



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 10158485

Date: AUG. 25, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a newspaper, seeks classification of the Beneficiary as an alien of extraordinary ability in the arts. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary had a major, internationally recognized award, or that he met three of the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3).

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). 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 Beneficiary is employed by the Petitioner as a graphics and multimedia editor, a role in which he has participated in the design and development of [REDACTED] projects. He received a master of professional studies degree from [REDACTED] University in 2016, and the Petitioner states that it intends to permanently employ him in his current position.

A. One Time Achievement

Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. See H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The House Report specifically cited to the Nobel Prize as an example of a one-time achievement; other examples which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the field as one of the top awards.

The Petitioner initially presented evidence that prior to the filing of the petition on behalf of the Beneficiary, it had been nominated for a 2019 [redacted] Emmy Award in the category of [redacted] for its [redacted] video and accompanying [redacted] piece titled “[redacted]” The Petitioner’s entry for this award shows that the Beneficiary was listed as one of nine producers for this project, along with three executive producers. In response to the Director’s request for evidence (RFE), the Petitioner submitted evidence that it had received this award on [redacted] 2019. However, the Director concluded, without specifically naming this or other awards received by the Petitioner, that since none of the awards in the record were in the Beneficiary’s name, he had not received a major, internationally recognized award.

On appeal, the Petitioner submits additional evidence relating to this award, consisting of a certificate and a photo of a statuette, both of which name the Beneficiary and his role as a producer on this project. However, the certificate states that the National Academy of Television Arts and Sciences (NATAS) “honors” the Beneficiary, but names the Petitioner as the recipient of the award. Also, the evidence from the NATAS website and that of the Petitioner states that it was the Petitioner who received the award. While the Beneficiary is pictured along with a group accepting this award at the awards ceremony, the announcement on the Petitioner’s website does not name him or any other individual as a recipient.

In addition, the record does not establish that the [redacted] Emmy is one of that small handful of awards which qualify as a major, internationally recognized award. The Petitioner submitted evidence about its receipt of the award from its own website and that of the NATAS, as well as a link to a YouTube video of the awards ceremony which includes a brief interview of the Beneficiary. But the Petitioner has not shown that this evidence reflects the same sort of international media attention afforded Olympic medals and Nobel Prizes as stated above, nor is there evidence in the record of a large monetary prize or any other indicators of international recognition.

For all of the reasons stated above, we find that the Beneficiary has not received a major, internationally recognized award.

B. Evidentiary Criteria

Because the Petitioner has not established that the Beneficiary has received a major, internationally recognized award, it must demonstrate that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Beneficiary met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his leading or critical role and a high salary in comparison to others in his field. On appeal, the Petitioner asserts that the Beneficiary also meets the evidentiary criteria relating to his receipt of lesser nationally or internationally recognized awards, published material about him and his work, and his contributions of major significance to the field.¹

¹ We note that although the Petitioner also references the criterion at 8 C.F.R. § 204.5(h)(3)(vii) regarding display of the Beneficiary’s work at artistic exhibitions or showcases in its appeal brief, it does not offer specific new arguments in dispute of the Director’s decision. The AAO, therefore, considers this issue to be abandoned. See *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

After reviewing all of the evidence in the record, we find that the Beneficiary does not meet the initial evidence requirement by meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

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)

In his decision, the Director listed evidence regarding several awards, but found that none of it named the Beneficiary as the recipient of an award. On appeal, the Petitioner does not dispute that the Beneficiary is not named as a recipient of these awards (aside from its assertions related to the [redacted] [redacted] Emmy which are discussed above), but argues that "what is intended by this provision is a requirement to produce credible evidence by virtue of the lesser award that this individual is extraordinary..." But the plain language of this criterion calls for documentation of the "alien's receipt" of qualifying prizes or awards, not his or her employer's receipt of such prizes or awards, a requirement which this assertion does not address.² Further, as explained above, the two-part analysis introduced in Kazarian requires that the evidence first be counted to determine whether the initial evidence requirement of a one-time achievement or at least three of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3) has been met. Only if that initial evidence requirement has been met do we consider whether the totality of the evidence shows that the individual has sustained national or international acclaim and is one of the small percentage at the top of his or her field. Therefore, at this point in our analysis of the evidence, we do not determine whether the evidence establishes that the individual has extraordinary ability, but whether it meets the plain language of the criterion to which it pertains.

The Petitioner also submitted evidence regarding the Beneficiary's role in these award-winning projects, including letters from his superiors indicating that his work was "indispensable" and that the projects would not have been published without him. The record also includes two articles written by the Beneficiary's supervisor which describe two of the [redacted] projects and include brief mentions and photographs of the Beneficiary, although it's not apparent where or if these articles were published. While this evidence shows that the Beneficiary was an important member of the team which created these [redacted] experiences, the Petitioner does not refer to a provision in the regulation which provides for consideration of the contributions of a member of an award-winning team to qualify under this criterion. As the Petitioner has not established that the Beneficiary has received a lesser nationally or internationally recognized award in his field, we agree with the Director and find that he does not meet 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 its appeal brief, the Petitioner includes a single sentence in reference to this criterion. After discussing the Beneficiary's role on the teams which created award-winning [redacted] and [redacted] projects for the Petitioner, the Petitioner states that the same reasoning underlying the assertion discussed above

² See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14. page 6 (Dec. 22, 2010), <https://www.uscis.gov/policy-manual/volume-6-part-f>.

also applies to articles written by others about those projects. Specifically, the Petitioner asserts that despite those articles not even mentioning the Beneficiary, the fact that he played an important role in creating the projects essentially means that the articles are about him. However, while there is no question that these articles discuss and praise the work of the Petitioner, and are clearly about the work of the teams which created them, the plain language of this criterion requires that published materials be about the alien. 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 about a show are not about the actor). Because these published materials do not focus on the Beneficiary to any extent, they do not establish eligibility under 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)

"Contributions of major significance" connotes that an individual's work has significantly impacted the field. See *Visinscaia*, 4 F. Supp. 3d at 134. 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. In its appeal brief, the Petitioner does not identify specific contributions that the Beneficiary has made to the field of creative technology or digital journalism, but refers to the eighteen reference letters which were submitted, stating that they show the "cutting-edge work" being done by the Beneficiary.³ We consider several of these letters below.

[redacted] General Manager of [redacted] Studio, writes that he worked with the Beneficiary on "the [redacted] hologram piece" in which the Beneficiary "contributed both conceptually and technically." [redacted] concludes that this and other projects completed by the Beneficiary as a member of the Petitioner's team "are very important examples in our field, showing how these new technologies can be applied to high purpose for mainstream purposes." Another employee of the [redacted] studio is [redacted], who states that the emerging [redacted] technologies "require exceptional individuals like [the Beneficiary]," and that his work is important to the field of journalism and for companies like [redacted] since "he breaks trail in using these emerging technologies." Although these letters indicate that the Beneficiary is contributing to his field as a pioneer in implementing these technologies, they do not establish that he has had an impact on the work of others in digital journalism.

[redacted], CEO of [redacted] states that the Beneficiary "has been a key contributor to some of the most significant contributions to the field of [redacted] media." He cites the [redacted] experience" as an example, indicating that the Beneficiary's contributions "made it one of the most impactful uses of [redacted] capture for [redacted] in history." However, [redacted] does not explain why he considers this work to be impactful, or how it has impacted the field.

Another letter was submitted by [redacted] Design Manager with [redacted] who indicates that "one cannot underestimate the reach of [the Beneficiary's] contributions." He writes that the Petitioner's story, [redacted] "is regarded as one of the best

³ All of the letters were reviewed, including those not specifically mention in this decision.

use [sic] of [redacted] in journalism.” [redacted] adds that the success of [redacted] platforms depends upon the content created for them, and that the Beneficiary’s work is therefore crucial to “ensure that highest quality of content is created for this medium.” But he does not indicate that the Beneficiary’s work has already directly led to the success of [redacted] platforms, or the adoption of this technology by more newspapers or other digital media.

[redacted] of the [redacted] describes the Beneficiary’s work on the [redacted] project, “an open source platform for shared, interactive computation.” He writes that the Beneficiary “propelled our project from mere prototype to deployment at scale,” and that his work “was a key requisite” for releasing the project.

These reference letters, and the others submitted by the Petitioner, show that the Petitioner has contributed to several [redacted] projects, with the Petitioner and other entities. They applaud his skill and creativity in contributing to the success of these projects, and some indicate that his work has allowed the Petitioner to attain a leadership position in this field. Although several media articles support the assertion that the Petitioner was one of the first media outlets to use this technology, the record does not include evidence showing a resulting wide implementation of techniques or methods used by the Beneficiary, or other evidence that his work has influenced others in his field. As such, we find that the evidence does not establish that the Beneficiary meets this criterion.

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

To qualify under this criterion, the Petitioner must establish that the Beneficiary played a leading or critical role for an organization, and that that organization has a distinguished reputation. The previously discussed reference letters and other evidence establishes that the Beneficiary played a critical role for the team that created several [redacted] projects for the Petitioner, and the awards received by the Petitioner for the work of that team demonstrates that it has a distinguished reputation. Accordingly, we agree with the Director and find that the Beneficiary meets this criterion.

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)

The Director determined that the Beneficiary met this criterion, but did provide the reasoning for this determination. On review, the record includes copies of the Beneficiary’s 2017 and 2018 Form W-2s, showing that earned salaries of \$112,336 and \$139,194, respectively, in those years. It also includes two pages from the website payscale.com which indicate that the average salary for a film/video editor in [redacted] New York is \$55,857 per year, while those at the 90th percentile earn \$90,000 per year. While the Beneficiary’s current job title closely matches that of the one used in this survey, the evidence does not include a description of the duties performed by those in this job. We note that while the job opportunities shown in this evidence involve working with video, the descriptions of the Beneficiary’s duties include creating a design framework and user interface for [redacted] projects, writing computer code, developing advanced photographic techniques, and coordinating newsroom, product and design teams to ensure technology and social media projects are aligned. The Petitioner indicates that the position requires “computer graphics and web interface skills, strategic vision, and journalistic acumen...” Salary information for those performing work in a related but distinct occupation with

different responsibilities is not a proper basis for comparison. Rather, the Petitioner must submit documentary evidence of the earnings of those in the Beneficiary's occupation performing similar work at the top level of the field. See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); see also *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. III. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. III. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). The AAO notes that in *Matter of Racine*, 1995 WL 153319 at *1, *4 (N.D. III. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. III. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Here, the Petitioner has not shown that the salaries of film and video editors are a proper basis of comparison to determine whether the Beneficiary's salary is high compared to that of others in his field. We therefore disagree with the Director and find that the Beneficiary does not meet this criterion.

C. Comparable Evidence

As noted above, 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. On appeal, the Petitioner asserts that the Director should have considered the awards it received under this provision, "given the nature of what the beneficiary does, and the overwhelming evidence supporting his extraordinary work..." However, the Petitioner did not make such a claim in its initial brief which accompanied the petition or in response to the Director's RFE. In addition, the Petitioner does not assert, and has not shown, that the standards do not readily apply to the Beneficiary's occupation. Accordingly, we will not consider the awards received by the Petitioner to be comparable evidence.

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 that he is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.