



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

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

MATTER OF C-N-

DATE: OCT. 22, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a multimedia installation artist, 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only one of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner presents a brief, arguing that he fulfills 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 indicated that he has exhibited his work in Europe and the United States. 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 determined that the Petitioner met one of the initial evidentiary criteria, display under 8 C.F.R. § 204.5(h)(3)(vii). As indicated above, the Petitioner has exhibited his work at artistic exhibitions and showcases. Accordingly, we concur with the Director's finding for the display criterion.

On appeal, the Petitioner maintains that he fulfills two additional criteria, discussed below. 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.

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).

The Petitioner argues that his receipt of a grant from the [redacted] meets this requirement. In order to fulfill this criterion, the Petitioner must demonstrate that he received the prizes or awards, and they 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

The record reflects that the Petitioner provided screenshots from [redacted] indicating that [redacted] “provides financial support with the purpose of stimulating the relevant development and visibility of visual arts and cultural heritage in the [redacted].” Moreover, [redacted] bases its decision to award a grant on “whether the quality of the artist’s work until the time of the application is relevant for the modern visual arts and whether the same can be expected from the development of the artist’s work.” Here, the screenshots show that the purpose of [redacted] is to provide financial assistance to develop art and make connections rather than to recognize an artist’s excellent achievements in the field.³ In addition, the Petitioner did not show the field’s recognition of the [redacted] grant as a national or international prize or award for excellence. For these reasons, the Petitioner did not establish that such financial assistance qualifies as a nationally or internationally recognized prize or award for excellence in the field.

In addition, the Petitioner contends that he won the “[redacted] award from the Museum of Contemporary Art [redacted]. The record reflects that in response to the Director’s request for evidence (RFE), he submitted a letter, dated November 2018, inviting the Petitioner for an exhibition as part of the [redacted] prize. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. See 8 C.F.R. §103.2(b)(1). Here, the Petitioner did not demonstrate that he received the [redacted] award prior to the filing of his initial petition in October 2017. Moreover, while the Petitioner submitted background information about [redacted]⁴ he did not show that the field recognizes it as a national or international award for excellence.

Finally, the Petitioner asserts that “while [his] selection to the shortlist for The [redacted] [redacted] . . . might not meet the plain meaning of the regulation, it also should be considered in a final merits analysis because of its considerable weight.” The record reflects that the [redacted] Arts 2015” shortlisted the Petitioner to the art competition. However, the Petitioner did not demonstrate that he received or won the [redacted], nor did he establish being named to the “shortlist” qualifies as a nationally or internationally recognized prize or award for excellence in the field consistent with this regulatory criterion.

Accordingly, the Petitioner did not show that he satisfies this criterion.

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.*

³ For example, the screenshots state that “this prize is an investment in talent development, through an awarded work period for all nominees, and finally a joint exhibition complete with publication.”

⁴ For instance, a screenshot from an unidentified website indicates that [redacted] “is annually awarded since 2003,” “in collaboration with the Museum of Contemporary Art,” and “[t]he final decision of the Award Winner is met by the jury appointed for the period of three years.”

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 Petitioner claims that he submitted two articles published in major media and four articles published in major trade publications. In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.⁵

Regarding his major media claim, the Petitioner presented an article from *Vogue Man Nederland* reflecting published material about him relating to his work. However, the Petitioner did not include the required author of the article. Moreover, the Petitioner did not establish that *Vogue Man Nederland* is a major medium. While the Petitioner submitted a promotional page from the magazine claiming that it “is the ultimate men’s fashion magazine” with a circulation of 40,000, he did not provide any independent, supporting evidence to corroborate the magazine’s claims. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff’d* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine’s status is not reliable evidence of major media). Further, the Petitioner did not show the significance of the circulation figures or explain how such data reflects status as a major medium.

In addition, the Petitioner claimed that he submitted an article published in *NRC Handelsblad*. However, the original article contains no identifying information showing that the article was published in *NRC Handelsblad* or the required publication date. Moreover, under the title, the accompanying certified translation stated that the article reflects: “By [redacted] [redacted] NRC Handelsblad.” However, the original article shows: [redacted]. Again, the original article does not include the publication and date as asserted by the translation. 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). Moreover, any document in a foreign language must be accompanied by a full English language translation. *See* 8 C.F.R. § 103.2(b)(3). 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. *Id.* Because the translator inserted information not present in the original document, the translation is not “complete and accurate,” and therefore, lacks probative value. Accordingly, the Petitioner did not establish that the article reflects published material about him and includes the required date of the material.

Moreover, the record reflects that the Petitioner offered screenshots from *adformatie.nl* reflecting that *NRC Handelsblad*’s circulation statistics in the third quarter of 2017 was 130,793. However, the Petitioner did not present circulation figures for 2014, the year when the article was purportedly published. Furthermore, the screenshots show the circulation figures for nine other publications, placing *NRC Handelsblad* in fourth place on the list. In fact, the circulation numbers for the three

⁵ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

highest publications are: 353,009, 297,823, and 210,685, respectively. When compared to the other publications, the Petitioner did not demonstrate that *NRC Handelsblad* qualifies as a major medium.

As it relates to his major trade publications claim, the Petitioner submitted in response to the Director's RFE, a screenshot from gallerieswest.ca announcing his exhibition from [redacted] 2018. The screenshot, however, does not contain the required date and author. Moreover, the Petitioner did not demonstrate that the publication of the screenshot prior to the initial filing of his petition. See 8 C.F.R. § 103.2(b)(1). Further, the screenshot reflects material about his upcoming exhibition rather than published material about him. Articles that are not about a petitioner 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). In addition, the Petitioner provided an "About Us" screenshot from gallerieswest.ca claiming to be "Western Canada's art magazine since 2002." However, the Petitioner did not present any independent, supporting evidence establishing the website's status as a major trade publication.

Moreover, the Petitioner offered screenshots from on-curating.org reflecting a conversation between the Petitioner and another individual. The screenshots reflect questions and opinions on various topics between the two rather than published material about the Petitioner relating to his work. In addition, the Petitioner did not include the required date of the material. Further, the Petitioner provided an "About" screenshot from on-curating.org indicating that the website "is an independent international web journal focusing on questions around curatorial practise [sic] and theory." However, the Petitioner did not show how the evidence demonstrates the status of on-curating.org as a major trade publication.

Similarly, the Petitioner provided screenshots from enjoy.org.nz reflecting a display of his exhibition, [redacted] in *The Occasional Journal*, along with his commentary on his own work. The screenshots, however, do not reflect published material about him consistent with this regulatory criterion. See, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *7. Moreover, the Petitioner submitted a screenshot from enjoy.org.nz indicating that *The Occasional Journal* is "[a] series of 'occasional journals' that contribute and respond to current dialogue on contemporary art practice." However, the Petitioner did not demonstrate the standing of either enjoy.org.nz or *The Occasional Journal* as a major trade publication.

In addition, the Petitioner presented an article from *Metropolis M* reflecting published material about him relating to his work. Further, the Petitioner submitted a screenshot from art-agenda.com announcing that the first edition of *Metropolis M* is "out now" and "totally new." However, the Petitioner did not establish how the evidence shows the magazine's position as a major trade publication.

Finally, the Petitioner contends that his "work was featured, including a photograph, in the major international publication *The Guardian*, which attracts over 300 million unique users to its website each month and has a print circulation of over 200,000." The record reflects that the Petitioner submitted screenshots from theguardian.com highlighting various [redacted]

photographs, in which the collection included a photograph of him with a caption.⁶ However, the screenshots are about the [redacted] rather than published material about him.

For the reasons discussed above, the Petitioner did not demonstrate 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. 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 C-N-*, ID# 4596442 (AAO Oct. 22, 2019)

⁶ The record does not support the Petitioner’s assertion that *The Guardian* featured his work in its publication.