U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6082055

Date: JAN. 9, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an animation director/producer, 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 Petitioner did not establish, as required, that he has received a major internationally-recognized award, or, in the alternative, that he meets at least three of the ten initial evidentiary criteria for this classification.

On appeal, the Petitioner asserts that the Director's decision contains errors of fact and overlooks a significant amount of probative evidence that establishes his eligibility.

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 Petitioner, an animation director and producer, is the CEO and owner of [redacted]. in South Korea and [redacted] in the United States. His major credits include television projects for Nickelodeon [redacted], Cartoon Network [redacted] and Netflix [redacted], among others.

A. Major International Award

The regulation at 8 C.F.R. § 204.5(h)(3) states that a petitioner may submit evidence of a one-time achievement that is a major, internationally recognized award. On appeal, the Petitioner maintains that his 2006 Annie Award for [redacted] is a qualifying award. He received the award as the animation director for the [redacted] episode titled [redacted]."[1]

The Petitioner describes the Annie Award as "one of the world's most prestigious awards in the animation industry, often described as '*Academy Awards (Oscars)* in animation' and/or 'Animation's Highest Honor,' noting that it is "internationally renowned and is truly a lifetime achievement." The record includes background information regarding the award, which is given by the Hollywood chapter of The International Animated Film Society (AFISA-Hollywood) at an annual awards ceremony. This information reflects that that from 1972 until 1992, the Annie Awards honored cumulative career achievement, after which increasing numbers of categories were added over time.

The information from ASIFA-Hollywood describes the Annie Awards as "one of the most professional awards shows in Hollywood" noting that it has drawn presenters such as Stan Lee, William Shatner, and John Leguizamo, and was filmed for television airing on one occasion (in 1999). The record includes evidence that the 2018 awards nominees were announced in articles published by the websites Animation World Network (awn.com) and mxdwn.com, as well as a 2017 article titled "Disney Wins

[1] Although the Director determined that the Petitioner only provided evidence of his nomination for this award, his actual receipt of the award is well-documented in the record, which includes a photograph of the engraved award and official results from the awarding organization.

Big at 44th Annie Awards" published on the website of the Walt Disney Company. Finally, the Petitioner submitted several recommendation letters from individuals in his field who mention the significance of the Annie Awards. For example, [redacted] a supervising director at [redacted] states that the Annie is "equivalent of the Academy Awards in the field of animation," and [redacted] a line producer at [redacted] states that the "Annie Awards are essentially the animation industry's version of the Oscars or Golden Globes." [redacted] executive producer [redacted] describes the award as "one of the most influential and internationally recognized awards for accomplishments in the industry."

The aforementioned documentation, however, does not sufficiently demonstrate the international import of the Annie Awards or establish that its winners receive recognition commensurate with a major, internationally recognized award. Although the evidence draws comparisons between the Annie Awards and the Academy Awards, winners of the latter are reported in major media internationally and receive their awards in a televised ceremony watched by millions of viewers. By contrast, the evidence does not establish that the Annie Awards attract a substantial audience, receive significant international media coverage, or are otherwise internationally recognized at the level required to qualify the award as a major one-time achievement.

Given Congress' intent to restrict this visa 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. Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). 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, is a familiar name to the public at large, and includes a large cash prize. Although a major internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, in the present matter, the evidence submitted does not establish that the Annie Award for character animation is such an award

In light of the above, the Petitioner has not demonstrated a qualifying one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

B. Evidentiary Criteria

Because the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to original contributions of major significance in his field, and high salary or remuneration. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to lesser nationally or internationally recognized awards, published materials, and leading or critical roles for organizations with distinguished reputations. After reviewing all of the evidence in the record, we find that the Petitioner has not satisfied three criteria.

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 that his prizes or awards are nationally or internationally recognized for excellence in the 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.[2] Further, the evidence must establish that the Petitioner himself received the award.

The Director determined that the Petitioner did not meet this criterion. As noted, the Director incorrectly found that the Petitioner did not establish that he was the recipient of an Annie Award, despite ample evidence in the record documenting his receipt. We find, based on the evidence discussed above, along with evidence that the Petitioner received media coverage that mentions his award, that he meets this criterion based on his receipt of the Annie Award [redacted]

With respect to this criterion, we note that the Petitioner also submitted evidence related to his Emmy Award nomination, and noted that [redacted] also received "major awards" including: two Pulcinella Awards in 2005 [redacted] and [redacted]; a Genesis Award for [redacted] for which he served as animation director, and a 2008 Peabody Award.

In order to fulfill this criterion, the Petitioner must demonstrate his *receipt* of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.[3] While the Petitioner's Emmy Award nomination is a significant professional achievement, we cannot equate his nomination with receipt of an award. In addition, while the Petitioner mentioned various awards won by [redacted] television series, he did not provide evidence that he was individually recognized by the awarding entities of the Pulcinella, Genesis, or Peabody Awards and therefore he did not meet his burden to establish that he was the recipient of these awards.

Published material about the individual in professional or major trade publications or other major media, relating to the individual'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's initial evidence included published online articles that relate to his work as an animator, animation director and animation studio head. These articles appeared on the websites *Cartoon Brew* (cartoonbrew.com), *The Korea Times* (koreatimes.co.kr), *Polygon* (polygon.com), *Kyunghyang News Daily* (khan.co.kr), *Hankyung Business* (news.naver.com), *Chosun Business*

[2] *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.
[3] *Id.*

(biz.chosun.com), *Yonhap News* (yonhapnews.co.kr), *Digital Times* (dt.co.kr), eDaily (edaily.co.kr), *The Dong-A Ilbo* (kids.donga.com), *Cine 21* (cine21.com), *The Daily Sports World* (sportsworldi.segye.com), *Chosun Daily Topclass* (topclass.chosun.com), and *Seoul Economics Daily* (news.naver.com).

With the exception of the articles published by *Cartoon Brew*, *The Korea Times*, and *Polygon*, all of the articles were in the Korean language. Any document in a foreign language must be accompanied by a full English language translation. 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.* Here, while each Korean-language article was accompanied by an English translation, the individual translations did not include a certification of accuracy from the translator. Rather the Petitioner submitted a single, blanket certification, which did not accompany any specific document. The certification from the translator states "that the attached/above document is an accurate translation of the document attached entitled "Newspaper Articles: [redacted]" Because the Petitioner did not submit a properly certified English language translation of each document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims. Therefore, we cannot find that the evidence from the Korean-language publications meets this criterion.

Further, the Petitioner did not include supporting evidence demonstrating that any of these articles, including those originally published in English, appeared in professional or major trade publications or other major media,[4] and instead relied on unsupported assertions regarding the nature or stature of these websites compared to other publications in South Korea. For example, counsel stated that "*The Korea Times* would be equivalent of the United States' *New York Times*." Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence. On appeal, the Petitioner submits additional information regarding *The Korea Times* from the publication's website, but the provided information only discusses the early history of the newspaper and does not include the comparative circulation data necessary to establish that it qualifies as major media in South Korea.

The Petitioner also submitted articles from publications such as *Forbes* and *Vanity Fair* which discuss the television series on which he worked. However, these articles do not mention the Petitioner and therefore are not about him. Articles that are not about the petitioner do not meet 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 about a show are not about the actor).

Finally, we acknowledge that the Petitioner submitted an undated certificate from The Marquis Who's Who Publication Board indicating that he had been approved as a subject of biographical record in the 2018-2019 edition of *Who's Who in the World*. The Petitioner did not provide evidence that this edition had gone to print as of the date of filing. Therefore, even if we determined that a biographical entry in this publication meets the plain language of the criterion, the submitted documentation does

[4] *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).

not establish that it was published prior to the date of filing. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

For the foregoing reasons, the Petitioner did not establish that he meets this criterion.

> *Evidence of the individual'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 satisfy this criterion, a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[5] 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 Director determined that the Petitioner met this criterion. We disagree and will withdraw that determination.

The Petitioner, referencing his filmography, indicates that he has "contributed numerous original artistic and commercially successful animation products of major significance." In addition to his filmography and other evidence related to his television projects, the Petitioner has provided letters from colleagues who highly praise his abilities as an animator, animation director, producer, and studio head.[6] However, the submitted letters do not contain sufficient information to establish how he has made an original contribution that has remarkably influenced or impacted the field.

[redacted] a principal artist at [redacted] describes the Petitioner as "an influential figure particularly in the South Korean animation industry." He notes while there are many internationally reputable animation studios that produce work for American and Japanese animation companies, the Petitioner, through his studio, has sought to be a "creator of world class animation works" instead of acting as a subcontractor to a major company." [redacted] opines that the Petitioner "deserves the title as a trailblazer in South Korean animation industry because his studio has contributed to the growth of independent creation by getting involved from the planning stage through post-production." While [redacted]s letter indicates that the Petitioner has adopted a business model that may be unusual in the South Korean animation industry, the evidence does not establish that the concept of operating a full-service animation studio is an original business concept in the field as a whole, and the actual impact of his business model on the wider field, or even within the Korean animation industry, has not been established. Therefore, while [redacted] commends the Petitioner for his decision to work towards more creative control of the planning and artistic processes for his animation projects, the record does not establish that his work in this regard amounts to an original contribution of major significance.

[redacted] refers to the Petitioner and [redacted] as "forerunners of this unique industry," but does not provide sufficient, specific information that would support a finding that the Petitioner made an original contribution of major significance in his field. He notes that the Petitioner received critical

[5] *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).

[6] Although we do not discuss every letter submitted, we have reviewed and considered each one in determining whether the submitted evidence satisfies this criterion.

acclaim for [redacted] and [redacted], and with respect to the latter, notes that it was "unusual for a brand new studio" to be involved in pre-production design and storyboarding along with animation. [redacted] a supervising producer at [redacted] animation, states that the Petitioner "has been widely recognized as one of the few pioneers who has successfully raised the statue [*sic*] of South Korean animation technique and accomplishments," noting that he has achieved both commercial success and artistic recognition. [redacted] notes in his letter that the Petitioner's and [redacted]'s have played "a key role in allowing [the [redacted] franchise to flourish beyond what many think of as 'children's programming,'" noting that the show "has been met with both critical and commercial success."

[redacted], an executive producer with [redacted] and co-creator of the [redacted] franchise, states that the Petitioner "is a visionary artist and entrepreneur who has been instrumental in changing the course of and elevating the TV animation landscape in the United States, South Korea and beyond." He further stated that the Petitioner's work on [redacted] exceeded "all standards for what was considered possible for TV animation," noting that the Petitioner and his studio were able to "innovate the production pipeline to allow artists to produce their best work under the demands of the American network system." [redacted] while offering very high praise, does not explain how the Petitioner elevated or changed the television animation landscape on an international basis or indicated that his innovations in animation production have impacted other studios.

The submitted letters corroborate that the Petitioner's work and studio are highly regarded and that he has received both critical and commercial success as an animator and director; however, these accomplishments alone are not sufficient to satisfy the plain language of this criterion. The submitted letters do not contain specific, detailed information identifying the Petitioner's original contributions and explaining the unusual influence his work has had in 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.[7] Here, the letters do not demonstrate the Petitioner's impact beyond the projects in which he participated.[8]

The Petitioner also relies on the above-referenced published materials in support of this criterion, including both articles about him, and articles which praise the quality of the projects on which he has worked. However, as discussed, many of the submitted articles are lacking the necessary certified translations. Notwithstanding that evidentiary deficiency, we note that the articles, like the submitted letters, generally address the Petitioner's commercial and critical successes or the relative novelty of his studio's business model in South Korea, without identifying how he has made contributions that have greatly influenced or impacted the field. We acknowledge that an article that appeared on the *Forbes* magazine website ([redacted]) mentions that [redacted]" The article describes the series as "totally unique" and goes on to discuss the tone, themes, and subject matter of the series, but does not attribute these qualities to the Petitioner or his studio, nor does it address the show's animation or other visual components of the show as being integral to this "new genre."

[7] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[8] *Id.; see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (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).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

> *Evidence 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)

As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[9] Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical. In addition, this criterion requires that the organizations or establishments must be recognized as having a distinguished reputation, which is marked by eminence, distinction, or excellence.[10]

At the time of filing, the Petitioner stated that he meets this criterion based on two appointments associated with the South Korean government. First, he provided evidence that, in 2013, he was appointed by the South Korean Ministry of Science, Information, Communication and Technology (ICT) and Future Planning, to be a member of the [redacted] He also provided evidence that, in 2012, he was "appointed as a mentor for then-South Korean [redacted]" noting that he was "selected for the [redacted] mentoring group comprised of 11 highly-esteemed professionals in the culture, arts, animation and media industry." While we agree with the Petitioner's statement that these appointments reflect his distinguished reputation in the South Korean animation industry, he did not provide information regarding his roles with either organization to establish how they were leading or critical, and therefore did not establish how his membership in either the [redacted] or in the [redacted] mentoring group satisfies the plain language of this criterion.

In response to a request for evidence (RFE), counsel indicated that the Petitioner "has been performing a leading/critical role for a number of animation companies with a distinguished reputation." Specifically, the Petitioner emphasized that the commercial success of [redacted] led to a video game, toys, books, and other merchandise that significantly contributed to an increase in profit for Nickelodeon. Counsel asserted that "[i]t was largely due to the [Petitioner's] extraordinary ability as an animation director and animator that made the animation such a huge success from the artistic and business perspectives." [redacted] also stated that "much" of the [redacted] franchise's success "is directly due to the talents, expertise, hard work, and ingenuity of [the Petitioner]." While the record reflects that the Petitioner held the key role of animation director for [redacted] episodes, it does not establish that a television series is an "organization or establishment." Rather, the record reflects that the [redacted] franchise is the property of Nickelodeon Animation Studios, which contracted some of its animation work to other studios, including DR Movie, [redacted] (a prior employer of the Petitioner), and MOI Animation. The record does not contain a letter from Nickelodeon detailing how the Petitioner's role was leading or

[9] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.
[10] *Id* at 10-11.

critical to the Nickelodeon organization as a whole, nor does it contain a letter from [redacted] that would establish his leading or critical role with that organization or its distinguished reputation.

However, we find sufficient evidence to establish that the Petitioner, as the founder, owner and CEO of [redacted] in Korea and in the United States, plays a leading role for these companies. Further, the record establishes that the Petitioner's studio enjoys a distinguished reputation as an animation producer, as evidenced by its partnerships to produce animated series with or for major companies such as Nickelodeon [redacted], DreamWorks and Netflix [redacted] and video game animations for Riot Games [redacted]. The record further reflects that, shortly after filing the petition, [redacted] signed contracts to produce two additional animated Netflix series. Accordingly, the Petitioner has met 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 Director determined that the Petitioner met this criterion. We disagree and find that the Petitioner did not submit sufficient evidence to meet his burden.

To establish eligibility under this criterion, the Petitioner must present evidence showing that he has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The Petitioner provided a copy of his IRS Form W-2 showing that he received $108,206.95 in wages from [redacted] in 2017.[11] The supporting evidence included a 2014 article published by [redacted] titled "[redacted] Salaries Revealed, From Movie Stars to Agents (and Even Their Assistants), which lists an average [redacted] salary of $200,000 for an animation director. The Petitioner also provided a 2016 blog post titled "What Salary Can I Expect to Earn in Animation?" published on the website of [redacted] College, which states that both senior animators and character technical directors average at or above $100,000 in competitive areas such as [redacted] Finally, the Petitioner submitted pay data from the Department of Labor's *Occupational Outlook Handbook* which indicates that producers and directors, not accounting for geographic location, earn a median annual wage of $70,950 with the highest 10% earning more than $189,870. The article indicates that "a few of the most successful producers and directors have extraordinarily high earnings."

[11] The Petitioner also provided evidence of his year-end U.S. earnings for 2018. However, because this criterion requires evidence that he "has commanded" a high salary in the past, and because the Petitioner must establish eligibility at the time of filing (February 2018) in accordance with 8 C.F.R. §103.2(b)(1), we will evaluate evidence that pre-dates the filing of the petition.

The Petitioner also provided a Certificate of Income from the Korean National Tax Service that includes his wage and salary income for the 2015 through 2017 tax years, but did not provide independent evidence that would allow us to compare his foreign salary to that of others working in his occupation and geographic area in South Korea. Individuals working in different countries should be evaluated based on the wage statistics or comparable evidence in that country, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States.[12] Without such evidence, we cannot properly evaluate the Petitioner's previous earnings in Korea.

The Petitioner emphasizes that his combined earnings from the United States and Korea for 2017 exceeded the figures provided in the above-referenced sources. However, as noted, we will not convert his Korean earnings for purposes of determining whether he earned a high salary relative to other animation directors working in the [redacted] area in 2017.[13] Further, the Petitioner has not indicated or documented how his time was divided between South Korea and the United States during that year, which prevents us from comparing his U.S. earnings to the provided figures. Finally, we note that the salary and wage resources on which the Petitioner relies include variable figures which lessen their probative value. For example, one source indicated average annual earnings of $200,000 for an animation director in [redacted] while another indicated a much lower average annual figure for the same geographic area, and neither purported to identify a "high salary" for an animation director in that region. The information from the *Occupational Outlook Handbook* is noted, but appears to be based on national figures, while other evidence in the record indicates that wages in the Petitioner's geographic are likely significantly higher than the average.

For the foregoing reasons, the Petitioner has not submitted sufficient evidence to establish that he meets 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. 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

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

[13] We also note that the Petitioner, at the time of filing, was in the United States working as chief executive officer in L-1A nonimmigrant status for [redacted] a nonimmigrant classification that requires his employer to establish that he primarily performs managerial or executive job duties. *See* section 101(a)(15)(L) of the Act, 8 U.S.C. 1101(a)(15)(L); 8 C.F.R. § 214.2(l). The record does not contain a full description of the services the Petitioner has performed for [redacted] and therefore, it is unclear whether his past earnings should be compared to that of other animation producers and directors, or to that of other chief executives.

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. 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.