



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

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

In Re: 7882011

Date: MAR. 17, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a 3D artist and animator, 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 provide evidence of his receipt of a major, internationally recognized award, or, in the alternative, evidence that he meets at least three of the ten initial evidentiary criteria for this classification.

On appeal, the Petitioner asserts that he meets all ten initial evidentiary criteria and is otherwise qualified as an individual of extraordinary ability.

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 received his bachelor of arts in animation from [redacted] College of [redacted] in the Philippines in 2014. The record reflects that, since graduating, he has worked in the Philippines as a 3D animator for [redacted] Corporation (2015), as a 3D artist for [redacted] Studio (2016-17), and as a freelance 3D animator for [redacted] (2017).<sup>1</sup>

### A. Evidentiary Criteria

The Director determined that the Petitioner did not establish that he has received a major, internationally recognized award.<sup>2</sup> The Petitioner does not contest this determination on appeal and therefore we deem this issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). Accordingly, 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 initial evidentiary criteria, relating to judging the work of others and commanding a high salary or other remuneration at 8 C.F.R. § 204.5(h)(3)(iv) and (ix). The Petitioner provided evidence demonstrating that he was asked to participate as a judge in the [redacted] College [redacted]'s thesis evaluation for the animation department's graduating class of 2015. In addition, he provided probative evidence of his 2015 year-end earnings along with evidence from two reliable sources demonstrating that he commanded a high salary relative to others working in the same occupation in his geographic region. Accordingly, we agree that the Petitioner satisfied these two criteria.

On appeal, the Petitioner asserts that he also meets all eight of the remaining ten initial evidentiary criteria, discussed below. After reviewing all of the evidence in the record, we find that the Petitioner did not establish that he meets at least three criteria.

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<sup>1</sup> The record demonstrates that, subsequent to the filing of the petition, the Petitioner accepted an employment offer in the United States as a 3D artist for [redacted]

<sup>2</sup> In response to a request for evidence (RFE), the Petitioner claimed that his Certificate of Recognition from [redacted] Corporation was a qualifying one-time achievement under 8 C.F.R. § 204.5(h)(3) but he has not pursued this claim.

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

In order to fulfill this criterion, the Petitioner must demonstrate his receipt of lesser nationally or internationally recognized prizes or awards for excellence in his field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.<sup>3</sup>

The Petitioner initially submitted the following evidence:

- Certificate of Recognition from [redacted] Studio for achievements in his position as a 3D artist
- Certificate of Recognition - Division-level Award, as a member of Motion Capture & 3D Scan Operations, a nominee for the 2015 [redacted] Awards Team Category, presented by [redacted] Corporation as part of "[redacted]" the [redacted] Special Recognition Program.

The Petitioner did not provide any supporting evidence to establish that his certificate from [redacted] [redacted] Studio is a nationally or internationally recognized award or prize. The record does not establish that the award is open to anyone other than employees of the company, or that it is recognized outside of the company that granted it.

With respect to his "Division-level Award" from [redacted] Corporation, the Petitioner emphasized that [redacted] Corporation, where he worked at the time he received the award, is the largest media and entertainment company in the Philippines. He explained that the [redacted] awards are publicly announced at an "awards night being held annually at the end of every month." The Petitioner explained that the award "is not limited to the employees of the award giving body"; however, he appeared to contradict that statement by also noting that the award is intended to "recognize exemplary performance by individuals identified by their supervisors and peers as having consistently excelled in their positions" and demonstrated "a strong commitment to the mission and values of [redacted] Corporation." The record contains screenshots from [redacted]'s website, including background information regarding the company and an article indicating that a program called [redacted] was a "big winner" at the 2019 [redacted] Awards. The submitted screenshots from [redacted]'s website, however, did not include information regarding the company's awards program, the number, types and categories of awards, the criteria for nomination, or any other information regarding the [redacted] employee recognition system.

As such, the Petitioner did not provide sufficient background regarding the level of recognition associated with his "Division-level Award," and we note that although the record contains two letters from representatives of [redacted] Corporation, neither of them mentioned the Petitioner's award or

<sup>3</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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>. (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance).

its significance. While it does appear that [redacted] holds a formal awards ceremony as part of its employee recognition program, the record does not contain evidence to support the Petitioner's claim that the awards are open to those working outside the company, nor is there evidence that "Division-level award" certificates are recognized at such ceremonies. For example, a photograph of the awards event from the company website shows individuals receiving a trophy. Notably, the Petitioner's certificate of recognition indicates that his team was nominated for a [redacted] Award in the Team Category, but there is no evidence that his team won the [redacted] Award. Accordingly, the Petitioner did not offer sufficient independent, objective evidence reflecting the national or international recognition associated with his division-level award certificate from [redacted]

On appeal, the Petitioner submits new evidence that he claims he was unable to obtain previously due to disruptions caused by typhoons in the Philippines. The newly submitted evidence indicates that the Petitioner was the first-place winner of a [redacted] design contest sponsored by the Philippines Department of Agriculture [redacted] Program in 2012. As the first prize winner, he received P25,000, a plaque and a certificate. The record reflects that the Petitioner was named among the other prize winners in a newspaper article published following the conclusion of the contest, but the name of the newspaper and the scope of its circulation are not provided. While it appears that the [redacted] [redacted] design contest was sponsored by a national government office and accepted entries from throughout the Philippines, the record does not establish the level of recognition associated with this competition and its prizes. As such, the Petitioner has not established that his first-place award in this special contest is considered a nationally or internationally recognized award or prize in his field.

For the reasons discussed above, the Petitioner did not demonstrate that he meets this criterion.

*Documentation of the individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*  
8 C.F.R. § 204.5(h)(3)(ii)

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.<sup>4</sup>

The Petitioner initially claimed that he meets his criterion based on his "membership" with Korea-Philippines Information Technology Training Center, but the attached evidence demonstrated only that he completed a training course in animation at the center in 2008. The Petitioner also argued that he was a "member" of [redacted]. However, the supporting evidence, which included a letter from [redacted] of [redacted], and the Petitioner's own resume, indicates that the Petitioner was employed by this company as a freelance 3D animator from February 2007 until July 2017.

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<sup>4</sup> 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).

In response to a request for evidence, the Petitioner described [redacted] as “a group of professionals involved in pre-and post-production of 2D and 3D animation, television programs and specials,” noting that “membership in this association is limited to individuals of proven track record and outstanding in the field of 3D animations.” He also submitted a second letter from [redacted] stating that the Petitioner was “a member of this group from February 2017 to July 2017.” [redacted] indicates that the organization is “open to all 3D animator professionals” but intending members must undergo a process that includes a portfolio review, review of their curriculum vitae and achievements, and a 20-minute questionnaire related to 3D animation. It appears that [redacted] has described the company’s hiring process for animators, and the record remains devoid of supporting evidence indicating that [redacted] is an association that offers “membership” rather than a company with that offers employment to qualified applicants.

On appeal, the Petitioner submits additional evidence related to this criterion, including a letter from [redacted] founder of the 3D Mentors Group at the [redacted] University [redacted]. He states that the group was established to help students and graduates of the program to gain access to the animation industry, and indicates that he promoted the Petitioner to “junior member” of the group when he was a senior at the university “because of his display of great mastery in only a short period of time.” The Petitioner submits a screenshot from the 3D Mentor’s group Facebook page, but does not provide any additional evidence regarding the group, such as its membership criteria, bylaws, or process for selecting members. [redacted]’s letter alone is insufficient to establish that the Petitioner’s membership in this group meets the requirements of this criterion. Similarly, the Petitioner provides screenshots indicating that he is a member of a Facebook group called [redacted] which is described as a “private group for students of [redacted]’s [redacted] on [redacted].” The Petitioner does not explain how his participation in a Facebook group designed for students enrolled in an online course qualifies as membership in an association in which members are required to demonstrate outstanding achievements as judged by recognized national or international experts.

For the foregoing reasons, the Petitioner has not established that he meets this criterion.

*Published material about the individual in professional or major trade publications or other major media, relating to the 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 claimed to meet this criterion based on his direction of a music video for the song [redacted] by [redacted]. The record reflects that the video has been uploaded to YouTube and contains testimonial evidence indicating that the video has aired MTV and on MYX Channel in the Philippines. The Petitioner also provided a letter from [redacted] the lead vocalist of [redacted] and a published article about [redacted], which does not mention the Petitioner or his work.

The Director determined that the Petitioner’s evidence did not satisfy the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) because he did not present published materials that are primarily about him and relating to his work in the field. We agree with the Director’s analysis of the

evidence and note that the Petitioner has not contested that analysis on appeal or pursued his claim that the video for [redacted] satisfies this criterion.

The Petitioner does, however, submit a copy of a newspaper article titled [redacted] [redacted] which he claims he was unable to obtain previously. As noted above, the article provides background information regarding the purpose of the design contest and names the various prize winners, noting that the Petitioner won first prize in the digital art category with a P25,000 cash prize. The article, however, is about the contest and its winners as a whole, and is not about the Petitioner and his work. Articles that are not about a petitioner 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 provided newspaper clipping does not identify the title of the newspaper, the date of publication, or the author of the material. Finally, the Petitioner has not established that the unidentified publication in which the article appeared qualifies as a professional or major trade publication or other major media in the Philippines. Accordingly, the Petitioner has not demonstrated 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 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. 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 maintains that he meets this criterion based on his previous submission of “[n]umerous references and supporting letters . . . that provide contextual information about the petitioner’s significant contribution in his field.” Specifically, the record shows that the Petitioner previously argued that the following evidence satisfies this criterion: (1) two letters from [redacted] of [redacted] [redacted] along with examples of artwork he completed as a 3D artist with that company; (2) his own statement describing his work with [redacted]; and (3) a letter from [redacted] [redacted] College [redacted].

The Petitioner stated that his work with [redacted] was “exciting” and that he had “the opportunity to work with one of the biggest international companies, [redacted]” He also states that “95%” of his work had “good reviews” and he believes [redacted] is happy about it.” The earlier letter from [redacted] praises the Petitioner’s “unbelievable talent in 3D and impressive work ethics” noting that he was able to “achieve best quality result of products & services to our clients” and his “expertise in 3D Animation was a huge advantage to the entire company.” The second letter from [redacted] notes that his “excellent body of work had been instrumental in keeping our clients satisfied and loyal,” and states that he was considered “one of our rising stars, a definite asset to the company.”

The letter from [redacted] College [redacted] was written by [redacted] chairperson of the animation program from which the Petitioner graduated in 2014. [redacted] praises the Petitioner’s thesis project [redacted] as “so creative and exceptional” and notes that the “thesis has been showcased, compiled and archived in our university library and made available for viewing by students

of this university especially those who specializes in this field.” [redacted] also indicates that his department solicits the Petitioner’s help with complicated projects because it considers him “an expert 3D animator.” Finally [redacted] notes that the Petitioner’s “influence and legacy to this university made him our choice to be part of the panel of judges in the 2015 Animation Thesis Evaluation.”

While the letters applaud the Petitioner’s abilities and commitment, they do not identify original contributions that he has made to the field, nor do they explain how his contributions have been of major significance in the field outside of [redacted] or the animation department at his former university. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value.<sup>5</sup> On the other hand, letters that lack specifics or use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.<sup>6</sup>

On appeal, the Petitioner states that he is submitting additional evidence demonstrating that his work “constitutes major significant contributions to the field and detailing specific impact and influence of original work.” This newly submitted evidence includes a Certificate of Appreciation presented to the Petitioner for volunteering as an art mentor for a two-day basic drawing skills class held at Rotary Club-sponsored Summer Education Outreach Workshop held in April 2013. The certificate is accompanied by a letter thanking him for his efforts, noting that he played “an integral role in ensuring every kid’s interest in the arts” and “inspired young children and their parents to new hope.” While this new evidence indicates that the Petitioner made an impact on the schoolchildren participating in the art workshop, the evidence does not establish how his participation in this program is an original contribution or how his two days of volunteer service remarkably influenced his field.

For these reasons, the Petitioner has not met his burden to show that he has made original contributions of major significance in the field.

*Evidence of the individual’s authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)*

This criterion requires the Petitioner to provide evidence that he has authored scholarly articles in the field which have been published in professional or major trade publications or other major media. A scholarly article should be written for “learned” persons in the field. “Learned” is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field.<sup>7</sup>

The Petitioner claims that he meets this criterion based on his thesis project titled [redacted] which he created to fulfill the requirements for his bachelor of arts in animation. The record contains letters from [redacted] College [redacted] indicating that the hardbound thesis is archived at the school’s Learning Resource Center and has been digitally archived. The Petitioner also provided evidence that the thesis project, a video, was uploaded to Vimeo.com and is accessible with a password. We agree with the Director’s determination the Petitioner did not establish that he

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<sup>5</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.*

“authored scholarly articles” as there is no evidence of a written component to his thesis project. Further the record does not establish that the Petitioner’s video thesis project was published in professional or major trade publications or other major media. Rather, it appears that the project is accessible by persons associated with his college and accessible online by those who have a password.

The Petitioner has also claimed eligibility under this criterion based on evidence of package design artwork and 3D renderings that he created while employed by [redacted]. Here, the Petitioner did not establish that the drawings he created at [redacted] constituted scholarly articles that appeared in professional or major trade publications or other major media or that they were created for “learned” persons, rather for the general staff of his employer and its clients. Accordingly, the Petitioner did not establish that he satisfies this criterion.

*Evidence of the display of the individual’s work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii)

In order to demonstrate eligibility for this criterion, a petitioner must show that his work was on display, and the venues were artistic exhibitions or showcases.<sup>8</sup> As noted, the Petitioner provided evidence that he directed and participated in post-production of the music video for the song [redacted] performed by the band [redacted], which can be viewed on YouTube and social media and is claimed to have aired on “MYX Channel 23 sometime in [redacted] 2011.” The Petitioner also submitted evidence that his 3D designs created for his new employer, [redacted] were presented at a jewelry trade show, and photographs or screenshots of “original art creations” that he claims he submitted “for presentation at a number of events and competitions and research and conferences” while he was a university student.

We agree with the Director’s determination that the upload of a music video directed by the Petitioner to YouTube does not qualify as the display of his work at an artistic exhibition or showcase. Similarly, while the Petitioner’s current employer indicates that his 3D jewelry designs were on display at the company’s trade show booths, the purpose of an industry trade show is not to exhibit or showcase the work of individual artists. Further, these trade shows took place subsequent to the filing of the petition. 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).

Finally, the Petitioner did not provide evidence to support his claim that his “original art creations” were displayed at artistic exhibitions or showcases. He generally states that his art, copies of which were provided, has been presented at “events and competitions” but does not provide identify those events with specificity or document the appearance of his artwork at a particular artistic showcase or exhibition. Therefore, the Petitioner did not establish that he meets this criterion.

*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)

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<sup>8</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.



The Petitioner submitted letters from his employers, a letter from his university, and copies of training certificates in support of this criterion. 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.<sup>9</sup> 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.<sup>10</sup>

The Petitioner provided two letters from [redacted], a Post Production Manager at [redacted] [redacted], where the Petitioner worked as a freelance 3D animator. [redacted] praises the Petitioner's creative and technical skills, states that the Petitioner assisted him with his work and improved his understanding of 3D techniques, and indicates that worked with him on "various 3D Animations projects." In addition, [redacted] indicates that "our company became one of the country's best in 3D design and animation," as a result of the Petitioner's "ability to evolve and complete 3D design projects combined with his steadfast commitment to top notch 3D design quality and production." However, his statement is too general to establish how the Petitioner had a leading or critical role in the company and how he contributed to its reputation as "one of the country's best." In a subsequent letter [redacted] stated that the Petitioner was [redacted]'s "on-call 3D Artist Consultant for some of our most complicated projects for a while," noting that the company was "happy with his advice and opinions," but did indicate that he considered the Petitioner responsible for the company's reputation in 3D design.

The Petitioner also submitted a letter from [redacted] of [redacted] who states that the Petitioner initially worked in the company's art department as a 3D artist "to fulfill our needs for 3D visualizations of various sets throughout the film project." [redacted] notes that he later moved into the position of 3D animator where he "displayed the design skills to transform a verbal brief into a 3D set with minimal references" and "was able to layout and model 3D that looked good enough to [p]resent for directorial approval."

In addition, the Petitioner provided two letters from former supervisors at [redacted] Corporation, where he worked in 2015. [redacted] states that the Petitioner worked on his team as a 3D/Visual effects artist for television projects, primarily for the program [redacted] [redacted] states that the Petitioner's role on the team "is considered the most meticulous, very detailed and time-consuming part." He praises the Petitioner's creative and technical abilities, dedication, work ethic and willingness to work long hours. [redacted], a visual effects manager at [redacted] states that the Petitioner was hired for his "exemplary knowledge and technical techniques." He states that the Petitioner stands out from other artists based on his creativity and artistic skills, computer and technological skills, and his ability to work on a team and manage deadlines. The letters, however, do not specifically articulate how the Petitioner impacted [redacted]'s achievements or reputation.

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<sup>9</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

<sup>10</sup> *Id.*

The submitted letters do not establish that the Petitioner held a leading position, nor do they contain specific information signifying the Petitioner's essential roles in these companies.<sup>11</sup> On appeal, the Petitioner contends that this criterion "does not necessarily require a showing that the alien's role was leading or critical to the organization as a whole" and that he need only show he was critical to a "key component." He states, for example, that "the director of a regional program at an international aid organization," or "the director of an athletics program at a university with a distinguished record in that field of sports." The evidence does not, however, establish how his roles as a 3D artist or animator were equivalent to the roles he offers as examples.

Although the letters confirm the Petitioner's employment, they do not reflect detailed, probative information demonstrating the specific nature and outcomes of his roles with the respective businesses. Therefore, we agree with the Director's determination that the record does not contain evidence that [the Petitioner] was responsible for an organization's or establishment's success or standing to a degree consistent with the meaning of leading or critical role. The Director acknowledged that the Petitioner's employers valued his work but emphasized that he did not submit evidence that distinguished his roles as leading or critical to his employers.

In addition to the letters already discussed, the Petitioner provided evidence that he completed three animation workshops offered by AutoDesk Authorized Training Center, and states that he "was asked to teach in the Auto Desk Training Company" as evidenced by photographs that show him in a classroom setting. He does not however, submit any additional evidence from Autodesk, such as a letter confirming his role as a trainer, or copies of certificates identifying him as a course instructor, nor does the Petitioner's resume contain any reference to his position as a course instructor for Autodesk. The evidence is insufficient to establish that he performed in a leading or critical role for that organization.

For the foregoing reasons, the Petitioner has not established that he meets this criterion.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x)*

This criterion focuses on volume of sales and box office receipts as a measure of a petitioner's commercial success in the performing arts. The evidence must show that the volume of sales and box office receipts reflect the individual's commercial success relative to others involved in similar pursuits in the performing arts.<sup>12</sup>

As evidence that he meets this criterion, the Petitioner submitted photographs taken at [redacted] Comic Con in 2017. The photographs depict him with four individuals identified as voice actors from [redacted] a popular video game produced by [redacted]. He also provided a photograph of an [redacted] poster that was autographed by the actors.

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<sup>11</sup> *Id.* (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

<sup>12</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 12.

The Director determined that the Petitioner did not meet this criterion because he did not provide evidence relating to his own commercial success in the performing arts. The Director emphasized that the regulation does not allow for alternative measures of an individual's commercial success other than those stated in the regulation.

On appeal, the Petitioner asserts that the previously submitted evidence demonstrates that he "obtained signatures and well-wishers [*sic*] from prestigious 3D animator voice recording actors and actresses to show their support to the art of petitioner."<sup>13</sup> The Petitioner does not, however, acknowledge or contest the Director's determination that the plain language of the regulation does not allow for submission of evidence other than box office receipts, video sales, or sales of other recorded media, and that such receipts and sales must be attributable to his own work in the performing arts. We agree with the Director's determination that the submitted evidence does not meet 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 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.

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<sup>13</sup> We note that the Petitioner has neither indicated nor documented that he attended Comic Con in a professional capacity as an animator or artist.