



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

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

In Re: 16692207

Date: APR. 29, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a photographer, 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 demonstrated that the Petitioner met the initial evidentiary requirements for this classification, it did not establish the Petitioner's eligibility as an individual of extraordinary ability.

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 photographer who has displayed his work at exhibits mainly in China and Europe. He states that he wishes to continue to work as a photographer in the United States, with the goal of opening an art studio in [REDACTED]

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 four of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his receipt of lesser nationally or internationally recognized awards, published material about him and his work, the display of his work at artistic exhibitions, and his service as a judge of the work of other photographers. However, the Director then concluded that the totality of the evidence did not establish that the Petitioner is one of the small percentage of photographers at the top of the field, and thus was not eligible as an individual of extraordinary ability. On appeal, the Petitioner asserts that the Director did not consider the totality of the evidence in the record in making his determination. After reviewing the record, we agree with the Director's conclusion regarding the Petitioner's satisfaction of four of the evidentiary criteria, and will therefore turn to 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.

As noted above, the Petitioner has submitted evidence that his photographs have been displayed at several artistic exhibitions. The record shows that he first began exhibiting his work in 2015 at the [REDACTED] [REDACTED] Photography Exhibition, and his work has continued to be displayed

in China at exhibitions such as [redacted] in 2017 and 2018, the [redacted] Photography Festival in 2017 and 2019, and the [redacted] Foto Festival in 2018. His work has also been shown at several exhibitions outside of China, including the [redacted] of Photography [redacted], the [redacted] Photographic Exhibition, the [redacted] Photographic Circuit, and the [redacted] Photographic Art [redacted], all in 2016.

On appeal, the Petitioner argues that several of these exhibitions included photographs from only the top artists in the field, which he asserts places him among that group. For instance, regarding the exhibition in [redacted] he submitted an article from the website of one its organizers, the [redacted] which notes that “most of these photographers are gold medal winners in various international photography competitions and are part of the [redacted] Photography Art team in China.” The Petitioner also highlights the acceptance of his work to be displayed at the [redacted] exhibition, noting that 203 photographs out of 2310 submitted were accepted and citing the statement from the exhibition’s website that it is “one of the most highly regarded exhibitions in the UK.” However, we note that the record does not include information about these exhibitions from independent sources, and thus lacks evidence to show that they are considered to be prestigious by the international photography community. This is also the case with the [redacted] Photographic Circuit and some of the Chinese exhibitions in which the Petitioner participated.

Regarding the display of the Petitioner’s work at the 2018 [redacted] Foto Festival, he submitted evidence demonstrating that both the festival and his photographs garnered attention. *Fisheye*, a French photography magazine, published a brief article discussing his series [redacted] which was exhibited at the festival. The author writes that the Petitioner is “one of the photographers who are beginning to be known in China,” and describes his photographs of [redacted] by stating that he [redacted]

[redacted] A major work to understand today’s China.” Another French publication, *Le Figaro*, published a much longer article about the festival, and briefly describes the Petitioner’s exhibit as [redacted]. In addition, *China Photo Press* devoted an article about both of his displays at the [redacted] Foto Festival, discussing [redacted]. The author writes that the Petitioner’s “photographing of wonders is actually culturally significant...” and that with both of these projects, “he has gripped the deepest and most central disease of the current society.” Information about all three of these publications is in the record. *Le Figaro* is a well-known major newspaper, but as stated only briefly describes the Petitioner’s work. On the other hand, while *Fisheye* and *China Photo Press* focus on photography and devoted more space to discussing the Petitioner’s work, the limited information provided about them in the record does not demonstrate their reach and the impact they have within the field of photography. Nevertheless, taken as a whole, this evidence demonstrates that the Petitioner’s work was exhibited at an important international exhibition in successive years and, as a result of his work’s appearance at the most recent of these, garnered a certain level of international acclaim as a result.

The Petitioner also submitted reference letters from two co-founders of the [redacted] Museum of Photography who also both play a role for the [redacted] Foto Festival. [redacted] states that he became aware of the Petitioner’s work through the festival, and describes his [redacted] noting that he “is one of the very few members in the Chinese photography field who have the courage to use their works to criticize and challenge” the Chinese government. He also writes that the Petitioner “is one of the Chinese photographers who have aggrandized public recognition.”

[redacted]'s colleague at the [redacted] museum, and founder and director of the festival, is [redacted]. She writes that [redacted] "has attracted widespread attention and unanimous praise from experts and media from home and abroad" after being exhibited at the festival, and that he "is the first photographer in China to [redacted] [redacted]". She also describes [redacted] and concludes by listing publications in which the Petitioner's work has been featured. However, we note that the record does not include evidence of media attention or discussion of his work beyond that which has already been discussed. These letters serve to confirm that the Petitioner's exhibitions at the [redacted] Foto Festival drew attention and were considered by some to be a highlight of the festival.

As a result of his participation in these exhibitions, the Petitioner also received several awards for his work. At the 2016 [redacted], he received a PSA (Photographic Society of America) Gold Medal¹ for [redacted] in the [redacted] category for his photograph [redacted]. This work also resulted in the Petitioner receiving a [redacted] Award for Chinese Art" in the same year. An article posted on the website www.fengniao.com describes a ceremony and includes a list of nominees and winners for the [redacted] Award for Chinese Art. This article indicates that 29 photographers were given this award in 2016, 4 received the "Bole Award" and 5 received the "lifetime photography achievement award." The article further states that "nominees for the award must have already obtained the highest awards in various art activities and competitions..." that candidates for the award may apply and are limited to "Chinese living in China and abroad," and that over the course of 4 award periods over 10 years, more than 100 photographers have received the award. In addition, the article describes nominees for the [redacted] Award for Chinese Art as "the future of Chinese Art," while the awardees are "the pioneers and leaders of Chinese Art" and the 50 photographers who have received the lifetime achievement award over the same period are "masters who have reached the peak of their own careers." The number of awards given at each event and the fact that the award received by the Petitioner is not the top award at the event indicates that he is not one of the small percentage of photographers at the top of his field on a national or international scale. Further, although the Petitioner submitted articles describing later instances of the [redacted] Award for Chinese Art ceremony that were posted to popular Chinese web portals, this was the only article submitted regarding the fourth edition in 2016, and the record does not include information about the website where it was posted.

Related to the [redacted] Award for Chinese Art is another honor received by the Petitioner in 2017, the [redacted] Chinese Photographers Award." An article posted on artron.net indicates that this award is sponsored by the organizers of the [redacted] Award for Chinese Art and is "one of the series of activities" involved with that award. The article also identifies that organization as its source, indicating that it is a press release or similar material. Further, it states that this was the first year that this award was given, and that the organizing committee ranked a total of 334 applicants in 5 different categories, with the Petitioner placed in the [redacted] category. A different article regarding the 2019 edition of these awards, posted on pop-photo.com, explains that candidates are ranked based upon a point system, with points given for the receipt of awards at photography competitions, membership in photography associations, and the publication of a candidate's work.

¹ We note that the record includes references to photography medals associated with multiple photography associations which were also awarded at some of the festivals in which the Petitioner participated. With the lack of information in the record regarding these associations and the type, level and number of medals with which they are associated,

Notably, the highest number of available points is awarded to recipients of the [redacted] Award for Chinese Art, along with other awards about which no information is provided. These materials indicate that this ranking is therefore not based upon an independent evaluation of the quality or artistic value of the candidate's work, but is instead a measure of their activity and previous recognition received at photography competitions in the previous year.

The Petitioner also submitted evidence of his receipt of additional awards for his work as a photographer, including a [redacted] Gold Medal and [redacted] awards from the [redacted] in 2016 (part of the [redacted] Photographic Circuit) and a [redacted] Award at the [redacted] International Photography Exhibition in 2019. Regarding the first of these, the record includes a description of a later instance of the [redacted] Photographic Circuit from its own website, a list of accepted photographers and photographs for the 2016 edition of the [redacted] Salon, and a certificate for the Petitioner's receipt of the [redacted] award. The website page indicates that more than 500 awards are granted, presumably across all four salons, and that this includes "Best of Salon" and "Best of Circuit" awards. While the Petitioner's receipt of these awards demonstrates some level of recognition, he did not receive the highest awards at this event, and the record does not include evidence of recognition beyond the event and its organizers. In addition, as with the [redacted] Gold Medal mentioned above, the record does not include information about these photography associations and the number and type of medals and other awards issued by them. This evidence is therefore insufficient to establish the Petitioner's relative standing in the field outside of the events in which they were awarded. Similarly, the information concerning the [redacted] Award is limited to a certificate and information from a website with an unknown affiliation.

In addition to the evidence of the display of his work at exhibitions, the Petitioner also submitted evidence that shows that some of his photographs were placed in the collections of artistic institutions. Specifically, one certificate indicates that five photographs of the [redacted] series (presumably referring to the [redacted] series discussed above) were transferred to the collection of the [redacted] Academy of Arts as part of a donation agreement in 2019, and another certificate states that one of the Petitioner's photographs was collected by [redacted] University in China in 2017. We note that although the Petitioner initially asserted that this evidence demonstrated that he had made original artistic contributions of major significance, he did not focus on it in responding to the Director's notice of intent to deny or on appeal. Further, although the evidence indicates that both are reputable institutions, it does not establish that the collection of the Petitioner's photographs is a high honor or is indicative of acclaim for his work at the highest levels.

After his success at the aforementioned exhibitions, the Petitioner served as a judge at the 2017 [redacted] Photography Art Exhibition. He submitted a letter from this organization which verifies his service as a judge, and an article posted on sohu.com by [redacted] indicates that this exhibition is hosted by the [redacted] Photography Museum and been held annually since 2010. This evidence shows that he is considered to be an expert in photography and has achieved some level of recognition. However, it does not establish that this exhibition is prestigious or that selection as a judge for this exhibition is reserved for those photographers at the top of the field.

As noted above, in order to establish eligibility as an individual of extraordinary ability, the Petitioner must show that he has been the subject of sustained national or international acclaim, that he is one of that small percentage who has risen to the top of his field, and that his achievements have been

recognized in the field through extensive documentation. The evidence demonstrates that he began exhibiting his work in 2015, and that he received awards for his work in international competitions the following year. However, it does not show that these initial awards were considered to be prestigious, or that his receipt of them placed him among top photographers. The Petitioner's receipt of the [redacted] Award for Chinese Art and [redacted] Chinese Photographers Award in 2017 show that he was receiving acclaim for his work at the national level, and his participation as a judge of other photographer's work at a single exhibition demonstrates that his expertise as a photographer had begun to be recognized. More recently, the attention given to the 2018 [redacted] Foto Festival, and in particular to the display of the Petitioner's collections there, illustrates a growing level of appreciation and notice of the Petitioner's work in the field of photography. However, the evidence does not establish that he has enjoyed *sustained* acclaim at the national or international level, 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.

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). In this case, although the evidence shows that the Petitioner has raised his standing among his peers in the field of photography, it does not establish that he is yet one of that small percentage at the top of the 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.

ORDER: The appeal is dismissed.