



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

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

In Re: 9286238

Date: AUG. 5, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a painter, 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 petition, concluding that the record did not establish, as required, that the Petitioner met the initial evidence requirement by satisfying at least three of the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Director further found that the Petitioner did not establish that his entry would substantially benefit prospectively the United States. The matter is now before us on appeal.

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

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The record reflects that the Petitioner is an [redacted] Painter” who has displayed his work in the United States, Spain, Taiwan, Costa Rica, and his native Venezuela. He received a bachelor’s degree in civil engineering before completing his artistic training at the [redacted] Museum in [redacted] between 2004 and 2012.

A. Evidentiary Criteria

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 Director found that the Petitioner met one of these ten criteria, relating to display of his work at artistic exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii). The record reflects that his work has been exhibited at several gallery exhibitions. Accordingly, we agree with the Director that the Petitioner fulfilled the display criterion.

On appeal, the Petitioner asserts that he also meets the following evidentiary criteria at 8 C.F.R. § 204.5(h)(3):

- (i) Lesser nationally or internationally recognized awards;
- (ii) Membership in associations that require outstanding achievements;
- (iii) Published materials about him and relating to his work;
- (viii) Leading or critical roles with organizations that have a distinguished reputation; and
- (x) High salary or other significantly high remuneration.

After reviewing all the evidence in the record, we find that the Petitioner has not established that he meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Documentation of the individual’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

In order to fulfill this criterion, the Petitioner must demonstrate his receipt of lesser nationally or internationally recognized prizes or awards for excellence in his field of endeavor. 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.¹

On appeal, the Petitioner asserts that he meets this criterion based on the following:²

- Honorable Mention – [redacted] 2018 Online Showcase;
- “Artist of the Day” selection – [redacted];
- Finalist (Still Life category) – [redacted] Salon Competition (2017);
- Finalist (Still Life category) – [redacted] Salon Competition (2016);
- Finalist and Gallery Award winner – [redacted] Competition (2015);
- Honorable Mention – [redacted] Art Contests (2006, 2007);
- Nomination – [redacted] Art Contests (2005, 2008);
- Nomination for [redacted] Prize” – Salon [redacted] (2012);

The Director determined that the Petitioner submitted insufficient evidence relating to the competitions in which he participated and did not establish that the awards he received are nationally or internationally awards for excellence in the field. On appeal, the Petitioner contests this finding noting that he provided extensive supporting evidence relating to each award and each awarding entity. He also emphasizes that the Director did not mention all of his awards in the decision and it is therefore unclear whether he considered them.

While we disagree with the Director’s determination that the Petitioner did not provide sufficient evidence relating to the competitions in which he participated, for the reasons discussed below, we find insufficient evidence to establish that the submitted evidence meets all elements of this criterion.

With respect to his “honorable mention award” from [redacted] 2018 online showcase, the Petitioner submitted a copy of his certificate, a public announcement of the award winners from [redacted] website, and background information regarding the [redacted] which is described as a 3,400-member national organization “established for the sole purpose of representing traditional, representational oil painters.” The contest rules for the online showcase (held three times per year) indicate that entry is

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>. (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance).

² The Petitioner initially claimed eligibility under this criterion based on honorable mention recognitions at the [redacted] [redacted] Salon (2008 and 2009) and a second-place award at the [redacted] in honor of the 50th anniversary of the [redacted] Venezuela. On appeal, the Petitioner has not pursued his claim that these are qualifying awards and we will therefore not discuss them here. We note that the Petitioner’s painting appears in the exhibition booklet for the [redacted] exhibition, but the record does not contain evidence of the referenced second place award.

limited to [] members. All entries are displayed on the []'s online showcase and winners receive cash prizes.

The []'s announcement of the results of its [] 2018 online showcase indicates that there were 517 entries. The juror of the competition awarded first, second and third-place prizes (which included cash awards), and recognized 10 additional pieces with an honorable mention. The Petitioner did not provide evidence that he received any type of award or prize apart from the honorable mention certificate, nor is there evidence that the results of this online showcase were publicized or recognized outside of the [] website and membership.

The Petitioner submitted copies of local media articles that discuss other [] competitions and artists who received awards in such competitions, including the gold medalist of []'s 2019 [] Exhibition (described as []'s "highest honor for master signature artists") and a silver medalist at the []'s [] Regional Show. The record does not contain similar media coverage of the []'s online showcases. The Petitioner provided online profiles of other artists, asserts that they also participated in the [] 2018 online showcase, and notes that they enjoy "recognition and good reputations in the field." However, it is unclear how this evidence establishes that the Petitioner's honorable mention recognition meets this criterion.

While the Petitioner provided evidence that [] is a nationally recognized organization, this status does not establish that an honorable mention in one of its seasonal online competitions is a nationally recognized award for excellence in the Petitioner's field. Rather, it is the recognition that the award receives in the field on a broader level, beyond the issuing organization or event, that determines whether it satisfies that element of this criterion.

With regard to the Petitioner's selection as an "Artist of the Day," the Petitioner provided evidence that he was the featured artist on []'s social media accounts (*Facebook* and *Twitter*) on [] [] 2017. The social media accounts provided a link to his artist profile and artwork on []'s website. [] is described as "the [] online art gallery" representing more than 60,000 artists. The Petitioner submitted a letter from [] of [] who states "[o]ur curators selected [the Petitioner] from among 60,000 artists to be presented . . . as Artist of the Day." She states that "[t]his is an extremely sought after internationally recognized prize, based on the large number of artists throughout the world who show their work on [] and the level of exposure that is achieved throughout the world through the prize, given the hundreds of thousands of diverse collectors who follow [] on social media." [] further notes that []'s curatorial staff are "renowned art industry experts" who select "only a small percentage of []" for this honor.

While the Petitioner has shown that it is an honor to be among the artists selected for "Artist of the Day," the plain language of the regulation requires evidence that he was the recipient of an "award or prize for excellence" in his field. The evidence does not support [] statement that selection as an "Artist of the Day" is a "prize," nor does the evidence establish what criteria are used for selection. For these reasons, the evidence does not establish that the Petitioner's selection as an artist of the day is a nationally or internationally recognized prize or award for excellence.

We have also considered evidence of the Petitioner's "Finalist" status in the [redacted] Salon Competitions. The Petitioner asserts that the [redacted] Salon is "the most prestigious realist art competition in the Americas."

The Petitioner submitted a copy of the introduction from the [redacted] Salon Competition's exhibition catalogue, which indicates that 1,006 works (32% of all submitted) were selected as finalists that year. The submitted evidence did not establish that all finalists received a "prize or award" or support the Petitioner's claim that being named a finalist is a prize or award in-and-of-itself. The book introduction mentions that the [redacted] Salon Competition awarded: a Best in Show prize; a special prize for the runner-up to the Best in Show; first, second and third place awards in each of eight designated categories; five special awards; six Chairman's Choice Awards; eight [redacted] Staff awards; two museum purchase awards, and seven magazine awards, among others. Similar results are summarized in the submitted exhibition catalogue for the [redacted] [redacted] Salon Competition.

The Petitioner provided a letter from [redacted], [redacted]'s chief operating officer, who states that "[f]inalist status in the [redacted] Salon is a nationally and internationally recognized award for excellence" noting that "finalists' work is displayed in a print catalog, or [redacted]'s website, and may be featured in a traveling exhibition." However [redacted] does not explain how finalist status qualifies as an "award or prize" in a competition that bestows all of the above-mentioned awards.

While the evidence reflects that the Petitioner, as one of dozens of finalists in his category,³ had his work displayed on the [redacted] website and in the [redacted] Salon exhibition catalogs, he did not establish that he received an "award or prize" as a finalist. Therefore, we acknowledge that the Petitioner's "finalist" status in two [redacted] Salon competitions garnered him some recognition that would be weighed under a final merits determination, the record does not establish that it is a prize or award that satisfies all elements of this criterion.

The Petitioner also claims eligibility under this criterion based on his "Finalist" status and "Gallery award" at the 2015 [redacted] Competition [redacted] held in [redacted]. He submitted a "Recognition Certificate" from the [redacted] Art Association indicating he was selected as a finalist but did not submit a comparable certificate for his "Gallery Award." However, the Petitioner provided a screenshot of the [redacted] Facebook page, which lists the results of the competition. These results recognize a Championship winner, a Chairman's Award winner, and 34 "Gallery Winners" who were "selected into [redacted] [redacted] 2016." The Petitioner's name was listed among these 34 artists, and the Petitioner provided exhibition advertisements and an exhibition catalog confirming the inclusion of his painting in the [redacted] exhibition held in [redacted] 2015. The evidence reflects that 90 finalists were selected to participate in the [redacted] portion of the exhibition, which according to one of the submitted media articles, included 278 artists and nearly 2000 artworks. Based on the submitted evidence, it appears that all 90 finalists participated in the 2015 [redacted] exhibition, while the "Gallery Award" winners also received invitations to return to exhibit their work in the 2016 edition of the event.

³ In 2012, for example, there were 466 entries in the Still Life category, of which 171 were named finalists and winners.

The supporting evidence shows that the [redacted] exhibition receives significant media coverage, and that the works of finalists from the [redacted] are “a staple at the annual fair” making up one of the ten sections at the exhibition. While the evidence indicates that the competition is international in scope and quite competitive based on the number of entries, the record does not establish that recognition as a finalist involves the receipt of a “prize or award,” or that the “gallery award” is an internationally recognized prize for excellence in the field. The submitted media coverage focuses on the increasing popularity of the [redacted] competition as well as the [redacted] exhibition, but does not mention [redacted] winners or finalists or demonstrate that finalists or gallery award winners receive recognition that extends beyond the event’s website and attendees at the exhibition.

As noted, the Petitioner also claims eligibility based on his two “Honorable Mention” and two “Nomination” recognitions received in [redacted] Art Contests between 2005 and 2008. The Petitioner states that this is a national competition in Venezuela, sponsored by [redacted] manufacturer. The submitted competition results reflect that the contest selects first, second and third place winners, one winner of a [redacted] Mention,” one winner of a [redacted] Mention,” one winner of a [redacted] Mention,” several “Special mentions,” several “Honorable mentions,” with several artists recognized as “nominees” or “pre-selectees,” which appears to be comparable to a “finalist” status.

An article about the competition indicates that it is “aimed at students and amateurs over 15 years” and that works must be created using certain brands from [redacted]. The evidence reflects that the first, second and third place finishers receive cash prizes, and all others who are pre-selected receive a [redacted] case.” The Petitioner submitted an article from Analytica.com about the 7th edition of the contest held in 2005, which states that there were 264 entries. The article mentions the winners of first, second and third place awards, two special mentions, and two honorable mentions, but does not mention the Petitioner or the work that earned him a nomination. The Petitioner also submitted brief articles regarding the 2007 and 2008 editions of the contest, both published online by *El Papel*. The article from 2007 mentions that 27 artists were recognized out of 123 submissions to the contest but does not identify the artists or their awards. The article about the 2008 contest also mentions that there were 27 winners out of “more than a hundred works,” and only identifies the first-place winner.

While the [redacted] Art Contest appears to be national in scope and [redacted] is an [redacted] recognized brand, the submitted documentation does not establish that an honorable mention or nomination in this contest, which is limited to students and amateurs and has a relatively small number of entrants, is a nationally or internationally recognized award for excellence in this field. The evidence does not sufficiently establish that artists selected as nominees or honorable mentions receive recognition that extends beyond the awarding organization.

Finally, the Petitioner claims eligibility under this criterion based on his nomination for the [redacted] Prize” in the Venezuelan competition [redacted] noting that this is “an important national award in Venezuela for excellence.” The evidence indicates that the [redacted] Prize is an award for drawing given as part of the [redacted] Arts Prize [redacted] Exhibition.” A booklet recognizing the winners of the 41st edition held in 2012 indicates that the jurors recognized a “winner” and an “honorable mention” in drawing and several other categories, while the Petitioner’s

name was listed among many dozen “selected artists.” The Petitioner’s certificate from this competition indicates that he “participated” and that his drawing was included in the exhibition. The evidence does not establish, however, that a certificate of participation is an “award or prize for excellence” in the field.

For the foregoing reasons, the Petitioner has not established that he has received lesser nationally or internationally recognized awards for excellence in his field.

Documentation of the individual’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)

On appeal, the Petitioner asserts that he meets this criterion based on his “memberships as Finalist” in the [redacted] Salons and his membership in the [redacted].⁴ In order to satisfy this criterion, the Petitioner must show that he is a member of an association, and 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

With respect to his finalist status in two [redacted] Salons, the Petitioner emphasizes that he was required to present outstanding work that was judged by experts in his field in order to be recognized as a finalist. However, he has not explained how achieving finalist status in an annual art competition conveyed membership in an association, as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). As noted, the Petitioner submitted the same evidence in support of the awards criterion which was appropriate given the nature of the [redacted] Salon as a competition in his field rather than an association in his field.

Regarding his membership in the [redacted], the Petitioner submitted a certificate and membership card indicating his rank as an [redacted]. This evidence was accompanied by a letter from the association’s President-Founder, [redacted] who describes the academy as “an international Association made up of 400 member artists from 50 countries” who are “selected by a jury of exceptional member artists with credentials demonstrating recognition for their expertise in their respective fields of art.” He indicates that new members are selected “based on the high quality of their work, originality, the skill required to create the artwork, as well as the artist’s achievements in terms of art exhibitions, prizes and/or other qualifications.” The Petitioner also provided a list of jury members from the association’s website ([redacted]), and media articles about a few of the member artists.

⁴ The Petitioner initially claimed eligibility based on his membership in [redacted] the International Association of Art, and The Venezuela Association of Plastics Arts, but did not pursue these claims in response to the Director’s request for evidence or on appeal.

⁵ See USCIS Policy Memorandum PM 602-0005.1, supra at 6-7 (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).

In response to a request for evidence, the Petitioner submitted a second letter from [redacted] who provided additional information regarding the composition of the [redacted] jury. He notes that it is composed of a group of 42 “exceptional artists, gallery owners, art critics, university professors of art, and directors of art magazines” and states that they are “nationally and/or internationally recognized art experts.” [redacted] highlights the credentials and achievements of five of the [redacted] jury members, and repeats verbatim his earlier statements regarding the criteria for membership in the [redacted].

The Director determined that the Petitioner did not submit documentary evidence demonstrating that outstanding achievements are required for membership, or evidence (such as the association’s constitution or bylaws) that discusses the qualifications required for the reviewers of the review panel. On appeal, the Petitioner maintains that the regulations do not require submission of an association’s constitution or bylaws, and asserts that [redacted]’s letter is sufficient to establish that his membership in the [redacted] satisfies all requirements of this criterion.

While we have considered [redacted]’s letters, we agree with the Director that his statements are not sufficiently detailed to establish that the [redacted] requires prospective members to demonstrate “outstanding achievements” as a condition of admission. As noted, [redacted] mentions that the [redacted] considers factors such as “high quality of their work, originality, the skill required to create the artwork, as well as the artist’s achievements in terms of art exhibitions, prizes and/or other qualifications.” This statement is broad and is not accompanied by any supporting evidence regarding the [redacted] or its membership requirements, such as information from its website regarding membership and the application process, or its constitution or bylaws, which may contain information regarding the selection criteria and process for becoming a [redacted]”⁶ Although the Petitioner objects to the Director’s request for the [redacted]’s bylaws or constitution or any other evidence beyond [redacted]’s letters, the regulations state that a petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. *See* 8 C.F.R. § 103.2(b)(8). For the reasons discussed, the Petitioner has not established that he meets this criterion.

Published material about the individual 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 satisfy this criterion, the Petitioner must demonstrate published material about him and relating to his work in professional or major trade publications or other major media, as well as the title, date, and author of the material.⁷

On appeal, the Petitioner asserts that the Director either mischaracterized or overlooked “the most important publications” submitted under this criterion, and imposed requirements that are not indicated by the plain language of the regulations. The record reflects that the Petitioner has submitted several

⁶ As noted, the only screenshot the Petitioner provided from the [redacted] website was a list of the Official [redacted] Jury members. We note that the [redacted] website states the following regarding its membership criteria: “The first criterion is talent, regardless of the length of the CV, years of experience, awards and honors received. You can try your luck even if you are a new artist[.]” *See* Website of [redacted] [https://\[redacted\].index.php/fr/candidature](https://[redacted].index.php/fr/candidature) (accessed on Jul. 28, 2020).

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

in-depth interviews that are about him and relating to his work, and which also include the required author, title and date of publication. He also emphasizes that his work has appeared in curated online collections and in exhibition books, but these sources, which display his work, do not include an article, interview or other information about him, and therefore do not satisfy the criterion. Therefore, the remaining issue is whether the Petitioner established that any of the referenced articles or interviews were published in professional or major trade publications or other major media.

In his appellate brief, the Petitioner specifically highlights the following evidence in support of his claim that he meets this criterion: (1) his interview on the YouTube program [redacted] (2) an interview published in *Artspace*'s online magazine (www.artspace.com/magazine); (3) inclusion of his work in [redacted] publications at [redacted] (4) a feature on his work published by the website *Art People Gallery* (www.artpeoplegallery.com); (5) an article published by the website *Globedia* (www.globedia.com); and (6) an interview with the magazine *Revista Ophelia*. He claims that most of the sources cited above qualify as major media or major trade publications, while he describes *Revista Ophelia* as a professional publication

The Petitioner did not submit sufficient comparative circulation or distribution data to support his claim that he and his work have been featured in major media and/or major trade publications.⁸ However, we find that he meets this criterion based on the article titled "[redacted]" published by *Revista Ophelia* in 2018. The record supports his claim that this magazine is a professional publication in his field.

Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner maintains that he has played a leading or critical role "for his own painting establishment" as well as for [redacted], [redacted], [redacted], [redacted] Galleries, and [redacted], and that the evidence demonstrates that these are "distinguished organizations." In order to meet the requirements of this criterion, a leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the outcome of the organization or establishment's activities.

On appeal, the Petitioner specifically emphasizes his "leading roles" with [redacted], [redacted], [redacted], and [redacted], and his leading role "in his own establishment," which he claims the Director failed to consider.

Although not initially claimed under this criterion, the Petitioner stated in response to the RFE that he plays a "leading or critical role for his business of the creation of art" noting that such business "constitutes an establishment that has a distinguished reputation."

⁸ 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).

In order to fulfill this criterion, the Petitioner must demonstrate that he “performed in a leading or critical role for *organizations* or *establishments* that have a distinguished reputation.” (emphasis added). The Petitioner did not establish that he, as an individual, qualifies as an “organization” or “establishment.” The Petitioner’s argument that “artists serve as their own establishment” because they rely on their “own skills and abilities” and “play a leading role to create a successful masterpiece” is not persuasive. Although he cites to the dictionary definitions of “organization” and “establishment” he does not explain how the work of an individual artist meets the cited definitions of either term.

The Petitioner also provided letters from various galleries that have exhibited his work. [redacted] director and founder of [redacted] Gallery in [redacted] Venezuela, confirms that the Petitioner’s paintings were on permanent display between 2007 and 2012, noting that the permanent exhibition “enjoyed great acceptance by our customers” and “commercial success.” He states that the Petitioner’s artwork “sold quickly, and with a higher price compared to the artworks of other similar artists” in the same genre, which is why “his work was exhibited for so many years in a row.” While [redacted]’s letter discusses other aspects of the Petitioner’s career and achievements, he offers no further information regarding how he played a leading or critical role for the [redacted] Gallery.

The Petitioner asserts that an artist who is earning more than other artists and whose work is selling faster “is absolutely vital to a gallery,” that “those are precisely the types of artists that galleries want to represent,” and why he “played a leading and critical role for the gallery.” However, [redacted]’s letter does not establish that the Petitioner’s role as an artist represented by the gallery was “leading” based on his title, placement in the organization, or his duties, nor does he provide sufficient information to establish that the success of the Petitioner’s former permanent exhibition was of significant importance to the outcome of the gallery’s activities to the extent that his role was deemed critical.

With respect to his role with [redacted] Gallery, the Petitioner submitted a letter from [redacted] [redacted] who confirms that that the Petitioner was one of 166 figurative artists invited by [redacted] to create a 20 cm by 20 cm original piece for an exhibition titled “20 años en 20 x 20” to celebrate the gallery’s 20th anniversary. [redacted] highlights some of the well-known artists who created artwork for this exhibition, praises the Petitioner’s work, and indicates that [redacted] intends to include him among the 100 artists it will feature in the 2020 edition of the annually published art book [redacted] [redacted]. The Petitioner claimed that because each artist in the [redacted] anniversary exhibition “was chosen with care based on the highest standards,” all of the participating artists, including the Petitioner, “play a leading and critical role for the organization.” While we acknowledge that it has an honor for the Petitioner to be invited to participate in the gallery’s 20th anniversary exhibition, the evidence does not establish how his involvement in one past event, among 159 other artists, establishes his leading or critical role for this well-established gallery.

The Petitioner also submitted a letter from [redacted] director of [redacted]’s [redacted] [redacted]’ who comments on [redacted]’s relationship with the Petitioner. As noted, the record reflects that [redacted] represents more than 60,000 artists and has sold work to more than 12 million collectors worldwide. In her letter, [redacted] confirms that [redacted] sold 10 of the Petitioner’s original artworks and 11 prints since 2013, and notes that, because its curators appreciate the Petitioner’s work, they have selected his work for nine of their curated online collections. She also emphasizes his “Artist of the Day” selection, and notes that he was one of 103 artists selected to

participate in [redacted] in 2019. Finally, [redacted] states that the Petitioner's artwork "particularly as of 2019" comes with "a substantially high price tag," noting that in recognition of these prices, he was twice selected among the "Sales of the Week." She concludes that, for all of these reasons," the Petitioner "has played and continues to play an important role for [redacted]" as his "works have been sought by our clients and his paintings have sold successfully over the course of many years."

While [redacted] refers to the Petitioner's role as "important," we note that [redacted] sells millions of pieces and represents tens of thousands of artists. The evidence does not support a conclusion that every artist highlighted in some way the organization's curators, even on several occasions, has a "leading role" in the organization, or that the Petitioner has contributed to the organization in a way that has been of significant importance to the outcome of the organization's activities. The evidence indicates that the organization's curators admire the Petitioner's work and that [redacted] has sold a number of his paintings and prints. However, the evidence submitted is insufficient to demonstrate that his contributions rise to the level of a role that is leading or critical to the organization.

On appeal, the Petitioner briefly mentions his "leading or critical role for [redacted] Galleries and [redacted]" by "providing high quality artwork that sells at high prices." A letter from [redacted], general director of [redacted], confirms that they contacted the Petitioner in 2016 to exhibit his paintings in the gallery. She notes that "we have sold all the artworks on display (two large oil paintings)" and "are waiting for new paintings." [redacted] of [redacted] Galleries states that the Petitioner "is one of the very few who I wanted to display at [redacted] Galleries due to the quality and extraordinary talent de demonstrates," and indicates that he is a "tremendous asset to the gallery," which displays 1500 original works by 150 artists. Both [redacted] and [redacted] go on to discuss the Petitioner's other achievements and genre of art, but they do not offer further details that would demonstrate how the Petitioner has played a role that was leading or critical for their respective galleries simply by exhibiting his work there.

While the Petitioner provided evidence in support of his claim that some of the galleries discussed above enjoy a distinguished organization in his field, the evidence does not demonstrate his leading or critical role these organizations or establishments. Accordingly, he has not satisfied this criterion.

Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

The Petitioner claimed that he is highly compensated for the sale of his paintings. The Director acknowledged that the Petitioner provided some evidence related to the sale of his work but noted that the record lacks sufficient documentation of his previous earnings (such as tax documents) and comparative data regarding the remuneration that other artists receive for comparable work, and therefore did not demonstrate that his remuneration is significantly high in relation to others.

On appeal, the Petitioner emphasizes that he provided a 2018 Contemporary Art Market Report compiled by Artprice which establishes that he commands significantly high remuneration for his paintings, and he now submits the 2019 edition of this report. He also emphasizes that he submitted letters from [redacted], [redacted], [redacted], and [redacted] Gallery which corroborate his claim that his work "sells for substantially more than other [redacted] painters."

The Petitioner has documented the sales price for only two of his paintings which sold in May 2019 for \$10,387 and \$9,010, respectively. While the letters from galleries referenced in his appeal brief mention that his paintings garner a relatively high price compared to similar artwork, they do not include any figures and therefore do not provide evidence of his past remuneration for his work. Further, we note that [redacted] representing [redacted] noted that the Petitioner's sales prices are higher "particularly as of 2019," thus suggesting that he has not consistently earned the documented amounts for his artwork.

According to the 2019 Artprice Contemporary Market Report, "the vast majority of Contemporary paintings are relatively affordable with 74% changing hands for under \$5,000." The 2018 edition of the report mentions that "the average price of a successfully auctioned Contemporary artwork has risen from \$8,400 at the turn of the 21st century to \$28,000 today" and indicates that 80% of artwork sold at \$8,053 and under. While these figures establish that the Petitioner garners higher remuneration than many artists, they do not establish that he has commanded *significantly* high remuneration in relation to others. Further, the Artprice market reports are limited to data for contemporary artwork sold at auction; the submitted evidence does not establish how prices for artwork sold at auction compare to prices for similar artwork sold by galleries, and the Petitioner has not provided evidence of remuneration he received for artwork sold at auction.

Overall, the Petitioner provided limited documentation of his past remuneration of his artwork, and insufficient comparative information to establish that he commands significantly high remuneration in relation to others in his field. Accordingly, the Petitioner did not show that he meets this criterion.

C. Reserved Issue

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether his entry would substantially benefit prospectively the United States, as required by section 203(b)(1)(A)(3) of the Act. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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 evidence demonstrates that the Petitioner is a talented artist who is highly regarded by collectors and gallery

owners who display his work, has achieved finalist and honorable mention status in some significant art competitions and has enjoyed increasing attention from art-related media. However, the Petitioner has not shown that the significance of his work and achievements at the time of filing 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.

ORDER: The appeal is dismissed.