



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

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

In Re: 6725482

Date: MAY 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a multimedia designer, 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 had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate 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 indicates his most recent employment as a lead product designer at [redacted] in [redacted] from February 2017 until the date when this petition was filed on January 29, 2018.¹ The evidence provides that the Petitioner designed the poster series [redacted] (2010), wrote and directed the short film [redacted] (2012), and designed the interactive costume installation [redacted] (2015). 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 fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and display at 8 C.F.R. § 204.5(h)(3)(vii). The evidence shows that the Petitioner performed as a judge for the [redacted] Youth Micro Film Contest (2015) and the [redacted] Micro Video Competition (2016). In addition, the record indicates that [redacted] was exhibited at the 2010 [redacted] Designers Week International Design Exhibition, [redacted] was displayed at [redacted] in [redacted] 2015, and [redacted] was screened at several film festivals, including the 2017 [redacted] Film Festival in [redacted]. Therefore, we agree with the Director's findings regarding the judging and display criteria.

On appeal, the Petitioner asserts that he meets two additional criteria, relating to published materials in major media and leading or critical role for distinguished organizations or establishments.² After reviewing all the evidence in the record, we conclude that the Petitioner does not establish that he satisfies the requirements of at least three criteria.

Published material about the individual 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)

¹ See the Petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status. The record also contains documentation indicating the Petitioner was approved for F-1 nonimmigrant classification to attend [redacted] between July 2015 and July 2020, and optional practical training (OPT) between May 2016 and May 2018.

² We note that the Director determined that the Petitioner initially submitted evidence related to lesser nationally or internationally recognized awards at 8 C.F.R. § 204.5(h)(3)(i) but did not satisfy this criterion. The Petitioner does not contest this issue on appeal and therefore we deem it to be waived. *See, e.g., Matter of M-A-S*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

The Petitioner maintains that he satisfies this criterion based on four articles, and evidence relating to www.qq.com, www.sohu.com, www.163.com, and www.sina.com.cn. The Director concluded that the Petitioner did not meet this criterion because the translations accompanying those documents did not include the required certification by the translator, and, therefore, the evidence was not sufficient to show that the articles are about the Petitioner and his work. On appeal, the Petitioner provides new translations of those articles, which establish that the articles are about the Petitioner and his work, focusing on his career, including the screening of [redacted] at several film festivals, the exhibition of [redacted] in [redacted] and his work with [redacted] and [redacted]

However, the record does not establish that the media in which these articles were published can be considered either professional or major trade publications or another type of major media. For example, the Petitioner submitted information on country ranking and website traffic regarding www.qq.com, www.sohu.com, www.163.com, and www.sina.com.cn., internet portals which are popular in China. However, the aforementioned articles were posted on specific webpages within those portals, such as, ln.qq.com, edu.163.com, and news.sina.com.cn, about which information was not provided.³ Here, the record does not include information regarding the specific media on which these articles were published, and they are therefore not qualifying under this criterion.

For the foregoing reasons, 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)

The Petitioner argues eligibility for this criterion based on his roles with [redacted] [redacted] [redacted] and [redacted]⁴ 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.⁵ 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 organizations 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.⁶

³ In addition, although the translation of the article from Sohu.com does not include the article's source, a review of the article using Google Translate indicates it was posted on the China Education Information webpage, about which information was not provided.

⁴ We note that the record is vague and inconsistent regarding the Petitioner's employment in the United States. While the Petitioner's work with [redacted], [redacted], and [redacted] appears to have occurred during his period of OPT, none of the authors of the recommendation letters from those companies provides the dates of the Petitioner's employment. In addition, although the Petitioner listed on the Form I-485 that he was employed with [redacted] between February 2017 and the date when the petition was filed in January 2018, the Petitioner did not list employment with [redacted] or [redacted] [redacted]. Rather, he included work with additional employers in [redacted] [redacted] between May 2015 and June 2016 and [redacted] between April and December 2016.

⁵ 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 10* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

⁶ *Id.*

On appeal, the Petitioner maintains that as a lead multimedia designer he “played a critical role in launching [redacted]” [redacted]’s leadership assessment tool. He also argues that as a senior product designer and art director at [redacted] he was “instrumental to the redesign and launch” of the [redacted] rewards program, and “helped to optimize and launch several iOS and Android applications of the [redacted] mobile application.” Further, the Petitioner asserts that as a user experience lead and product designer with [redacted] he played a critical role working “to help create a new web-based project, [redacted]”⁷ Although the Petitioner references recommendation letters which confirm his work on those projects, the letters do not contain detailed information demonstrating that he performed in a leading or critical role as a whole.⁸

First, the Petitioner provided organizational charts to establish the Petitioner’s positions within the overall hierarchy of the above companies. The Petitioner provided a screenshot from [redacted]’s staff directory, showing that the Petitioner works in the Product Management Department (PM) within [redacted]’s Global Shared Services Division (GSS). The Petitioner also submitted a partial organizational chart, not bearing any indicia that [redacted] prepared the chart, that indicates that GSS is one of twenty-two divisions within [redacted]. The organizational chart from [redacted] shows that the Petitioner worked within one of the company’s ten departments. Further, regarding [redacted] the record includes a chart that only reflects the hierarchy for a single project team, the [redacted] business unit. The chart does not reflect at what leadership level the petitioner operated within [redacted]. Based on this evidence, the Petitioner did not show that his positions within the overall hierarchy of the above companies was such that he has established the leading nature of his roles.

In addition, the submitted documentation also does not establish that the Petitioner contributed to the companies in a way that was significant to their success or standing in the field. For instance, [redacted] [redacted] general manager of [redacted]’s PM, indicates that he is the founder of [redacted] and that the Petitioner was the lead multimedia designer on [redacted]. He states that the Petitioner “independently created our [redacted] Series” which he describes as providing “key metrics for measuring the success and progress of our clients.” He also asserts that “the critical role [the Petitioner] has played in the success of [redacted]” is demonstrated by the fact *Human Resource Executive* magazine named [redacted] one of its top HR products of the year, and the sale of “hundreds of units” of [redacted] generating “over a million dollar[s] in total revenue.” His letter is accompanied by a copy of the recognition certificate given to [redacted] for “Top HR Product – [redacted]” However, [redacted] did not point to any specific documentation or evidentiary exhibits in support of his claim regarding the sales figures for [redacted] or that increased sales of [redacted] or its recognition by *Human Resource Executive* magazine is attributable to the Petitioner. Further, his letter does not describe the manner in which the Petitioner’s role as the lead multimedia designer on the [redacted] tool resulted in the success or standing of [redacted] as a whole.

⁷ On appeal, the Petitioner referenced unpublished AAO decisions that purportedly support his eligibility claims. While the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

⁸ See USCIS Policy Memorandum PM-602-0005.1, supra, at 10 (providing that this is one criterion where letters from individuals with personal knowledge of the significance of the alien’s leading or critical role can be particularly helpful to USCIS officers in making this determination as long as the letters contain detailed and probative information that specifically addresses how the alien’s role for the organization or establishment was leading or critical).

Regarding the Petitioner's employment with [redacted] he presented a letter from [redacted] [redacted], a former senior manager at [redacted] loyalty program, who states that the Petitioner "led two application interface and user experience redesigns for Android phones." He asserts that the Petitioner's "critical impact on our work" is shown by an increase in rating of [redacted] from 3.5 "prior to the release of [the Petitioner's] changes" to a "peak" rating of 4.2 "[a] few weeks after the newly-developed version," which he claims "involves thousands of people, if not more, changing their minds." [redacted] did not point to any specific documentation or evidentiary exhibits in support of this claim. The Petitioner has not established the claimed fact with unsupported testimonial evidence alone. [redacted], a former senior manager of [redacted] states that the Petitioner's ability as a design leader was "critical" to the success of the [redacted] redesign because his "handling of all of the Android interface's redesign freed up all of the staff that would otherwise be dedicated to the project." [redacted] and [redacted] do not describe the manner in which the Petitioner's role on the [redacted] redesign projects reflects a role equally critical to the success of [redacted] as a whole. On appeal, the Petitioner, through counsel, asserts that the evidence demonstrated "the financial benefit his product has brought to the company." However, the authors of the aforementioned letters do not state that a financial benefit resulted from the Petitioner's work related to [redacted]. Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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, which may include affidavits and declarations.

Regarding [redacted] the Petitioner submitted a letter from [redacted] the company's CEO, who states that the company is "a full-time programming boot camp." He indicates that he has known the Petitioner "for a few years," and that he met the Petitioner "through a product design project for my company's then-new web-based project, [redacted]. He states that he delegated to the Petitioner "the planning, management, and leadership of all design phases" and that in "third-party user-tests . . . [the Petitioner's] designs had the highest ratings available." He asserts that "[a] lot of the success of our products has been due to the critical role of [the Petitioner] in designing our products." [redacted] [redacted] does not describe, however, the manner in which the Petitioner's role for the [redacted] project reflects a role critical to the success of [redacted] as a whole, and the record does not contain evidence which would corroborate his claims about any success the company's products have enjoyed that is attributable to the Petitioner.

Here, the organizational charts provided did not establish that the Petitioner's positions within the overall hierarchy of the above companies was such that he has established the leading nature of his roles. The submitted documentation also does not establish that the Petitioner contributed to the companies in a way that was significant to their success or standing in the field. The lack of specific information does not provide probative information to demonstrate the Petitioner's leading or critical roles for the above-referenced organizations.

Finally, the Petitioner did not establish the distinguished reputation of [redacted].⁹ Although [redacted] [redacted]'s recommendation letter provided brief background information, the Petitioner did not offer any supporting documentation to corroborate the claim. For example, promotional material from [redacted]

⁹ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10-11 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

[redacted] indicates that it was founded in 2013 “to teach students the skills they need to become successful app developers” and build “their iOS or Android portfolios,” and that it “pioneered” the approach that “enables students to work as interns on real projects.” Again, the Petitioner did not submit corroborating evidence, nor did he demonstrate the significance of those statements. The Petitioner did not include evidence, for example, showing the field’s view of [redacted] how its reputation compares to similar establishments, or how its successes or accomplishments relate to others, signifying a distinguished reputation consistent with the regulatory criterion.

For the reasons discussed, the Petitioner has not established 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 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.