



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 11133034

Date: DEC. 16, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a poet, 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 Texas 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 addition, the Director determined that the Petitioner did not establish that he would substantially benefit prospectively the United States.

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)(A) of the Act makes visas available to immigrants with extraordinary ability if:

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

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate 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 criteria 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). (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).

## II. ANALYSIS

The Petitioner submitted evidence of his poetry and indicated that he has “continued [his] work as a poet since [he] arrived last year, as a result, [his] new book will be published in May 2020, and [he has] written the entire book during [his] stay here in the United States.” Because the Petitioner has not indicated or established that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), 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 the following three criteria: awards at 8 C.F.R. § 204.5(h)(3)(1), published material at 8 C.F.R. § 204.5(h)(3)(iii), and judging at 8 C.F.R. § 204.5(h)(3)(iv). Upon de novo review, we agree with the Director regarding the awards and judging criteria. However, for the reasons discussed below, the Petitioner did not demonstrate that he meets the published material criterion. Accordingly, the Petitioner did not establish that he meets at least three criteria.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material, and any necessary translation.<sup>1</sup> Because the record does not reflect that the Petitioner

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<sup>1</sup> See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 7 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), we will withdraw the Director’s decision for this criterion.

In the initial filing cover letter, the Petitioner claimed:

[B]ecause he is considered one of the foremost contemporary [redacted] poets whose work serves as a benchmark in the field, [he] has received extensive press and media coverage relating to himself and his work, including numerous articles and reviews of his work in newspapers and online, as well as interviews on several television and radio stations around the globe . . . .

Additional reviews of [his] work have been published by critics in the Middle East Newspaper ([redacted] 2017), Aljazeera Newspaper ([redacted] 2016 and [redacted] 2016), Okaz Newspaper ([redacted] 2014), Alyoum Newspaper ([redacted] 2014 and [redacted] 2017), Alhayat Newspaper ([redacted] 2019), the Qatari magazine New Generation ([redacted] 2016) and Farqad Magazine ([redacted] 2018). . . . Given the sheer volume of [his] extensive press and media coverage relating to himself and his work, we present a sampling of this evidence for your review . . . .

Although the Petitioner asserted publication by newspapers and magazines, the record does not contain evidence of his claim. Instead, the Petitioner provided documentation reflecting the posting of articles on websites; the record does not indicate published material about the Petitioner relating to his work in newspapers or magazines. For example, the Petitioner stated that he “was recently interviewed by the Egyptian leading newspaper Al-Ahram in an article entitled [redacted]

[redacted] The record shows a translated article from an unidentified website rather than from the newspaper, Al-Ahram. Accordingly, in the absence of publication in newspapers or magazines, the Petitioner must demonstrate that the postings on websites represent major media. See, e.g., Victorov v. Barr, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at \*8 (C.D.C.A. Apr. 9, 2020).

Likewise, the Petitioner submitted a “Certificate of Translation” from [redacted] for a list of 36 items, indicating that she:

[E]dited the translated text from [redacted] to English for meaning, accuracy, and consistency with the original source text. [She] hereby certified to the best of [her] knowledge, the translation that [she has] provided is accurate and faithful translation of the original text provided to [her].

[She has] made the attached translations into English for the following documents:

Any document in a foreign language must be accompanied by a full English language translation. See 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. Id. In her list of documents, [redacted] indicated that she translated articles from specific newspapers and magazines even though the record contains only screenshots of websites. For example, while [redacted] [redacted]s certification lists [redacted]. Al-Riyadh

Newspaper,” the record only contains a translation of an article entitled, [redacted] posted online at alriyadh.com.

Moreover [redacted] lists documents that are not contained in the record – either in a printed format or an online format. For instance, [redacted] indicated ‘[redacted]’; however, the record does not reflect the translation of such an article printed in Al-Hayat Newspaper or posted on alhayat.com.

Furthermore, the majority of the translations reflect introductory commentary by the Petitioner. For instance, the translation for an article entitled, [redacted] (alapl.com), states “[i]n [redacted] 2019, poetry news agency wrote about my comment on my winning of the [redacted]’s prize for [redacted] poetry.” (emphasis added). Here, the added commentary by the Petitioner suggests that [redacted] did not translate the material and/or did not provide a “complete and accurate” translation as required by the regulation. In addition, the Petitioner submitted translations, such as the ones entitled [redacted] and [redacted] without attaching the original documents.

Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Because of these inconsistencies, the Petitioner did not demonstrate that the translated material is accurate and supports his claims.

Notwithstanding the above, the Petitioner submitted translations for 17 foreign language website postings. However, two of the translations have no dates of the material, four of the translations have no authors, eight of the translations have no dates and no authors, and one translation has no title, date, and author. The inclusion of the title, date, and author of the material is not optional but a regulatory requirement. See 8 C.F.R. § 204.5(h)(3)(iii). In addition, although eight of the articles reflect published material about the Petitioner relating to his work, nine of the articles reflect media coverage of events and other individuals. While the Petitioner is briefly mentioned, the articles do not represent published material about him. For example, the translation of an article entitled [redacted] which includes the title, date, and author, is about the [redacted] Prize with the Petitioner briefly mentioned one time among the other winners. Further, the other translation that includes the title, date, and author entitled, [redacted] reports on the Petitioner’s poetry books but is not about him. 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.N.V. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

The Petitioner also presented three English online articles. As it relates to the article entitled, [redacted] (timesofoman.com), the article reflects coverage of the opening ceremony of the [redacted] Festival for [redacted] Poetry with the Petitioner mentioned only time as being one of several poets participating. Similarly, an article entitled, [redacted] (middleeasteye.net) is about a list of 10 poets with the Petitioner briefly listed among them. Further, although the article entitled, [redacted]

[redacted] (allafrica.com) reflects published material about him, the Petitioner did not include the author of the material.<sup>2</sup>

Further, the Petitioner offered five screenshots of photographs claiming that they depict television interviews of him and attached website addresses from YouTube. However, the Petitioner did not include the titles and the authors of the material. In addition, the Petitioner did not demonstrate that screenshots of photographs depict published material about him. The Petitioner, for example, did not submit transcriptions of the television interviews to establish published material about him.

As it relates to the evidence reflecting published material about him, which included the required title, date, and author, the Petitioner provided one article entitled, [redacted] [redacted] (sudanow-magazine.net).<sup>3</sup> Likewise, notwithstanding the personal commentary and the other issues addressed above regarding the translations, the Petitioner submitted translations for interviews of him posted on alaraby.co.uk, okaz.com, and alittihad.ae.<sup>4</sup> However, the Petitioner did not demonstrate the major media standings of the websites.

Specifically, the Petitioner submitted an “About” screenshot regarding SUDANOW Magazine from sudanow-magazine.net. The screenshot makes no mention of sudanow-magazine.net, let alone its standing as a major medium.<sup>5</sup> Further, the Petitioner did not offer any independent, objective evidence to support the screenshot’s claims. USCIS need not rely on the self-promotional material of the publisher. See *Braga v. Poulos*, No. CV 06 5105 SJO (C.D.C.A. July 6, 2007) aff’d 2009 WL 604888 (9<sup>th</sup> Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine’s status is not reliant evidence of a major medium); see also, e.g., *Victorov*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at \*8. Likewise, the Petitioner provided a screenshot from eyeofriyadh.com that indicates contact information for Okaz Newspaper but does not establish, or even mention, okaz.com as a major medium. The record does not reflect that the Petitioner offered evidence relating to alaraby.co.uk and alittihad.ae.

For the reasons discussed above, the Petitioner did not demonstrate that his documentation satisfies all of the elements of this criterion, and we withdraw the Director’s decision for this criterion.

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria.<sup>6</sup> As a result, we need not provide the type of

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<sup>2</sup> Duplicate copies of this article contained in the record.

<sup>3</sup> Duplicate copies of this article contained in the record.

<sup>4</sup> The Petitioner submitted another translation of an interview posted on al-hayat.com but did not include the author.

<sup>5</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

<sup>6</sup> The Petitioner previously claimed eligibility for original contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). He does not contest these criteria on appeal. Accordingly, we consider these issues to be abandoned. See *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11<sup>th</sup> 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).

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 conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

Although the Petitioner received some awards, they are mostly limited to youths, students, and age [redacted] Prize for [redacted] youths. Award of [redacted] for students of secondary schools and bachelors’ degrees, and [redacted] Award for young innovators between 18 – 40). While the awards reflect some recognition of his work in the field, the Petitioner did not demonstrate how his honors place him among that small percentage at the very top of the field. See 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not establish that his receipt of such awards compare to those in the upper echelon of his field. Moreover, the Petitioner did not show that his work on the judging committee of the [redacted] Poetry reflects a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. See H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. He did not, for example, demonstrate that he garnered wide attention from the field based on his committee work judging poetry. Further, even though the website articles suggest some media coverage, the Petitioner did not establish that such reporting is consistent with the sustained national or international acclaim for this very high standard to present more extensive documentation than that required. See 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.<sup>7</sup> 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.

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<sup>7</sup> As the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether his entrance will substantially benefit prospectively the United States under section 203(b)(1)(A)(iii) of the Act. Accordingly, we reserve this issue. See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).