



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

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

In Re: 6986109

Date: MAY 27, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a photographer, 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is one of that small percentage at the very top of the field. The matter is now before us on appeal.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will sustain 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) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we 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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

### A. Evidentiary Criteria

The Petitioner is a photographer who works in the genre of documentary portraiture, typically choosing members of the Chinese working class as his subjects. His work has been displayed in China and internationally from 2002 until the present time.

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).

In denying the petition, the Director determined that the Petitioner had met three of the initial evidentiary criteria, pertaining to receipt of nationally recognized awards or prizes at 8 C.F.R. § 204.5(h)(3)(i); published material in professional or major media under 8 C.F.R. § 204.5(h)(3)(iii); and display of his work in artistic exhibitions under 8 C.F.R. § 204.5(h)(3)(vii). The record supports the Director’s determination that these criteria were met. On appeal, the Petitioner contends that the Director erred in determining that he did not satisfy a fourth criterion, relating to original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), and that the Director also failed to consider relevant evidence pertaining to those contributions in his final merits analysis.

As the Petitioner has established that he satisfied at least three alternative criteria, we will conduct a final merits determination of all the evidence, including evidence of his original contributions, below.

## B. Final Merits Determination

As the record satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. We evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. When considered in the aggregate with the evidence discussed below, the Petitioner has demonstrated that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The record reflects that the Petitioner initially achieved national acclaim as a photographer in 2002 for his very first series of photographs titled [redacted] and later attended and graduated from the [redacted] Academy in 2009. The Petitioner, who was working as a [redacted] when he shot this series of documentary-style photographs of [redacted] received a bronze award at the [redacted] Photographic Art Exhibition in 2002, receiving national recognition among works submitted by acclaimed professional photographers. The evidence reflects that the award is among the most prestigious national photography awards in China.

Several of the submitted reference letters comment on the Petitioner's early success and sustained critical acclaim. A letter from photographer [redacted] who mentored the Petitioner early in his career, discusses the Petitioner's subjective documentary style, noting that "when [redacted] won the Bronze Prize at the [redacted] Photographic Art Exhibition, a discussion of [redacted] in the photography field was instantly spread." He states that *China Photo Press*, a professional publication, "also carried out a special report on [redacted] and states that the Petitioner's signature portrait style has had "groundbreaking significance" in China that has endured beyond the "instant fame" he received when he won the referenced award. Similarly, [redacted] of the China Photographers Association, [redacted], and [redacted] at [redacted] News Agency, confirms in her detailed letter that the Petitioner's earliest work "instantly attracted the attention of numerous mainstream media and led to widespread repercussion in the Chinese photography field." She further affirms that his work continues to cast influence in the photographic art field and has continued to receive broad attention both domestically and internationally.

The supporting documentation supports these conclusions. The Petitioner provided evidence that he drew international recognition for his work in 2003, when [redacted] was selected for the [redacted] International Photography Encounter in [redacted] France. That same year, several photographs from the series appeared in a *New York Times Magazine* article titled [redacted], which discussed the Petitioner's photographs, his unusual background, and his upcoming exhibitions at [redacted] and at the [redacted] International Photography Festival in China. The *New York Times* article praised his work, noting that his portraits "are uncannily reminiscent of [American photographer Richard] Avedon's, yet unique in their intimate acquaintance with their subjects."

Later, the Petitioner's portrait photographs of Chinese [redacted], were prominently featured in *Time Magazine's* [redacted] Person of the Year special issue in which "the Chinese [redacted] received runner-up status. He later shot a series of photographs of Chinese [redacted] titled [redacted] which were featured in a *Slate* magazine article titled "[redacted]" In the *Slate* article, the Petitioner was interviewed about his background as a photographer and his approach and artistic treatment of the [redacted] people who are often his subjects. In addition to having his documentary portrait photography featured in major media, the record reflects that the Petitioner has taken photographs to accompany articles for other *Time* magazine issues, the *New York Times Magazine*, and *GQ*.

The Petitioner has also continued to display his work in solo and group exhibitions, photography festivals, and in permanent museum collections in China and abroad from 2002 through 2018. He was the only Chinese photographer selected for [redacted]'s inaugural global touring exhibition titled "[redacted]" in 2005, which highlighted 50 photographers who were still new to the international scene. [redacted], former director of the [redacted] in [redacted] Switzerland and [redacted] of the 2005 [redacted] exhibition, states that "[a]mong a field of several hundred Chinese candidates, [the Petitioner's] work stood out as among the most exceptional." [redacted] notes that the Petitioner has been invited to participate in the launch of the museum's 2020 [redacted] exhibition (which is organized every five years) and to lecture about his work.

Recently, the Petitioner's work has been featured in survey and retrospective exhibitions that highlight the work of prominent Chinese and international [redacted] artists. These include [redacted] at the [redacted] in France, where the Petitioner's work was presented alongside international artists discovered by the museum, including Ansel Adams, Richard Avedon and others. The Petitioner's work was also selected for the exhibition [redacted] which traced the history of the medium and its role in Chinese culture and was shown in several countries. The exhibition [redacted] which featured 30 photographers from 11 countries, [redacted] and was discussed in a *New York Times* article titled "[redacted]" in which the Petitioner was interviewed along with the exhibit's curators and organizers. These and other major exhibitions also speak to the international recognition the Petitioner continues to receive for his work and his reputation as a leading contemporary photographer in China. Further, the Petitioner provided evidence that his work has been included in the permanent collections of [redacted] Art Museum, Museum of Contemporary Photography [redacted] Museum, and the [redacted] Center of Photography.

Additional evidence of the Petitioner's acclaim and commentary about his work can be found in submitted journal articles and books that discuss his photographs. A photograph from his [redacted] series appears on the cover of the book [redacted] in which the author, a professor of media and communications at the University of Technology [redacted] discusses the use of his photographs in the *Time* magazine article featuring [redacted]" Among other publications, the Petitioner is the subject of the article [redacted]" published in the professional publication *Art and Design*, and an essay published by [redacted] an acclaimed photographer, curator and associate professor at [redacted] University, published by arts magazine *Photo*

China. His work also appears in *The Daily Book of Photography* and several major exhibition catalogs, and he is the subject of the monograph titled [redacted] published in [redacted] as part of a series on Chinese contemporary photographers.

The Petitioner also provided evidence that examples of his work, including discussions of his artistic approach and photography techniques, have been included in at least five Chinese photography textbooks intended for college and university-level students between 2009 and 2015. The textbook [redacted] includes him in its introduction to “the creation and ideology of some famous photographers,” while [redacted] includes “numerous composition experience stories of prestigious photographers” and highlights examples from several of the Petitioner’s portrait series and his commentary on photographic composition. [redacted] published by [redacted] University Press, mentions that “the realistic portrait in the most abstract environment has been spoken highly of by photographic field in China and around the world” and references the Petitioner’s [redacted] and [redacted]’s [redacted] series as representative works in that style.

Based on the evidence of the Petitioner’s achievements and earned recognition discussed above, the Petitioner has demonstrated his extraordinary ability as a photographer and established that he is regarded as having a “career of acclaimed work in the field.” *See* H. Rep. No. 101-723, at 59 (Sept. 19, 1990). The totality of the evidence establishes that he possesses a level of expertise that is consistent with a finding that he is one of a small percentage at the very top of the field of endeavor and that he has documented sustained acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20.

### III. CONCLUSION

The Petitioner has established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). He has also demonstrated sustained national and international acclaim and that his achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that he intends to continue working in his area of expertise and that he will substantially benefit prospectively the United States. He therefore qualifies for classification as an individual of extraordinary ability.

**ORDER:** The appeal is sustained.