



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

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

MATTER OF M-K-

DATE: OCT. 29, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a miniaturist, 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 two 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 has exhibited his artwork in Asia 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 two of the initial evidentiary criteria, awards under 8 C.F.R. § 204.5(h)(3)(i) and 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. However, for the reasons discussed below, the record does not reflect that the Petitioner demonstrated his eligibility for the awards criterion.

On appeal, the Petitioner maintains that he fulfills four 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 Director found that the Petitioner satisfied this criterion without identifying the qualifying award(s) and explaining his determination. 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.<sup>1</sup> 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.<sup>2</sup> Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(i), we will withdraw the findings of the Director for this criterion.

The Petitioner indicated that he “was awarded [the] [redacted] Award of Excellence for [redacted] in 2014. The record reflects that the Petitioner initially submitted a certificate from the [redacted] showing that he received the “Award of Excellence for [redacted].” In response to the director’s request for evidence (RFE), he provided the history and objectives of [redacted].<sup>3</sup> Moreover, the Petitioner provided a “Memorandum of Understanding” between [redacted] stating that “the Award of Excellence for [redacted] [became] an international initiative led by [redacted] under the patronage of [redacted].” As it relates to the “Award of Excellence,” the Petitioner presented documentation of the evaluation criteria and supporting documentation showing that artwork is judged based on excellence, authenticity, innovation, and marketability.<sup>4</sup>

While the Petitioner submitted background information regarding [redacted] including the relationship with [redacted] and the “Award of Excellence of [redacted]” he did not explain how the evidence establishes the national or international recognition of the award in the field. Here, the Petitioner did not show the national or international significance of the award in the field beyond [redacted] such as national or international media reports. Moreover, the Petitioner did not demonstrate that the issuance of numerous awards is indicative of an award “for excellence in the field of endeavor” consistent with this regulatory criterion. For instance, in 2012, “[t]he [redacted] Award of Excellence for [redacted] has been granted to 80 craft products from a total 189 entries in the South and South-East Asian subregions.”<sup>5</sup> In this case, almost half of all entries received the “Award of Excellence.”

In addition, the Petitioner stated that he “was named as the Best Show Finalist of the [redacted] [redacted]” in 2015. Initially, he provided a certificate from the 56th International Art Exhibition at the [redacted] 2015 reflecting the Petitioner’s “recognition of artistic accomplishment and selection as Best Show – Finalist.” In response to the Director’s RFE, he submitted screenshots about the “[redacted] 2015,” including a presentation by artist [redacted] at the exhibition. Here, the evidence relates to the exhibition and [redacted]. In fact, the screenshots make no mention of the Petitioner or the certificate he received. Furthermore, the

<sup>1</sup> 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>.

<sup>2</sup> *Id.*

<sup>3</sup> For instance, “[t]he main objectives of [redacted] is to ensure the status in each country of the Asia Pacific Region as a vital part of the cultural scenario by developing and strengthening it,” including “[t]o promote, develop, maintain, strengthen and ensure status of [redacted] as an important medium of artistic expression.”

<sup>4</sup> In addition, “[t]he [redacted] Award of Excellence for [redacted] aims to promote quality [redacted] that upholds rigorous standards of excellence” and “encourages product innovation in order to ensure that [redacted] remain relevant, valuable, and marketable in modern life.”

<sup>5</sup> See <https://culture360.asef.org>, incorporated into the record of proceedings.

Petitioner did not establish that receiving a “Finalist” certificate represents a nationally or internationally recognized prize or award for excellence.

Moreover, the Petitioner claimed that he “won the third place at the International [redacted] and [redacted] Expo in [redacted] China” in 2016. He initially presented a “Certificate of Honor” for third prize at the [redacted] International [redacted] Expo. In response to the Director’s RFE, he submitted an article from chinadaily.com.cn mentioning the 2016 exposition. In addition, he provided screenshots from an unidentified website relating to the exhibition’s regulations. Again, the Petitioner’s evidence relates to the exhibition without demonstrating that its bestowed prizes or awards are nationally or internationally recognized for excellence in the field. Moreover, the Petitioner did not establish that third place is tantamount to a prize or award “for excellence.”

For the reasons discussed above, the Petitioner did not demonstrate that he received nationally or internationally recognized prizes or awards for excellence in his field of endeavor. Accordingly, we withdraw the findings of the Director for this criterion.

*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 “is a current and full member of [redacted], [redacted] of the Republic of Uzbekistan.” 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.<sup>6</sup>

The record reflects that the Petitioner presented a certificate demonstrating his membership with [redacted]. In addition, the Petitioner provided a letter from [redacted], chairman of the [redacted] Regional Department of [redacted] who claimed that the [redacted] Association requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in the respective field of Folk Art or Craftsmanship,” and “[t]he criteria for [the Petitioner’s] level of membership in the association, which is full association membership, were demonstration of outstanding achievements in the field of folk art, in his case, traditional Uzbek miniature art painting, as judged by nationally recognized experts in the field of traditional Uzbek miniature art painting.” Here, [redacted] repeats the language of the regulations without pointing to any governing authority establishing that membership with [redacted] requires outstanding achievements, as judged by recognized national or international experts. *See 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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Further, the Petitioner did not submit any supporting evidence, such as the bylaws or other documentation, showing [redacted]’s membership requirements, to corroborate Mr. [redacted]’s assertions.

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<sup>6</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (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).

Moreover, he offered two letters from [redacted], chief executive officer of [redacted], who confirmed the Petitioner's membership and highlighted his artwork. Further, [redacted] described the purpose and history of [redacted] as well as the importance of craftsmen in the field. However, [redacted] did not indicate the membership requirements for [redacted] nor did he demonstrate that recognized national or international experts judge the outstanding achievements for membership with the association.

As such, the Petitioner did not show that he meets this criterion.

*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).*

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.<sup>7</sup> The record contains an article from *Bukhara Sharif* reflecting published material about the Petitioner relating to his work in the field. However, the Petitioner did not establish that *Bukhara Sharif* qualifies as a professional or major trade publication or other major medium. The Petitioner submitted two letters from [redacted], main editor, who described *Bukhara Sharif* as "a weekly social – political newspaper" that "is published every Thursday with around of [sic] 500 print issues containing about 4-6 pages per each." Here, the Petitioner did not provide any independent, objective evidence showing the newspaper's standing as a major medium. 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 a magazine as to the magazine's status is not reliant evidence of a major medium). Further, the Petitioner did not show the significance of the "500" circulation figures or explain how such data reflects status as a major medium.<sup>8</sup>

For these reasons, the Petitioner did not demonstrate that he satisfies this criterion.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).*

The Petitioner contends that his "mastery of traditional Uzbek miniature art was recognized as a contribution of major significance to the field by leading experts in this field." In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.<sup>9</sup> For example, a petitioner

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<sup>7</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

<sup>8</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

<sup>9</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The record reflects that he provided recommendation letters from [redacted] and [redacted] who claimed that the Petitioner “has made an original contribution of major significance to the field of traditional Uzbek miniature art by virtue of reviving this unique style and narratives in his miniature painting.” However, neither individual provided detailed information explaining or justifying their opinions. Instead, the authors summarize the Petitioner’s experience, highlight his exhibitions, and point to his individual accomplishments without showing how his artwork has significantly impacted or influenced his field. Moreover, repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d at 41; *Avyr Associates, Inc.*, 1997 WL 188942 at \*5.

In addition, the Petitioner submitted additional recommendation letters [redacted] and [redacted] who also commented on his career and experience without demonstrating how he has made original contributions of major significance in the field. Moreover, the letters praise the Petitioner’s skills and talents. For example, the Petitioner’s “noteworthy skills as a designer of miniatures is his eye for color and his familiarity with the curves and nature of the culture” and “way of incorporating practicality with grandeur, a unique manner of mixing the modern designs with glamorous history-inspired pictures.” However, having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. Further, the record must be supported by evidence that the Petitioner has already used those skills and talents to impact the field at a significant level, which he has not shown. Moreover, the letters do not demonstrate the Petitioner’s impact in the overall field beyond the limited projects in which he exhibited or participated.<sup>10</sup>

Here, the Petitioner’s letters do not contain specific, detailed information identifying his original contributions and explaining the unusual influence his artwork has had on the overall field. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value.<sup>11</sup> On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.<sup>12</sup> Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

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<sup>10</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; see also *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

<sup>11</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

<sup>12</sup> *Id.* at 9. See also *Kazarian*, 580 F.3d at 1036, *aff’d* in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner claims eligibility for this criterion based on his authorship of a book entitled, [REDACTED] [REDACTED] The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires his "authorship of scholarly articles in the field, in professional or major trade publications or other major media."<sup>13</sup>

Here, the Petitioner did not demonstrate how an authorship of a book qualifies as a scholarly article in a professional or major trade publication of other major medium consistent with this regulatory criterion. Moreover, a scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field.<sup>14</sup> However, the Petitioner did not establish that his book is written for "learned" individuals and contain the characteristics of a scholarly article.

Further, the Petitioner did not show that his book represents a professional or major trade publication or other major medium. The Petitioner, for instance, did not provide statistics or other evidence establishing the major standing of the book.<sup>15</sup>

Accordingly, the Petitioner did not show 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).

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<sup>13</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

<sup>14</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

<sup>15</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9 (providing that evidence of professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and the intended audience).

*Matter of M-K-*

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 M-K-*, ID# 4643262 (AAO Oct. 29, 2019)