



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

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

In Re: 6458020

Date: MAR. 30, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a film and television director, 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 record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 immigrant visas available to aliens 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 their 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 they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual’s occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner worked as a cameraman for Armenian [] TV and the Armenian [] Channel before founding his own production company, which produced television programs, documentaries, and advertisements. The Petitioner seeks employment as a director for [] Armenian Television.¹

Before discussing the merits of the case, the Petitioner contends that the Director imposed too high a standard of proof. In this proceeding, the Petitioner must establish eligibility by a preponderance of the evidence. The “preponderance of the evidence” standard requires that the evidence demonstrate that the claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989)).

The Petitioner asserts that his evidence meets this standard, and that, by denying the petition, the Director “applied a higher standard of proof.” The Petitioner, however, does not elaborate or identify the higher standard the Director is said to have imposed. The truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, a director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

A. Evidentiary Criteria

Because the Petitioner has not indicated or 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). Prior to the denial, the Petitioner claimed to have met five criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;

¹ In a subsequent filing, the Petitioner indicates that he has worked as an appliance repairman since January 2019.

- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director found that the Petitioner met one of the evidentiary criteria, relating to display. On appeal, the Petitioner asserts that he also meets the other four claimed criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner has not met any of the 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 record contains copies of certificates that do not appear to be nationally or recognized prizes or awards for excellence in the Petitioner's field of endeavor. Some are from municipal authorities, and the accompanying translations do not refer to the Petitioner's work as a director. One certificate refers to a martial arts competition; another refers to the Petitioner's "significant place in Latin American dancing." The Director noted the lack of "objective documentary evidence about the awards or prizes," and concluded that the "prizes or awards appear to be local or regional in nature." On appeal, the Petitioner disputes this characterization of the awards, and discusses two of the awards specifically. We will focus on these two awards.

The Petitioner initially submitted a translated certificate, indicating that the publication [redacted] [redacted] named him "best videographer of the year" in 2006. The certificate is in Russian rather than Armenian. An article in an unidentified publication referred to [redacted] "only Russian language magazine." The Petitioner did not submit evidence to show the national or international recognition of awards from this minority-language publication.

The Director requested more evidence about the Petitioner's prizes and awards. The Petitioner submitted a letter from the "Former Director" of [redacted] who affirmed the Petitioner's receipt of the aforementioned award, and stated that [redacted] "the only Russian-language magazine published in the [redacted]" ceased publication in 2008. The writer did not state the circulation [redacted] [redacted] or establish that awards from that publication had any significance beyond the magazine's own readership.

The Petitioner's response also included a translated copy of a certificate from the [redacted] [redacted], indicating that the Petitioner won second prize for a "TV essay" in the 2004 [redacted] competition. The [redacted] of the International Confederation of Journalists' Unions states that the [redacted] competition involved participants from 15 countries. The official does not attest to the national or international recognition of the competition's second prize, and the Petitioner has not submitted independent, objective evidence of the award's recognition. A printout from the [redacted]'s website lists four awards: "Academy Recognition," "Medal of [redacted]," "Big Medal of [redacted]" and a medal for "Veteran of National Television." The printout does not indicate that the Petitioner received any of these awards, or that the [redacted] itself attaches particular significance to the prize that the Petitioner won. Background information about the [redacted] does not establish that prizes or awards from the [redacted] are nationally or internationally recognized.

The Petitioner has established that the eligibility pools are national for the [] prize and international for the [] prize, but national or international availability is not the same as national or international recognition.

The Petitioner has not shown his receipt of nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

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 submitted copies of several articles and a website printout:

- An Armenian-language website, not identified in the translation and not clearly legible in the submitted printout, summarized significant events in Armenian sports in 2006, and reported the winners of the [] awards discussed above.
- A translated article in *Bravo.am* covered a screening of the film []. The article mentions the Petitioner three times: once to name him as the film's director; once to quote him about the making of the film; and once in a quotation from a singer, expressing appreciation for being invited to participate. The focus of the article is split between discussing participants in the film, and describing the charity [] that inspired the project.
- Short articles on the websites of *Epress* and *Armenpress* briefly covered a press conference about [] and quoted the Petitioner regarding his short documentary about the charity. Photolure News Agency photographed the same press conference.
- Two articles in *The Armenian Mirror-Spectator* covered benefit performances to raise funds for []. One article, after a concert in [] mentions the Petitioner once, identifying him as a "filmmaker [who] accompanied" one of the singers. The other article, previewing an event in [] named the Petitioner among "many accomplished Armenians" who support the charity. The articles do not discuss the Petitioner's films or indicate that the Petitioner had more than a peripheral role in the events.
- The website of *The Armenian Times* previewed a new season of a dance competition program produced by the Petitioner's company, and interviewed a choreographer working on the project. Near the end of the article, the Petitioner is quoted and identified as "director of the program and founder of the company."

The Petitioner also submitted a three-page document, identified as an article from the [] 2013 issue of *Yerevan*. The submitted document, however, contains no internal evidence of publication in *Yerevan* or any other magazine. It is not a photocopy of printed magazine pages, nor is it identifiably a printout from a website. The document includes a web address for the article, but attempts to visit the site show that the domain name is for sale.

Even then, the article is predominantly about the [redacted] charity. The second-to-last paragraph of the three-page article lists the names of the Petitioner and several other individuals “who helped in the production of a [redacted] documentary.”

The Director acknowledged that the Petitioner’s name appeared in the submitted articles, but concluded: “The material only cites, quotes, or references the petitioner. There is no evaluation of the petition or the petitioner’s work.”

On appeal, the Petitioner states that the submitted materials meet the requirements, because “[e]ach news article explicitly references the Appellant and the title of his film or project being recognized.” The regulatory standard, however, is that the published material must be “about the alien . . . relating to the alien’s work in the field.” Materials that mention the Petitioner only briefly, or which identify him but do not pertain to his work, cannot satisfy this standard.

The Petitioner contends that “it is sufficient for the publications to reference the Appellant and his work, as ‘the published material need not reference the petitioner as a star.’ *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. 1995).” The passage presented as a quotation does not appear in *Muni*, and there is nothing in *Muni* to suggest that an article need only include an alien’s name and occupation to be “about” the alien, regardless of the context or the remaining content of that article.²

The Petitioner has not submitted published material about him, relating to his work.

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)

The Petitioner submitted several letters from colleagues and clients, attesting in general terms to the Petitioner’s skill and the high profile of some of his projects. Prior to the denial of the petition, the Petitioner claimed that these letters satisfied this criterion as well as the criterion (8 C.F.R. § 204.5(h)(3)(viii)) discussed directly below. In the denial notice, the Director determined that the Petitioner had not established the major significance of specific original contributions. On appeal, the Petitioner maintains that he satisfies this criterion, but does not elaborate. Therefore, the Petitioner has effectively abandoned this issue and we will not further address this issue in this decision. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *see also Hristov v. Roark*, No. 09–CV–2731, 2011 WL 4711885, at *1, *9 (E.D.N.Y. 2011) (plaintiff’s claims found to be abandoned when not raised on appeal to the AAO); *see also Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (stating that passing references to issues are insufficient to raise a claim for appeal, and such issues are deemed abandoned).

² With respect to this criterion, the Court in *Muni* stated:

Under the INS’ own regulations, all Muni need show is that there is “[p]ublished material about [him] in professional or major trade publications or other major media, relating to [his] work in the field for which classification is sought.” 8 C.F.R. § 204.5(h)(3)(iii). The articles Muni submitted, which appeared in various newspapers and hockey magazines, clearly fit this requirement; even the INS admits that some of the articles “discuss [Muni’s] hitting ability and his record as a defenseman” (Admin.Rec. at 4).

Id. at 445.

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

We will discuss the letters referenced above in the context of the claim that the Petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The record shows that the Petitioner plays a leading and critical role for the production company that he founded. The question is whether the company has a distinguished reputation. The concept of distinction is inherently comparative. Therefore, simply listing the projects that the Petitioner's company has undertaken does not show that the company has a distinguished reputation relative to other production companies.

The general director of Armenia TV, "the highest rated television station in Armenia," stated that the Petitioner's company acquired the Armenian format rights to [redacted] and [redacted] and produced several successful seasons of the shows on Armenia TV. The official also stated: "Armenia TV cooperated with [the Petitioner] within the framework of [several] shows . . . [that] were very popular."

While a network official's statements are not without weight, the production and ratings of television programs are matters of objective fact rather than subjective opinion, for which primary documentation (such as contracts and reports from ratings services) ought to exist. (We note that the Director indicated that letters could suffice to establish the nature of the Petitioner's role for a given organization, but the Director did not indicate that letters would suffice to establish distinguished reputation.)

In a similar vein, the Petitioner asserts that the adaptation of [redacted] was "Armenia's highest rated television show," but he has submitted no documentary evidence to support this claim or to show how the Petitioner came to learn this information.

More broadly, little of the Petitioner's work is directly documented in the record with first-hand evidence. The Petitioner relies mostly on letters that refer to his projects. For example, the Petitioner submitted printouts from Armenia TV's website, but those printouts do not appear to mention him, his company, or any of his productions. This lack of an evidentiary footprint is of concern in a petition for an immigrant classification that, by statute, demands "extensive documentation." Section 203(b)(1)(A)(i) of the Act.

The Petitioner also contended that, by producing, directing, or filming programs, commercials, or events for various clients and charities, he performed in a critical role for those clients and charities. Representatives of those organizations attested, in letters, to the Petitioner's work on their behalf. While these entities appreciated and complimented the Petitioner's efforts, the letters do not show how the Petitioner's contributions were critical, not merely helpful and beneficial.

The Director concluded that the letters from employers, clients, and colleagues do not show how the Petitioner's role was leading or critical for "the organization or establishment as a whole." On appeal, the Petitioner asserts that the Director, in this way, "incorrectly imposed an additional requirement" beyond the wording of the regulation.

We disagree with the contention that the Director imposed a new requirement. It appears, instead, that the Petitioner seeks to broaden the criterion beyond the wording of the regulation. A given alien's role must be leading or critical for a particular organization or establishment, rather than for one project, event, or division of that organization or establishment.

The Petitioner's résumé includes this statement: "In 1999 I was the personal videographer of the [redacted] [redacted] of Armenia [redacted] for two months. It played [a] role for me to become well known in [the] media field." On appeal, the Petitioner places new emphasis on this assignment, stating that it was "a critical position reserved for only the most distinguished and acclaimed in the field." The initial assertion that the position allowed him "to become well known" contradicts the later claim that the position was only open to videographers who were already "the most distinguished and acclaimed in the field." The Petitioner does not adequately explain how the role of a videographer is critical to the office of a high-ranking elected official, and the record offers minimal details about the Petitioner's work in that capacity.

The Petitioner has not established that he has performed in a leading or critical role for organizations or establishments with a distinguished reputation.

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

The Director stated, without elaboration, that the Petitioner had satisfied this criterion.

The Petitioner cannot satisfy the regulation's specific reference to "artistic exhibitions or showcases" through the mere visibility, availability, or distribution of visual artistic works such as films and television programs. The Petitioner has not identified an exhibition or showcase established for the specific purpose of displaying his work, or a group of works including his works. As noted above, the record contains little objective, documentary evidence to directly establish the very existence of his work. Instead, the Petitioner has relied heavily on letters from individuals who attest that the Petitioner is a director.

The Petitioner has not established the display of his work in the field at artistic exhibitions or showcases.

B. Comparable Evidence

Beyond the regulatory criteria, the Petitioner asserts that "support letters from exceptionally significant Armenian public officials, artists, and celebrities . . . meet[] the standard for comparable evidence . . . under 8 C.F.R. Section 204.5(h)(4)." The cited regulation provides that, if the ten criteria listed at 8 C.F.R. § 204.5(h)(3) "do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." The Petitioner does not show that the standard criteria do not readily apply to his occupation. Rather, he claims to satisfy several of them outright. The Petitioner has not adequately explained his contention that the comparable evidence clause applies in this matter.

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.

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.

ORDER: The appeal is dismissed.