



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

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

In Re: 12509489

Date: NOV. 24, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an artist, 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 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 an individual in the small percentage at the very top of the field. The Director also concluded that the Petitioner did not establish that he will continue to work in his field of claimed extraordinary ability, or that his work will be of substantial prospective benefit to the United States. 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 sustain 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 international 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 criteria 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 he or she is 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) (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).

## II. ANALYSIS

The Petitioner is an illustrator and “street artist,” whose projects have ranged from drawings for wristwatch faces to large outdoor murals. Prior to entering the United States shortly before filing the petition, the Petitioner worked in  the capital and largest city in .

### 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). The Petitioner claims to have met six criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases; and
- (ix), High remuneration for services.

The Petitioner also claims to have submitted comparable evidence equivalent to criterion (viii), relating to a leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met three of the evidentiary criteria, numbered (iii), (iv), and (vii). On appeal, the Petitioner asserts that he also meets the other claimed criteria.

After reviewing the evidence in the record, we agree with the Director that the Petitioner has met at least three criteria. Therefore, rather than discuss the specific requirements of the evidentiary criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

## B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in 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.<sup>1</sup> In this matter, we determine that the Petitioner has shown his eligibility.

Copies of several published articles and a transcript of a television broadcast show that the Petitioner has attracted media coverage in [redacted]. The Director determined that this coverage satisfies 8 C.F.R. § 204.5(h)(3)(iii), relating to “[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien’s work.” The Director acknowledged that this evidence portrays the Petitioner as “a recognizable Artist-Illustrator in [redacted]” before concluding that, nevertheless, the evidence does not place the Petitioner at the top of his field.

It is notable that several of the submitted articles refer to the Petitioner as a prominent artist who is often recognized on the street. One article, describing a master class he taught as part of an art festival, described an admirer’s excitement when the Petitioner gave her a screen print that she would not have been able to afford to buy. Another article is not about the Petitioner; it mentions him only once, in passing. But in the context of the record as a whole, it bears noting that this article calls the Petitioner a “well-known artist.” In the aggregate, the published materials take the Petitioner’s prominence for granted, with a tone that presumes readers’ familiarity with him and his work. The Director did not question the authenticity or origin of the published material in the record, or (with the limited exception of one piece that lacks required information) establish that its evidentiary weight is limited.

The Petitioner’s reputation appears to rest in part on large, prominent outdoor murals, some of which have attracted press coverage of their own. The Petitioner has also documented several lucrative commercial projects to design products or decorate office space for prominent clients such as a major [redacted] corporation, a large [redacted] manufacturer, and the United Nations organization [redacted]. Contracts with prominent customers are not, by themselves, strong evidence of acclaim or recognition, but the record supports the conclusion that these customers (particularly the [redacted] manufacturer) selected the Petitioner on the basis of his existing reputation, rather than simply because he was a local artist who was available during the relevant period. Rather, the Petitioner’s work brought a recognizable character

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<sup>1</sup> *See also* 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 4* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

to the projects in question. The record is also consistent with the conclusion that the Petitioner was particularly well-paid for many of these endeavors, further dispelling the idea that the Petitioner was randomly chosen.

It appears to be particularly significant that the Petitioner had a solo exhibition not of finished works, but of sketches and drafts that led to those finished works. The nature of such an exhibition presumes a level of public interest in a “behind the scenes” glimpse at the Petitioner’s creative process, before the works in question were polished and perfected. This, by itself, does not establish acclaim, but it is one of several lines of evidence that converge on the conclusion that the Petitioner is a prominent artist in [redacted]

Not all of the Petitioner’s evidence is persuasive. For instance, information regarding his membership in the [redacted] Union of Designers does not consistently portray an exclusive association rather than a trade guild. But the less-persuasive evidence in the record does not raise fundamental questions of credibility that would undermine other elements of the record such as the evidence discussed above.

We find that the Petitioner has established, by a preponderance of the evidence, the acclaim and recognition required for the classification sought.

### C. Continued Work and Prospective Benefit

8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise.” The Director concluded that the Petitioner did not sufficiently establish how he will continue working in his field in the United States, because he provided only “vague ambitions” and “prospective hopes of finding work” rather than “detailed plans.” Based on this stated lack of specific plans, the Director also found that the Petitioner had not established substantial prospective benefit to the United States as required by section 203(b)(1)(A)(iii) of the Act.

The Petitioner, however, had submitted letters from two prospective clients (a [redacted] law firm and a [redacted] software development company), expressing an intention to engage the Petitioner’s services on graphic design and painting projects, contingent on the Petitioner’s obtaining work authorization. The Director’s denial notice did not explain why these letters are deficient, and the Director did not cite any evidence that would undermine their credibility. We withdraw the Director’s conclusions in this regard.

## 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 acclaim in his field and submitted extensive documentation of his achievements. Lastly, the Petitioner has shown that he intends to continue working in the United States in his area of expertise and that his entry will substantially benefit prospectively the United States. He therefore qualifies for classification as an individual of extraordinary ability.

**ORDER:** The appeal is sustained.