U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6559665

Date: APR. 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a journalist, 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 although the Petitioner satisfied three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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). The regulation at 8 C.F.R. § 204.5(5)(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).

II. ANALYSIS

The Petitioner indicates current employment as a manager of brand and editorial for [redacted] in Colombia. Because the Petitioner has not 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 fulfilled three criteria relating to published material at 8 C.F.R. § 204.5(h)(3)(iii), leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), and high salary at 8 C.F.R. § 204.5(h)(3)(ix). Although we agree with Director regarding the leading or critical role criterion, for the reasons discussed later, we do not concur with the Director's decision relating to the published material and high salary criteria. Moreover, for the explanations discussed below, the Petitioner did not demonstrate that he fulfills any other previously claimed criteria.

A. Evidentiary 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 claimed eligibility for this criterion based on a "[redacted]" from the [redacted] in 2007. 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]

[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 record contains documentation reflecting that [redacted] magazine received the prize rather than the Petitioner. For instance, a screenshot from guia.com indicates that "this *newspaper* [redacted] is going to have worldwide recognition at the [redacted] contest of 2007 in the brand category that the [redacted] . . . organizes each year." (emphasis added). Further, screenshots from community.ulule.com shows that "[t]he [redacted] are awarded annually to innovative *newspapers*." (emphasis added). In addition, [redacted] founder of [redacted] expresses that "[d]uring [the Petitioner's] time as editor-in-chief of [redacted] the *publication* received a [redacted] in the Brand Category." (emphasis added). Moreover, [redacted] journalist, states that '[redacted] awarded [redacted] the Best Brand in 2007." (emphasis added). Although the documentation reflects that the Petitioner accepted the prize on behalf of [redacted] he did not demonstrate that [redacted] awarded the prize to him. 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.[3]

Furthermore, the Petitioner did not establish that the '[redacted]" is nationally or internationally recognized for excellence in the field. Although the Petitioner submitted documentation regarding [redacted] and background eligibility information relating to the prizes, it does not reflect the national or international significance of the prize.[4] The evidence, such as [redacted]s 2017 prize pamphlet, promotional material from [redacted] and screenshots from [redacted]'s website, does not mention or demonstrate the national or international recognition of excellence in the field. In addition, while [redacted] indicated that "past winners of the [redacted] [] include prominent newspapers such as The Guardian, The Tampa Bay Times and The New York Times," the Petitioner did not show how other publications receiving such prize is in-and-of-itself evidence of national or international recognition for excellence. Here, the Petitioner provided insufficient evidence to identify the '[redacted]" as a nationally or internationally recognized prize for excellence in the field consistent with this regulatory criterion.

For the reasons discussed above, the Petitioner did not establish that he meets 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 argued that he meets this criterion based on membership with the California Chicano News Media Association (CCNMA) and the International Federation of Journalists (IJF). 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.[5]

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

[4] [redacted] indicated that he created and administered the [redacted]" as executive director of youth engagement and new literacy at [redacted] and the prize was later replaced in 2017 by a youth category of the [redacted]

[5] *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,

Regarding CCNMA, the Petitioner submitted the bylaws reflecting that members "shall be Chicano/Latino and other men and women dedicated to the purposes of this corporation, who obtain primary economic support by gathering, writing and presenting news, and who, upon recommendation of the membership committee, are elected by the vote of the Board of Directors." Here, the Petitioner did not demonstrate how being dedicated to CCNMA and economically supported by being involved in the news reflect outstanding achievements consistent with this regulatory criterion. Moreover, the bylaws do not discuss a candidate's achievements, let alone outstanding achievements, as an essential condition for membership with CCNMA.

Further, the Petitioner provided a letter from [redacted] fashion stylist, who claims that "[m]embers of the organization must undergo a rigorous application process to ensure that the organization consists solely of the highest regarded journalists in the field," and the Petitioner "was extended membership into the organization after a careful review of his outstanding achievements." Moreover, a letter from [redacted] senior writer, asserts:

> [The Petitioner] was accepted into the CCNMA . . . given his outstanding achievement in the industry. CCNMA is a renowned institution recognized for being the oldest regional organization of journalists of color in the country. The organization's Board of Directors, which consists of high ranking professionals from renowned media outlets, thoroughly evaluated [the Petitioner's] accomplishments in the journalism industry and extensive portfolio before approving his membership into the institution.

The letters, however, do not indicate how the authors are aware of the Petitioner's membership with CCNMA, nor do they explain how they know of the membership requirements for the association. Although both letters use the regulatory term "outstanding achievements," they do not contain detailed, specific information defining what constitutes outstanding achievements. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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.).

Moreover, the Petitioner did not establish that recognized national or international experts judge the outstanding achievements for membership.[6] As indicated above, the bylaws reflect a membership committee provides a recommendation and the board of directors vote for membership. Although he submitted screenshots from CCNMA's website reflecting the pictures and names of nine board members, the Petitioner did not provide further evidence showing that they qualify as recognized national or international experts. In addition, while [redacted] claimed that the board of directors "consists of high ranking professionals," he did not offer detailed information justifying his assertion.

As it relates to IJF, the Petitioner provided information regarding the principles on the conduct of journalists, such as respect for truth and for the right of the public to truth is the first duty of the journalist. In addition, he submitted screenshots regarding IFJ's international press card stating that

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and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6-7.

"[t]he IFJ Press Card is the world's oldest and most reputable accreditation and provides instant confirmation that the bearer is a working journalist." Moreover, "[t]he IFJ Press Card is available to the members of national associations and unions of journalists that, in turn, are members of the IFJ."

Here, he did not show the membership requirements for IFJ rather than the requirements for an IFJ press card. Regardless, he did not establish that membership in national associations and unions of journalists represents outstanding achievements.[7] Moreover, he did not demonstrate that membership with IFJ is judged by recognized national or international experts.

Accordingly, the Petitioner did not demonstrate that he fulfills 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).

The Director found that the Petitioner satisfied this criterion without identifying the qualifying material and explaining his determination. In order to meet 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.[8] Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), we will withdraw the findings of the Director for this criterion.

The record reflects that the Petitioner claimed eligibility for this criterion based on four articles from eluniversal.com, *Ultimas Noticias*, diversomagazine.com, and guia.com. However, the Petitioner did not demonstrate the authors of the articles. The inclusion of the author is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii).

Moreover, the Petitioner did not demonstrate that the articles from *Ultimas Noticias*, diversomagazine.com, and guia.com reflect published material about him relating to his work. Specifically, the *Ultimas Noticias* article is about the [redacted] with the Petitioner mentioned as conducting the ceremony. Further, the diversomagazine.com article relates to upcoming projects of [redacted] with the Petitioner describing the projects rather than material about him. In addition, the guia.com article reports on [redacted]'s receipt of the [redacted] award with the Petitioner noted as traveling to the ceremony. Articles that are not about an alien 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).

Furthermore, the Petitioner did not establish that diversomagazine.com and guia.com reflect professional or major trade publications or other major media. As it relates to diversomagazine.com,

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[7] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (providing that relevant factors that may lead to a conclusion that the alien's membership in the associations was not based on outstanding achievements in the field include, but are not limited to, instances where the alien's membership was based on a requirement, compulsory or otherwise, for employment in certain occupations, such as union membership or guild affiliation for actors).

[8] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

the Petitioner submitted a screenshot from histats.com showing that it averages around 1.2 visits per day. However, the Petitioner did not show the significance of the figures or visits and demonstrate how such data reflects status as a major medium.[9] Further, based on the low daily visits, the Petitioner did not demonstrate that the website is tantamount to a major medium. In addition, the Petitioner pointed out that diversomagazine.com received almost 4 million total visits. However, according to histats.com, diversomagazine.com was created in December 2007, and the total visits are accumulated until January 2015. Here, the Petitioner did not establish the significance of 4 million visits in seven years as evidence of a major medium.

Moreover, the Petitioner provided screenshots from guia.com relating to "links to those relevant websites of and about Venezuela." However, the Petitioner did not demonstrate how the screenshots show evidence of guia.com's status as a major medium. Although the Petitioner claimed that guia.com "is one of the top 500 publications in the whole country of Venezuela," the screenshots do not support his assertions. In addition, the Petitioner did not establish where guia.com falls within the "top 500 publications" in Venezuela.

Finally, the Petitioner submitted a YouTube screenshot of a video posted by [redacted]' from the [redacted]' The Petitioner claimed that the video reflected an interview of him broadcasted on Channel 1 in Venezuela. However, the Petitioner did not provide a transcription of the video demonstrating published material about him relating to his work. Moreover, the Petitioner did not establish that [redacted] represents a major medium. Although the Petitioner provided television ratings for channels in Venezuela, the issue is whether the television show is a major medium. Further, the television ratings refer to 2017 while the Petitioner claimed that the interview occurred in 2007. In addition, the Petitioner indicated that the YouTube video received over 13,000 views. However, the Petitioner did not demonstrate the significance of 13,000 views on a YouTube channel.

For the reasons discussed above, the Petitioner did not demonstrate that he satisfies this criterion, and we withdraw the Director's decision for 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 contended that his creation of a bilingual website, the increased circulation for [redacted], and an advertising campaign for [redacted] demonstrate his eligibility for this criterion. 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.[10] For example, a petitioner 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.

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[9] *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).

[10] *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).

As it relates to the bilingual website, [redacted] the Petitioner provided screenshots claiming it to be "the first bilingual website specializing in [redacted]" that "travels around the world trying to decipher the digital code of [redacted]." He submitted an excerpt from the book, [redacted] which recommends the website and indicates that it "take[s] the trouble to write all the content of their blogs in two languages, which entails a considerable extra effort." However, the Petitioner did not demonstrate that a citation and recommendation from a single book shows that his website rises to a level of major significance. The Petitioner, for example, did not offer evidence showing that his website has been extensively cited, referenced, or visited.

Further, the Petitioner submitted a letter from [redacted] senior editor and content creator at the [redacted], who stated that he created '[redacted]', an audiovisual initiative for [redacted] which "was heavily inspired in [redacted] and the multi-platform work [the Petitioner] did through its website." Moreover, [redacted] indicated that the elements in [redacted] "truly inspired the work that [he] currently do[es] with [redacted], where [he] interview[s] personalities using the techniques [he] learned from [the Petitioner] through his innovative website." While [redacted] compliments the Petitioner's website and credits it for inspiring *him* to create his own initiative, he did not explain how the Petitioner's website greatly impacted or influenced the overall field beyond his own project.[11]

Regarding [redacted], the Petitioner claimed that "[h]is innovative strategies and decision to implement the [redacted] Awards led to [redacted] receiving a [redacted] award." In addition, the Petitioner referenced background information and articles previously reviewed and discussed under the awards and published material criteria regarding the [redacted] award. Although the documentation reflects the Petitioner's contributions to [redacted], such as serving in the position as co-editor and implementing and hosting the [redacted], he did not demonstrate how the evidence shows his contributions of major significance in the overall field. For example, the Petitioner did not demonstrate that his co-editing position or [redacted] has greatly influenced or impacted the journalism field in a significant manner.

Similarly, he submitted a letter from [redacted] journalist, who praised the Petitioner for growing and diversifying [redacted] and indicated that the [redacted] had two important editions, with it receiving a [redacted] award in 2007. Again, [redacted] discussed the Petitioner's contributions to [redacted] rather than explaining how the Petitioner has made original contributions of major significance in the greater field. [redacted] for instance, did not elaborate and show how the Petitioner's contributions have been implemented in the overall field or how they have somehow resulted in a substantial effect in the field.

As it pertains to the advertising campaign for [redacted] the Petitioner presented screenshots from buzzfeed.com, latintimes.com, and creativity-online.com reporting on the marketing campaign, [redacted]' which created altars for [redacted] deceased characters. Moreover, the Petitioner submitted screenshots from an unidentified website reflecting that [redacted] received a silver award in the best multicultural event campaign at the 2018 [redacted] for [redacted]'s '[redacted]' campaign. In addition, the Petitioner submitted a letter from [redacted] chief marketing officer at

[11] *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).

[redacted] who stated that the Petitioner "lead the highly successful [redacted] campaign that took place at the [redacted] cemetery," and he "showed his exceptional insight to successfully communicate with the Spanish speaking audience." Moreover, [redacted] vice president of brand and editorial at [redacted] indicated the Petitioner's involvement in "set[ting] up five real altars dedicated to some of [redacted] most beloved deceased characters." While the letters described the Petitioner's role in leading the campaign and setting-up altars, they did not demonstrate that he created the marketing campaign resulting in an original contribution. In fact, as indicated, [redacted] received an event campaign award for its work. Regardless, the letters praised the Petitioner for his involvement in the campaign without showing that it resulted in a majorly significant contribution in the field consistent with this regulatory criterion. Furthermore, the Petitioner did not show that the [redacted] campaign significantly influenced or impacted the greater field outside of [redacted]

Here, the Petitioner's letters do not contain specific, detailed information explaining how his work qualifies as original contributions of major significance in the field. Letters that specifically articulate how a petitioner's contributions are of major significance in the field and its impact on subsequent work add value.[12] 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.[13] 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.

> *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).

In order to demonstrate eligibility for this criterion, a petitioner must show that his work was on display, and the venues were artistic exhibitions or showcases.[14] The Petitioner claimed to meet this criterion based on authoring articles on websites for *Hoy* and *Variety Latino*, publishing articles and video on [redacted]s social media accounts, and reporting at [redacted] 2015 for *Variety Latino*. However, the Petitioner did not demonstrate that any of these instances involves displaying his work products at artistic venues consistent with this regulatory criterion.

Furthermore, the Petitioner argued that his evidence should also be considered as comparable evidence. The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation.[15] A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[16]

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[12] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.
[13] *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).
[14] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.
[15] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.
[16] *Id.*

General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted.[17] Here, the Petitioner did not show why he cannot offer evidence that meets at least three criteria. The fact that the Petitioner provided documentation that does not meet at least three criteria is not evidence that a journalist could not do so. In fact, the Petitioner claimed to meet seven other criteria.

Accordingly, the Petitioner did not demonstrate that he fulfills this criterion, including through the submission of comparable evidence.

> *Evidence that the alien 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).

As indicated earlier, the Director found that the Petitioner established eligibility for this criterion. In order to meet this criterion, a petitioner must demonstrate that his salary or remuneration is high relative to the compensation paid to others working in the field.[18] For the reasons outlined below, the record does not reflect that the Petitioner provided sufficient documentary evidence showing that fulfills this criterion, and the Director's determination on this issue will be withdrawn.

The record reflects that the Petitioner claimed eligibility for this criterion based on his salaries at two positions at [redacted]. Specifically, the Petitioner submitted evidence showing his salary in his previous role as the "Social Media Coordinator" and in his current role as "Manager of Brand and Editorial." However, the Petitioner provided wage data of occupations that are not same as these positions. In particular, the Petitioner offered documentation relating to the salaries of "Reporters, Correspondents, and Broadcast News Analysts," "Journalists," "Editors," "Writers and Authors," and "Reporters and Correspondents." Although he likens his salaries to other occupations, the Petitioner did not show that he commands a high salary "in relation to others in the field," such as social media coordinators and branding and editorial managers. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner did not demonstrate he earned a high salary compared to others in his field.

Because the Petitioner did not establish that he satisfies this criterion, we withdraw the decision of the Director for this criterion.

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[17] *Id.*

[18] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales. 8 C.F.R. § 204.5(h)(3)(x).

The Petitioner argued eligibility for this criterion based on comparable evidence through his claims of growing the circulation of [redacted], the number of unique visitors to *Variety Latino's* YouTube channel and website, and the number of followers on [redacted]s social media posts. For the reasons previously discussed above under the display criterion, the Petitioner did not demonstrate that he qualifies for the submission of comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4).[19]

Furthermore, the Petitioner did not demonstrate how his claims are "truly comparable" to the commercial successes criterion.[20] Here, the Petitioner did not establish how *he* was responsible for increased circulation or the number of site views and followers. For example, the Petitioner did not demonstrate that *his* specific work increased circulation or attracted a number of site visits and followers comparable to a level of "commercial successes" rather than taking credit for the total number of visits and followers.

Accordingly, the Petitioner did not establish that he meets this criterion through the submission of comparable evidence.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, 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. *See La. 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 Petitioner has established the acclaim and recognition required for the classification sought.

[19] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 12.
[20] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 12.

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. *Price*, 20 I&N Dec. at 954. 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). Although the Petitioner has experience in journalism and media, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.

ORDER: The appeal is dismissed.