



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

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

In Re: 8537913

Date: APR. 5, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a [ ] painter, 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 Petitioner had satisfied only one of the ten 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 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 indicates work in the field of [redacted] artwork. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), 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 satisfied only one of the initial evidentiary criteria, display at 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains that he meets four additional criteria. After reviewing all of the presented evidence, the record does not reflect that the Petitioner meets the requirements of at least three criteria.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.<sup>1</sup> The Petitioner argues his eligibility for this criterion based on membership with the [redacted] Association of Folk Artisans and Artists of [redacted] [redacted]. Specifically, the Petitioner claims:

In accordance with the Charter of [redacted], admission to the Association is granted based on recommendation of Art Experts Council composed solely of nationally or internationally recognized experts in the respective field of folk arts and based on the

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<sup>1</sup> *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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

applicant's outstanding artistic achievements in the field of [redacted] folk arts, as judged by such nationally or internationally recognized experts in the respective fields of folk art.

Although he references a "Charter," the record does not reflect that the Petitioner submitted a charter or similar documentation to support his assertions. In fact, the record shows that at initial filing, the Petitioner offered his membership certificate, and in response to the Director's request for evidence (RFE), he presented a screenshot from [redacted] that provides a general overview and purpose of [redacted] including contact information. These materials, however, do not demonstrate the requirements or criteria for obtaining membership with [redacted]. Here, the Petitioner did not establish that [redacted]'s membership requires outstanding achievements, as judged by recognized national or international experts consistent with this regulatory criterion.

Accordingly, the Petitioner did not demonstrate that he meets this criterion.

*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).*

In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.<sup>2</sup> At initial filing, the Petitioner submitted two articles published in [redacted] and [redacted]. Regarding [redacted] although the Petitioner claimed a publication date of [redacted] 2017, the translation reflects a date of [redacted] 2017." In response to the Director's RFE, the Petitioner provided a letter from the [redacted] Regional Printing House, LLC, indicating that the article "was announced . . . [redacted] 2017." However, the Petitioner did not present a complete and accurate translation of the article. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner provided a translation that conflicts with other evidence, the Petitioner did not show that the translated material is accurate and supports the Petitioner's claims. Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, the Petitioner did not include the required author for the [redacted] article.

Notwithstanding the above, the Petitioner did not establish that these regional newspapers qualify as professional or major trade publications or other major media. The Petitioner offered a letter from the editor of [redacted] who stated that the newspaper covers the [redacted] region with "an average of 9,000 – 11,000 copies per year." In addition, the Petitioner submitted a letter from the editor of [redacted] who indicated that the "spread area is [redacted]" and "is published per a week in 3000 (three hundred copies)." However, the Petitioner did not provide any independent, objective evidence showing the newspapers' standings as major media. USCIS need not rely on the self-

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<sup>2</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliable evidence of a major medium). Further, the Petitioner did not show the significance of the "9,000 – 11,000" and "3000" (or "three hundred") circulation figures or explain how such data reflects status as major media.<sup>3</sup>

We note that in response to the Director's RFE, the Petitioner provided two pieces of material published after the initial filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). As such, we will not consider this evidence in our adjudication of this appeal.

For these reasons, the Petitioner did not demonstrate that he satisfies this criterion.

*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).

In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.<sup>4</sup> For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner contends that "his mastery of traditional [redacted] art was recognized as a contribution of major significance to the field by leading experts in this field." The record reflects that the Petitioner submitted three recommendation letters that opined on his abilities, skills, and personal traits. For instance, "[i]n two years, he got all the necessary skills where others were already doing for a long time" [redacted], "[the Petitioner] distinguished himself with diligence and critical engagement, which . . . stem from his intellectual curiosity and commitment to learning" [redacted], and "[the Petitioner] is extremely creative and is able to produce unique, expressive, and inventive of art" [redacted]. However, having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. Further, the record must be supported by evidence that the Petitioner has already used those skills and talents to impact the field at a significant level, which the letters do not show. Furthermore, none of the letters, as asserted by the Petitioner, mention or reference his artwork as contributions of major significance in the field.

Here, the Petitioner's letters do not contain specific, detailed information identifying his original contributions and explaining the unusual influence his artwork has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance in the field and its impact on subsequent work add value.<sup>5</sup> On the other hand, letters that lack specifics and use

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<sup>3</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

<sup>4</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

<sup>5</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.<sup>6</sup> Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Although he provided samples of his artwork demonstrating originality, the Petitioner did not explain or establish how the artwork impacted or influenced the overall field.<sup>7</sup>

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

### III. CONCLUSION

The Petitioner did not demonstrate that he satisfies the criteria relating to memberships, published material, and original contributions. Although the Petitioner claims eligibility for an additional criterion on appeal, relating to scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.<sup>8</sup> Accordingly, 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 conclusion 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 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). Although the Petitioner claims experience as a miniature painter, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.

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<sup>6</sup> *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, *aff’d* in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

<sup>7</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

<sup>8</sup> *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

**ORDER:** The appeal is dismissed.