanning this international readership or clarify how ballots vary from one locality to another. The distinction is critical because the overall international reputation of an award-granting institution does not convey national or international recognition on awards that are limited to a much smaller geographical area. The Petitioner appeared in a non-touring production that could only be seen in [redacted], and he has not submitted evidence that the particular award that he received was recognized beyond that local area at the national or international level.

Looking at the documentary evidence, the press release from *BroadwayWorld* indicates that the Petitioner won a “BroadwayWorld [redacted] Award,” as part of “the 2017 BroadwayWorld [redacted] Regional Awards.” The theaters and resident companies listed in the press release are all in Minnesota [redacted]. The named runners-up for [redacted] were, likewise, nominated for performances in Minnesota. Whatever national or international reputation *BroadwayWorld* may enjoy as a whole, the Petitioner did not establish that the *BroadwayWorld* [redacted] Award, described as “regional” by the awarding entity itself, is nationally or internationally recognized.

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)

We agree with the Director that the Petitioner satisfied this criterion. The Petitioner submitted copies of numerous articles from several different sources, mostly reviews of theatrical productions. Not all of the

¹ The Petitioner contended that, much as a sports team relies on the efforts of all its players, “[t]he creation of a film or theater production . . . relies on all members of the team for success. . . . Thus, [the Petitioner’s] role as a starring actor contributed to the success of each film and theater production.” In the Petitioner’s analogy of a sports team, the entire team shares the championship title. The Petitioner has not shown this to be the case with the awards documented in the record. If the Petitioner was not a named recipient of a given prize or award, then he cannot vicariously claim that prize or award by virtue of his involvement in the production. The regulation requires “[d]ocumentation of the alien’s receipt of . . . prizes or awards,” rather than the alien’s involvement in award-winning projects.

published material is about the Petitioner, and not all of it appeared in major media, but the submission includes some qualifying materials.

Evidence of the alien'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)

The Petitioner stated that he “served as a judge in both 2014 and 2013” at “the [redacted] Graduate Acting panel, where he was responsible for selecting an ensemble of 16 actors, all of whom were sought-after by top theatre companies and television programs.”

The Director noted a letter from [redacted] School of the Arts referred to “selecting the best possible students for the 2018 cohort.” The Director found that the Petitioner did not establish that the judging took place before the petition’s February 2018 filing date. But the letter is from December 2014; the phrase “the 2018 cohort” refers to the school’s class of 2018, selected in 2014 for the four-year program of study.

The *significance* of the judging activity is a matter for the final merits determination, further below.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

The Petitioner claimed to have satisfied this criterion through the screening of [redacted] at three film festivals and a performance of [redacted] at the [redacted] Theatre Festival. The Petitioner had supporting roles in both of these productions. The Director found that the Petitioner had not satisfied this criterion, but we agree with the Petitioner that film and theater festivals qualify as artistic exhibitions for the purposes of the criterion. The importance and standing of those festivals is a matter for the final merits determination.

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)

We agree with the Director’s finding that the Petitioner has not satisfied this criterion.

The Petitioner claimed to have satisfied this criterion by appearing in online advertisements for [redacted]; playing [redacted] and playing various parts at the [redacted] Theater, an off-Broadway venue in New York. The Petitioner cited various unpublished appellate decisions indicating that acting roles can satisfy this criterion. Those decisions have no weight as precedent under 8 C.F.R. § 103.3(c). All the cited non-precedent decisions predate the binding authority of U.S. Citizenship and Immigration Services (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*, 10 (Dec. 22, 2010), <http://www.uscis.gov/legal-resources/policy-memoranda>. That memorandum states:

If a leading role, the evidence must establish that the alien is (or was) a leader. A title, with appropriate matching duties, can help to establish if a role is (or was), in fact, leading.

If a critical role, the evidence must establish that the alien has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the alien's performance in the role is (or was) important in that way. It is not the title of the alien's role, but rather the alien's performance in the role that determines whether the role is (or was) critical.

The Petitioner appeared, by himself, in a series of short advertisements for [redacted], promoting [redacted] programming in parts of Europe. The creative director for [redacted] stated, in a letter, that the Petitioner's "four sessions as a spokesperson . . . are critical components of our organization's marketing strategy . . . and have been critical to [redacted] at large." The Petitioner submitted evidence regarding the success and stature of [redacted] but the record does not objectively demonstrate that the Petitioner has held any position of leadership within the [redacted] organization. The Petitioner certainly represented the face of this particular four-session marketing campaign, as the only actor appearing in the short commercials, but the letter from the creative director does not provide sufficient detail as to how this role was critical to [redacted]'s overall operations.

The Petitioner played a title role in [redacted]. The theater's artistic director stated that the Petitioner "was an integral part in representing [redacted] as a place to witness the world's finest theatre" and "helps cultivate a creative environment." The record does not show how the Petitioner's performance was critical to the [redacted]. As the artistic director noted, the Petitioner's performance was well-reviewed, and the record shows considerable local coverage in the [redacted] area, but the Petitioner did not establish that his portrayal of [redacted] was of significant importance to the outcome of the [redacted]'s activities, for example by significantly increasing ticket sales or raising the theater's profile.

The artistic director of the [redacted] Theatre stated that the Petitioner "has played a critical role in numerous [redacted] Theatre productions." The adjective "numerous" is vague, but the record identifies only two such productions. Published reviews in the record discuss the Petitioner's role in [redacted] one of three one-act plays presented together in 2016; reviews of the 2015 production of [redacted] tend to mention him with others as part of an ensemble cast. As with the above discussion of the [redacted] the record does not show that the Petitioner played a leading or critical role for the [redacted] as an organization.

The Petitioner quotes a dictionary definition of "organization" as "a body (as a corporation or union) that has a membership acting or united for a common purpose." The Petitioner maintains that this definition applies to "a television show, film or stage production," but it is so broad that it also applies to the audience (gathered together for the common purpose of watching the production).

We need not argue the definition, however, to point out that the organization itself must have a distinguished reputation. Therefore, for example, if the Petitioner contends that the cast and crew of the [redacted] production of [redacted] was an organization, then the Petitioner must show that the cast and crew collectively have a distinguished reputation in their own right, rather than relying on the

reputation of the [redacted] itself. The Petitioner has not shown that the productions in which he played leading or critical roles have distinguished reputations (as opposed to transitory local press coverage).

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.² In this matter, we determine that the Petitioner has not shown his eligibility.

As acknowledged above, the Petitioner has been the subject of media coverage relating to his acting work. This coverage, however, has been overwhelmingly local and project-specific in nature. For instance, [redacted] news outlets covered him during his run in [redacted] at the [redacted] but apparently not before or after that time.

The field of acting intrinsically involves some level of public visibility, even at the lowest levels; local media will review productions at community theaters or even at schools, and in some areas, the local media includes nationally known publications. In this respect, project-specific public attention is not inherently demonstrative of sustained acclaim at the very top of the field. There are hierarchies among theaters, among film production companies, and among film festivals; an actor's work at lower levels can satisfy the letter of the regulatory criteria but not the underlying statute.

The Petitioner has acted in a film shown at three festivals, and in a play staged at another, but the Petitioner has not shown that his work was a focus of attention beyond the local level or otherwise earned national or international acclaim. The Petitioner's roles in [redacted] and [redacted] appear to have been comparatively minor supporting parts, judging from the submitted reviews in the record (which, unlike the letters in the record, were not written for the specific purpose of supporting the petition).

The Petitioner's work as a judge, while sufficient to meet the broad wording of 8 C.F.R. § 204.5(h)(3)(iv), does not place him at the top of the field. The record shows that the Petitioner participated on an "alumni panel to screen those auditioning for acceptance into [redacted] Graduate Acting Program," indicating that judges are chosen not from throughout the field, but from the much more limited pool of [redacted] Program alumni. Furthermore, the Petitioner has not shown that helping to audition students for a graduate program is an activity reserved for, or typically performed by, acclaimed actors at the top of the field.

² *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 4* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

Letters written to support the petition are of limited value in this situation. A [] School official claims, in one such letter, that the Petitioner “was chosen to be part of this select judging panel due [in part] to . . . his multiple awards.” As noted above, the record identifies only one award in the Petitioner’s name, which he won in 2017, several years after he began judging applicants for the program. The other awards, which the Petitioner claims to have won vicariously through his involvement, also post-date the beginning of his involvement with the selection panel.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from a petitioner’s personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2 (BIA 2008). Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by a petitioner in support of an immigration petition are of less weight than preexisting, independent evidence.

The Petitioner has undoubtedly had a successful career in a field where it can be difficult even to secure steady employment. Nevertheless, success does not equal acclaim. The Petitioner’s satisfaction of at least three evidentiary criteria owes more to the nature of his occupation than to his own level of acclaim. The Petitioner has not established the required acclaim in a field where those at the top are household names. The Petitioner’s own evidence underscores this point. For instance, he submitted a number of articles about a Shakespeare in the Park production of *King Lear*, many of which emphasized the participation of John Lithgow in the title role. The Petitioner has not established a record of acclaim that compares favorably to that of Mr. Lithgow. Similarly, discussion of the Petitioner’s work on an [] marketing campaign invites comparison to the level of acclaim achieved by some of the actors who appear in [] programming.

III. CONCLUSION

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 and recognition of his acting work are indicative of the required sustained national or international acclaim or that they are 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. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.