



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

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

In Re: 10832549

Date: NOV. 27, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a filmmaker, 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 the record did not establish that the Petitioner met the initial evidence requirement by submitting evidence of a one-time achievement or meeting at least three of the ten evidentiary standards listed at 8 C.F.R. § 204.5(h)(3).

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

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).

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 a director and producer of [redacted] films whose work has been screened at, and awarded by, several international film festivals. He states that he intends to continue to produce and direct films in the United States.

### 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 Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to published material about him and his participation as a judge of the work of others. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to an additional four criteria. After reviewing all of the evidence in the record, we find that in addition to the criteria that the Director determined that the Petitioner met, he also meets the criterion related to the display of his work at artistic exhibitions or showcases. While he therefore meets the initial evidence requirements for this classification, the evidence does not establish that he qualifies as an individual of extraordinary ability.

*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)*

As stated in the plain language of the regulation, this criterion requires that material be about a petitioner, concern his or her work in the field of expertise, and be published in one of the qualifying types of media. In addition, the evidence must include sufficient identifying information to allow USCIS to verify its source, and foreign language material must be accompanied by a translation meeting the requirements of 8 C.F.R. § 103.2(b)(3), including that it be a “full English-language translation.”

Although we note that much of the evidence submitted in support of this criterion either does not include the required title, date and author of the material, or is accompanied by only a partial English translation, there is also qualifying evidence in the record. Examples include interviews of the Petitioner about his work which appeared in the Slovenian newspaper *Delo*, the Swiss newspaper *La Tribune de Genveve*, and the Spanish magazine *El Cultural*. As such, we agree with the Director that the Petitioner meets this criterion.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The evidence demonstrates that the Petitioner has served on the juries of several film festivals, primarily in [ ] from 1999 through 2009. We note that in some cases he sat on the jury for a particular prize, while in others he participated in the awarding of all of the prizes awarded at the festival. Accordingly, we agree with the Director's finding that the Petitioner meets this criterion.

*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 found that the evidence submitted in support of this criterion did not meet its requirements for two reasons: first, the Petitioner's work did not fall into the "visual arts" such as painting, sculpting and photography; and second, that the Petitioner's work was not "regularly... displayed at exclusive national or international venues." However, as the Petitioner states on appeal, neither of these requirements appear in the plain language of the criterion. USCIS may not utilize novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. See *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir.2008).

The evidence in the record shows that films directed by the Petitioner were displayed at several film festivals in 1992-93, from 1997 to 2000, and again from 2006 to 2010. The purpose of these festivals was either primarily or entirely to display films as artistic works. Therefore, we withdraw this portion of the Director's decision and find that the Petitioner meets this criterion.

As we noted above, the Petitioner asserts that he meets four evidentiary criteria in addition to the two that the Director found he met. Because we agree with the Director's finding regarding those two criteria, but withdraw his decision regarding a third criterion and find that he meets that as well, the Petitioner has met the initial evidence requirement for the requested classification. We will therefore not consider his claims to the additional three criteria, but will instead review the totality of the evidence in the record in the final merits determination below.

## B. Final Merits Determination

In a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and 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. Here, the Petitioner has not offered sufficient evidence that he meets that standard.

The Petitioner indicates that his career in filmmaking began in the late 1970s, serving as an assistant director in several movies before his first film as a director was released in [redacted]. The evidence shows that that film, [redacted] premiered at the [redacted] Film Festival, and went on to be screened at several film festivals that year. This included the [redacted] International Film Festival [redacted] where it received both the Grand Prix - Crystal Globe award for best film, and also the FIPRESCI Prize from the [redacted] of Film Critics, both with the Petitioner named as the only recipient.<sup>1</sup> Although the evidence indicates that the [redacted] is today considered an important European film festival and had a long history even before [redacted] it also indicates that its prestige had waned in the years after the split of the former Czechoslovakia into smaller countries. Specifically, while the festival itself, and the Petitioner's receipt of the top prize, received coverage from international media, several of those articles noted that [redacted] had suffered from a lack of funding and organization. An article in the *International Herald Tribune* notes that while it "was once the showcase for East European filmmaking," the [redacted] edition was its "first attempt at real international scope," and that many Eastern European filmmakers had chosen to "compete at more prestigious events" such as the [redacted] Film Festival. In addition, an article in the *Los Angeles Times* quotes the president of the festival stating that "As a result of the well-known situation in the past, the festival has lost a lot of its reputation." While the extent of the media coverage of the [redacted] and the Petitioner's receipt of the top prize, is noted, the content of that coverage reflects a lesser level of international recognition and prestige for the festival and award than a simple listing of those articles might suggest.

Regarding the FIPRESCI Prize, the Petitioner submitted the regulations governing this award from the [redacted] Film Critics website. These indicate that the organization decides to which international film festivals and other festivals "of particular importance" it will send juries, and whether the jury may issue prizes for different film types (feature, short, documentary, etc.) The evidence shows that [redacted] was the only film awarded at the [redacted] edition of the [redacted], but that a total of 30 FIPRESCI Prizes were awarded at several festivals that year. The Petitioner also submitted several more recent articles reporting on winners of this award, with a 2009 article in *The Guardian* stating that "In principle, this should be the most prestigious and sought-after prize of all," but going on to note that it does not carry a monetary award and has not led to commercial success for the awarded films.

The evidence shows that [redacted] and the Petitioner also received awards at other film festivals, but the evidence does not establish that these were recognized as top venues or were even at the level of the [redacted] in terms of recognition in the field. For example, several articles published in Spanish and Argentinean newspapers report on the Petitioner's receipt of the Best Film and Best Director awards at the [redacted] Spanish Cinema festival in [redacted] Uruguay. However, as noted above when discussing published material about the Petitioner, those articles are accompanied by only partial English translations, and thus do not comply with the regulations. While we acknowledge that the translated portions of these articles sufficiently verify the Petitioner's receipt of this award, the lack of a complete translation detracts from the weight of this evidence in establishing the award's recognition and thus the extent of the acclaim afforded to the Petitioner.

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<sup>1</sup> The Director suggested in his decision that because several of the awards were given for movies that the Petitioner directed, he could not be considered to be the recipient. However, the materials show that in all cases where a movie was awarded, the Petitioner was specifically and exclusively named as the director of the movie. Therefore, we will consider those awards to have been received by him.

Similarly, several articles from Italian newspapers are accompanied by partial English translations which are sufficient to confirm that [redacted] was awarded the Stefano Reggiani award for best film at the [redacted] International Film Week in [redacted]. But the translations do not include most of the main body of these articles, and thus do not provide sufficient context to determine the level or extent of recognition that the Petitioner received by winning this award.

Beyond the awards given to this film, the Petitioner also submitted media articles which discuss or interview him based upon the success of his initial movie at film festivals, as well as its topical content coming after the creation of several new Eastern European nations. These include an article in *Screen International* which calls [redacted] "One of the surprise hits at the [redacted] Film Festival," and the article in *Delo* which indicates that the Petitioner "was popular and sought-after" by many Eastern European journalists since they [redacted]. Based upon the evidence of awards and media attention given to him after the release of his initial film, the Petitioner appears to have enjoyed a certain level of international recognition at this stage of his career.

The next film that the Petitioner directed, [redacted] was released approximately [redacted]. The evidence shows that it was screened at the [redacted] International Film Festival that year, as well as at [redacted] the next year and less prestigious festivals, but did not receive any awards. The Petitioner submitted evidence of a review of the film in *Variety* and an interview of him about the film in *La Tribune de Geneve* as well as *El Pais*, a major Spanish newspaper, but the totality of the evidence regarding this film does not show that the Petitioner received national or international recognition as its director.

In [redacted] the Petitioner released his film [redacted] [redacted] at the [redacted] edition of the [redacted] Film Festival, where it was awarded for best film, best director and best actress. The record includes three articles from Spanish newspapers that report on the film's success at the festival, but as previously noted with other foreign-language articles, these are only partially translated and thus do not provide a complete picture of how the award, the film and the Petitioner were presented. We note that a brief article also appeared in *Variety*, which stated that the festival received increased media attention that year and "looks set to establish itself as [redacted]'s main platform for exclusively local product." In addition, the evidence includes two properly translated articles from Bolivian newspapers about the film's receipt of the [redacted] award for best film at the [redacted] Film Festival in [redacted] Bolivia. Further, the Petitioner was interviewed in an article published in *Clarín*, a major Argentinean newspaper, about the film and its production. The evidence thus indicates that the awards received by the Petitioner at one up-and-coming film festival, and another less well-known, brought a certain level of national acclaim in [redacted] where it was filmed, and in his native [redacted].

The evidence indicates that the Petitioner did not direct another film until [redacted] when [redacted] [redacted] was shown at several film festivals, including the [redacted] International Film Festival [redacted], the [redacted] International Film Festival [redacted] and the [redacted] [redacted] Film Festival in [redacted] where it received the First Prize for best film. However, we note that the evidence regarding recognition of this award is limited to pages from unrelated websites or the festival's own materials. The film was reviewed in another major Argentinean newspaper, *La*

*Nacion*, but only a partial translation of this review was provided, and the evidence does not indicate that it received significant media attention beyond this article.

His next film appeared in [redacted], with [redacted] premiering at the [redacted] International Film Festival. It was also screened at film festivals focusing on [redacted], and at several locations of the [redacted] Institute, an institution created by the [redacted] government to promote [redacted] culture. The Petitioner provides evidence that he received the “Best Documentary” award at the [redacted] Film Festival, which is also represented in the evidence as the International Festival of [redacted] Cinema. However, other than a brief mention in a *Variety* article and another posted on what appears to be a blog, the Petitioner did not submit evidence that he received widespread acclaim resulting from this movie or the award it received. Although he submitted recent articles about the increasing popularity of the [redacted] Film Festival, the record does not show that the festival, or the prizes it granted in [redacted] received significant professional or public media attention at the time or was otherwise deemed noteworthy.

The Petitioner’s final film to date was [redacted] which was screened at several film festivals focusing on Latin American films, including those in [redacted] and [redacted] as well as broader festivals in Argentina and Spain. Like his previous film, it was also featured in screenings at several locations of the [redacted] Institute. An article in *Variety* provides a favorable review, as does another article in what appears to be a local or regional Spanish newspaper. However, the record does not include evidence that this film received an award or the level of coverage in the general and industry media that the Petitioner’s first three films received.

In addition to his work as a director, the evidence demonstrates that the Petitioner has also worked as a producer, and is a co-founder of [redacted] Productions based in [redacted]. [redacted] produced three of the films directed by the Petitioner ([redacted]), as well as the films [redacted] in 2004 and [redacted] the same year. [redacted] in which the Petitioner is credited as a co-producer, won several awards at film festivals, as well as a Silver Ariel for [redacted] Film in [redacted]. However, the Petitioner has not shown how the level of critical success of these films, for which the director is credited, has added to his acclaim as a filmmaker. He highlights an article which appeared in *Variety* in 2006 which discusses a project on which he and his production company were said to be collaborating with a Colombian director, and asserts that this attention from the well-known industry publication shows the recognition that both had achieved in the industry. However, we note that the article does not focus on the Petitioner’s work as a producer, but instead briefly mentions his awards received as a “helmer” or director. In addition, although other articles in the record about films produced by [redacted] list or mention the production company, none of them focus on the company or on the Petitioner for his work as a producer. We therefore conclude that this evidence does not show that this aspect of the Petitioner’s career as a filmmaker have noticeably contributed to his acclaim in the field.

Another aspect of his work which reflects on the nature of his acclaim as a filmmaker is the Petitioner’s service as a judge for film festivals. The evidence shows that he served in this capacity for several festivals, primarily in Spain, from 1999 to 2009, including as president of the jury for the [redacted] International Film Festival, which focuses on the work of young filmmakers, and twice at the [redacted] Film Festival, in 2000 and 2008. His first participation in a film festival jury was at the [redacted] Film Festival in [redacted] Spain in 1999. In several cases he served on the jury for a particular

“section” or type of film, such as at the 2007 [redacted] Film Festival where he judged only short films. This evidence shows that during this period, the Petitioner had achieved a level of national acclaim and was thus regularly called upon to utilize his expertise as a filmmaker to judge the work of other filmmakers.

A review of the evidence discussed above shows that the Petitioner garnered acclaim at the international level with his first film as a director in [redacted], with [redacted] receiving awards at film festivals and significant media attention. His next two films, released five and seven years later, continued to be screened at international film festivals, but the evidence shows that they did not receive the same level of recognition as [redacted] with [redacted] receiving attention mainly in the Petitioner’s country of residence at the time, [redacted]. While he remained active in his field as a producer and in judging film festival competitions, the Petitioner next directed a film in 2006, seven years after the release of [redacted]. That film, [redacted] was also screened at international film festivals such as those in [redacted] and [redacted] but the evidence does not show that the award it received at the [redacted] Film Festival was well-recognized. And the last two films that he directed were screened at lesser known festivals focused on [redacted] and [redacted] films, as well at several locations of the [redacted] Institute, but the evidence does not demonstrate that they received the same level of critical acclaim as his earlier movies.

Since directing his last film in 2010, the evidence shows that the Petitioner has made some speaking appearances, and has also participated in educational programs for young filmmakers. For instance, on two occasions in 2015, he spoke at events organized by the [redacted] an organization created by the [redacted] government to strengthen ties with [redacted]. While one of these talks was at a conference titled [redacted] and thus appeared to be related to the field of filmmaking, the other was a poetry reading to memorialize a recently deceased poet, where the Petitioner was one of many participants reading poetry.

Regarding educational and mentoring activities, the Petitioner took part in [redacted]” an international symposium on [redacted] film and literature organized by two universities in the United States. The evidence shows that he was one of six filmmakers from [redacted] and [redacted] who were invited to participate with the conference in conjunction with the [redacted] International Film Festival in 2011. He had also previously spoken about his films at [redacted] University in 2007. Separately, he participated as one of several advisors in a course entitled [redacted] [redacted] organized by the [redacted] Program in 2013. Although these activities show that in the years following the release of his last film, his expertise as a filmmaker remained sought after to some degree, the evidence relating

In addition to these activities, the Petitioner also remained active in his field through his membership in professional organizations. The Petitioner submitted evidence that as of June 2012 he was one of three members of a specialty commission of the [redacted] and claims that he was a member of the Board of Directors of this organization from 2012 to 2016. However, this same evidence states that “the first of each section being the new member of the Board of Directors,” while the Petitioner is listed as the third member. In addition, other information from the [redacted] [redacted]’s website indicates that two members from each specialty commission, out of a total of six members, are a member of the Board of Directors. Although the evidence confirms that the Petitioner was a member of the specialty commission for direction for a two-year period, it does not confirm that

he was a member of the Board of Directors as claimed. In addition, while the record includes articles from film industry media discussing leadership changes in the [REDACTED], the Petitioner is not mentioned in any of them, nor does the record include other evidence of his activities while a member of the specialty commission. This evidence demonstrates that the Petitioner remained a respected member of his profession at the national level in the years after he directed his last film, since members of the specialty commissions are voted on by the academy's general assembly, but does not indicate that he had sustained the level of acclaim earned earlier in his career up to the time of filing this petition.

The Petitioner also submitted evidence that he was a member of the standing committee of the board of Directors of [REDACTED] an organization which manages the interests of the authors of audiovisual material in their secondary rights to their creations. The evidence indicates that this organization collects and distributes global copyright royalties, and advocates for the fortification of copyright protection. As with the Petitioner's claim about his membership in the [REDACTED], the evidence indicates only that he was a member of the Board of Directors at some point, but does not support his claim of membership from 2005 to 2013. In addition, although this evidence shows that he worked on behalf of others in his profession to protect film copyrights and royalties, it does not demonstrate that he maintained national or international acclaim as a filmmaker through this work.

In summary, although the record shows that the Petitioner remained active in his field through advocacy and teaching and mentoring activities in the years since he last directed a film, it does not indicate that he has actively worked as a director or a producer in the nine years preceding the filing of this petition, or that he has participated as a jury member at film festivals. This decrease in his activity is also reflected in the evidence of media coverage of the Petitioner and his work. As discussed above, he and his films were the subject of many articles in a variety of media, including major newspapers in his native [REDACTED] as well as in [REDACTED] where he resided, during the period in which he was actively directing films and his work was regularly screened at film festivals. However, the record does not show that this level of media coverage of his career continued once his activity as a director ceased. The more recent articles in the record concern screenings of his film at several locations of the [REDACTED] Institute, and consist of a posting on that location's website, as opposed to the previous coverage of his work in major and professional media. The Petitioner has therefore not established that the acclaim he gained as a director through his early films has been sustained to the present.

In addition, while the Petitioner's films received a level of international acclaim in the 1990s, winning prizes at film festivals and receiving press coverage at the international level, the evidence does not show that this acclaim reflected standing as one of the small percentage of filmmakers at the top of the field. He has not established that the awards he received were considered to be among the most prestigious prizes in his field, or that the level of critical acclaim he received as a filmmaker otherwise marked him as a top filmmaker. More importantly, the Petitioner's work was most recently awarded approximately nine years prior to the filing of this petition, and the record does not demonstrate that he was among the small percentage of filmmakers at the top of his field at that time.



### III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. 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 sustained national or international acclaim in the field, and that he is one of the small percentage who is at 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.