



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

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

In Re: 9868433

Date: DEC. 18, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a television and movie producer, 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 the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three. 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 claims to be vice president and general manager at [REDACTED] in China. 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 only one criterion, scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that he meets five additional criteria. After reviewing all of the evidence in the record, the record does not reflect that the Petitioner satisfies the requirements of at least three criteria.

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

The Petitioner argues that he “has served as [REDACTED] of several TV productions which received awards for excellence” and “film and television productions are a collaborative effort, and no one person is 100% responsible for its success.” He lists ten television series and various awards for “Outstanding Television Series,” “Best Television Series,” and “Top 100 Chinese TV Series.” 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 The description of this type of evidence in the regulation provides that the focus should be on the alien’s receipt of the prizes or awards, as opposed to his or her employer’s receipt of prizes or awards.² Here, the Petitioner presented documentation relating to awards won by the television series, including others involved in the productions such as actors, directors, and screenwriters, rather than by him. Although he served as an executive producer on the television series, the Petitioner did not establish

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.*

that any of the awarding entities acknowledged him as an award recipient or that the awarding authorities distinguished him from the others who worked on the productions.

As the record does not reflect that *he received* any nationally or internationally recognized prizes or awards for excellence in his field of television or movie producing, the Petitioner did not show 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 contends that he “was elected as the [redacted] of the [redacted] Committee for Production and Broadcast of TV Dramas and Online Dramas of [redacted] [redacted] in September 2018.”³ 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.⁴ Associations may have multiple levels of membership, and the level of membership afforded to the alien must show that in order to obtain that level of membership, the alien was judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought.⁵ Here, the Petitioner does not argue for any of his positions as a level of membership but rather his general membership with [redacted].⁶

The record contains a screenshot from [redacted] website regarding membership conditions:

The individual has been engaged in TV art creation, management, research, commentary and teaching for a long time and has achieved certain achievements. He or she has obtained professional titles of deputy senior or above, or won individual awards in provincial and national industry system. His or her works participated in the national award. He or she has made certain contributions to the management of TV art, enthusiastically promote the development of TV art, actively support the citizens of the People's Republic of China, and are willing to participate in the activities of this association (including professional committees) and group membership organizations. The individual supports the constitution of the association may apply to join the association as an individual member.

³ The Petitioner also indicates that he was elected as [redacted] of the [redacted] committee within [redacted]

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

⁵ *Id.*

⁶ The record does not contain evidence regarding the requirements for an election to [redacted] or [redacted] of a committee within [redacted] nor did the Petitioner establish that being elected to a committee position requires outstanding achievements, as judged by recognized national or international experts.

Although [] requires “certain achievements,” the Petitioner did not demonstrate that they rise to a level of “outstanding” as required by this regulatory criterion. Specifically, the Petitioner did not establish how obtaining a professional title of deputy senior or above constitutes an outstanding achievement. He did not show, for example, the relevance or significance of a deputy or senior professional title in the field.

Similarly, while [] generally indicates receipt of provincial or national awards, the Petitioner did not establish how this elevates to an outstanding achievement. For instance, the Petitioner did not show that [] requires receipt of major, recognized awards rather than local or little known awards. Likewise, the screenshot does not elaborate on the meaning of “certain contributions” and how they represent outstanding achievements. Further, the Petitioner did not demonstrate how enthusiastically promoting television arts, actively supporting Chinese citizens, and willingly participating in [] activities portrays outstanding achievements consistent with this regulatory criterion.

Moreover, the screenshot indicates that “[t]he association will review on the materials and then submit to the Presidium for approval.” However, the Petitioner did not show the composition of the presidium and demonstrate whether it contains nationally or internationally recognized experts in their disciplines or fields.

Finally, the Petitioner indicates that he “has been a member of the [] Radio and Television Association []” but does not explain how his membership qualifies for this criterion or points to which evidence, if any, demonstrates his eligibility. Furthermore, although the Petitioner previously submitted evidence of his membership and a screenshot relating to a brief description and background of the association, the evidence does not show the membership requirements and judging body. As such, the Petitioner did not establish that [] requires outstanding achievements of its members, as judged by recognized national or international experts.

For the reasons discussed above, 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 Petitioner claims eligibility for this criterion based on six items. 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.⁷ With the exception of an article published by *Beiguang People*, the remaining five items do not reflect published material about him relating to his work. Although they briefly mention his name or quote him for source material, they are not about him and pertain to various events in which he participated. Specifically, the sina.com screenshot reflects an article about a seminar that mentions the Petitioner as one of the attendees, the xinhuanet.com screenshot reflects an article about a conference that mentions the Petitioner as providing a speech, and the two screenshots from people.com.cn and the screenshot from sohu.com reflect articles about a convention that quotes the Petitioner. Articles that are not about

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

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). Further, the Petitioner did not include the required authors for the articles posted on sina.com, xinhuanet.com, and sohu.com. 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).

Regarding the article from *Beiguang People*, the Petitioner did not demonstrate publication in a professional or major trade or other major medium. The Petitioner makes no arguments on appeal regarding the publication's standing or status as a professional, major trade, or major medium. Moreover, the record reflects that at initial filing the Petitioner provided a copy of the article but did not include any evidence relating to *Beiguang People*. In response to the Director's request for evidence, the Petitioner submitted another copy of the article and evidence showing the same article posted on bgtv.cn. However, the Petitioner did not present any supporting evidence establishing that either *Beiguang People* or bgtv.cn constitutes a professional or major trade publication or other major medium.⁸

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

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

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.⁹ 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.

The Petitioner contends that he “significantly contributed original and pioneering work related to film and television, and he is also a distinguished film and television producer of exceptional abilities, exceedingly superior to what is expected at those at his level.” Although he lists various television series, including awards received by them, the Petitioner does not identify what, if any, original contributions he made and how they have been of major significance in the field. He does not specify what “original and pioneering work” resulted from the production of television series and how the work influenced the field in a majorly significant manner. He did not show the impact his contributions have had on the overall field beyond the television series that he produced.¹⁰

Further, the Petitioner argues that he “submitted documentation to demonstrate that [he] has published his studies and research.” Although we already considered his authorships and publications under the

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).

⁹ *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).

¹⁰ *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).

regulation at 8 C.F.R. § 204.5(h)(3)(vi) relating to scholarly articles, the Petitioner did not provide evidence, for instance, of the impact or influence of the studies and research in the field to be considered majorly significant. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” See *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115. Likewise, the Petitioner makes brief references of “service as a member of the judge panel for major TV program awards; media coverage of his achievements and comments of the industry; and the extraordinary achievements he has accomplished by production of his works” without further elaborating and explaining how the evidence demonstrates original contributions and how the field considers them to be of major significance consistent with this regulatory criterion.

Finally, the Petitioner references three recommendation letters that opined on his abilities, skills, and personal traits. For instance, [redacted] stated that the Petitioner “has a rich experience in the field of TV series production, and has a comprehensive understanding and control of the TV series market and resources in China,” and “[h]e also has an unusually rigorous attitude toward and pursuit in the artistic quality of TV series.” [redacted] indicated that “[m]any of [the Petitioner’s] television series . . . have produced groundbreaking and intricate characters and plots in a field where there is an abundance of monotony and remakes of prior television productions,” and “[he] has the ability to add fresh new storylines and perspectives [] up to high artistic standards and advocate positive values.” [redacted] claimed that the Petitioner has an “acute sense on TV production of different resources” and “is extraordinary thoughtful in making selections of the resources of TV series in China.” However, having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. The record must be supported by evidence that the Petitioner has already used those skills and talents to impact the field at a significant level, which the letters do not show.

Here, the Petitioner’s letters do not contain specific, detailed information identifying his original contributions and explaining the unusual influence his artwork has had on the overall field. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value.¹¹ 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.¹² 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.

III. CONCLUSION

The Petitioner did not demonstrate that he satisfies the criteria relating to awards, memberships, published material, and original contributions. Although the Petitioner claims eligibility for an additional criterion on appeal, relating to judging at 8 C.F.R. § 204.5(h)(3)(iv), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria

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

¹² *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).

under 8 C.F.R. § 204.5(h)(3), we reserve this issue.¹³ Accordingly, 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 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 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 the television and film industry, 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.¹⁴ 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.

¹³ *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).

¹⁴ 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*, 429 U.S. at 25-26; *see also* 26 I&N Dec. at 516, n.7.