



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

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

In Re: 18851417

Date: AUG. 30, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, an independent filmmaker, 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 Texas Service Center denied the petition, concluding that while the Petitioner met the initial evidence requirement for the requested classification, the record did not establish that he enjoyed sustained national or international acclaim and was among the small percentage of those at the top of his field.

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 an independent filmmaker whose credits include theatrical feature films, short films, and documentary projects released in his native country of Zimbabwe. The record reflects that he has also directed and written concepts for music videos. He intends to continue writing, editing and directing films in the United States if his petition is granted.

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 lesser awards, published material about him and his work, his participation as a judge of the work of others, and display of his work in the field at artistic exhibitions or showcases.

The record reflects that the Petitioner's short film, [redacted] received a [redacted] Award [redacted] for [redacted] in 2013 awarded by the National Arts Council of Zimbabwe. This film also earned him the [redacted] Award at the [redacted] International Film Festival [redacted] in 2011, and was screened at the [redacted] that same year. In 2017, he produced [redacted], a feature film expanding on the original short film by the same name, which won multiple awards and was also screened at the [redacted] and at several additional festivals. The record also contains evidence demonstrating that he won [redacted] at [redacted] in 2006, as well as the [redacted] for [redacted] in 2016. Accordingly, we agree that the submitted evidence establishes that the Petitioner meets the awards and display criteria.

In addition, the Petitioner submitted numerous articles published in major media discussing his work and accomplishments, as well as evidence that he judged the work of others in his field as the head juror for the [redacted]. We concur with the Director's determination that the Petitioner also satisfies the judging and published material criteria. Therefore, the Petitioner has established that he fulfills at

least three regulatory criteria, and we will evaluate the totality of the evidence in the context of 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 is an independent filmmaker who has also worked as a music video writer and director. The record as a whole reflects that he has become a respected figure in Zimbabwe's film industry, but does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Preliminarily, we note that on appeal, the Petitioner submits a copy of an updated Form I-140, Immigrant Petition for Alien Worker, that updates his claimed job title to "[redacted] Film Maker." The Petitioner indicates that the Director unfairly considered the Petitioner in the context of filmmakers as a whole, when in fact he should be compared to the [redacted] of [redacted] [redacted] when determining whether he is one of the small percentage at the very top of the field of endeavor. The Petitioner requests that we accept this new job title and associated duties, and supplements the appeal with additional evidence for consideration in support of this assertion.

While the Petitioner's assertions are noted, we will not consider these new claims in our review of the appeal. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). If significant changes are made to the initial request for approval, the Petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.¹ Although the Petitioner attempts to submit an updated Form I-140 to reflect its change in job title, he is not permitted to make material changes to a petition, to its claims, or to the evidence in an effort to make an apparently deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). The Petitioner's initial filing does not describe the job title as "[redacted] film maker" or provide any details of the [redacted] field of endeavor. Consequently, we will only consider the claims and evidence the Petitioner presented before the Director.

The record shows that the Petitioner has worked on four feature films, several short films, and approximately 40 short documentary videos since 2006, usually as a writer and director. Although this demonstrates the Petitioner's lengthy career in filmmaking, longevity in the industry, however, is not the same as sustained national or international acclaim.

¹ Rather than file a new petition, the Petitioner seeks to amend the current petition on appeal. The Petitioner stated that "[s]ince we are not filing a new I-140, we are not including a new filing fee since [the Petitioner] has previously paid it in his original filing."

Based on the submitted evidence, the Petitioner is best known for his feature film, [redacted] which he completed in 2017. The Petitioner's film, on which he served as writer, director, and editor, won [redacted] Film at the [redacted] and [redacted] Feature at the [redacted] Film Festival in 2017, as well as [redacted] at the [redacted] International Film Festival in [redacted] in 2018. Although his receipt of these awards received press coverage in outlets such as *The Herald* and *H-Metro*, such media coverage does not establish that winning such awards results in sustained national or international acclaim for the award recipient. While the Petitioner received his awards for [redacted] in 2017 and 2018, the record does not demonstrate that he directed another feature film or received any additional nominations or awards for his film and music video projects in subsequent years. Therefore, the Petitioner has not demonstrated that he has achieved sustained national or international acclaim in the field.

The Petitioner also submitted evidence demonstrating that in late 2019, he was selected to participate in an American television documentary entitled "[redacted]" a series that featured [redacted] filmmakers from [redacted] countries, of all whom were [redacted]. The series consisted of [redacted] episodes, with one episode dedicated to each filmmaker, and the Petitioner was selected to represent Zimbabwe. The director of the project, [redacted] indicated in a letter that in addition to featuring the Petitioner in the series, she also selected him to be a special guest at the [redacted] Film Festival in [redacted] 2020, which was ultimately cancelled due to the COVID-19 pandemic.

The Petitioner relies on this project as evidence of his ongoing career and his sustained acclaim in the field, noting that his invitation to participate in the series and attend the [redacted] Film Festival as an "honored guest" demonstrated continued interest in his work. He further noted that had he attended this festival, he undoubtedly would have received significant media attention, both internationally and in Zimbabwe.² While we note that the Petitioner's selection to participate in this project is an honor, we note that he was simply the subject of another filmmaker's project and not engaged in the writing, directing, or editing of the series. Moreover, the record is devoid of evidence demonstrating that this project was actually completed and televised, given [redacted]'s indication that this was a "current" project at the time her letter was submitted. We are unable to determine whether the segment featuring the Petitioner in this series was actually completed, and if so, whether it highlighted his film achievements and his impact upon the industry, or merely described his talents and abilities as a filmmaker. Absent such evidence, his selection to appear in this series does not establish that he was one of that small percentage who have risen to the very top of their field as contemplated by *Kazarian*.

The Petitioner was awarded [redacted] Award for [redacted] in 2006, and the [redacted] Award and the [redacted] for [redacted] in 2011 and 2013, respectively. There is no indication, however, that the Petitioner has since

² The record contains minimal evidence pertaining to the [redacted] Film Festival, and we therefore afford minimal weight to this assertion. The Petitioner submitted a letter from [redacted] the festival's executive director, confirming the Petitioner's invitation to attend the festival in [redacted] 2020. He states that the festival, "now in its [redacted], is a globally recognized international film festival that thrives to bring creative voices from around the world to the big screen and an international audience," and that it has premiered many Oscar-nominated films. Aside from this letter, and a screenshot of the festival's website noting its cancellation due to COVID-19, there is no evidence supporting these statements. Although [redacted] claims that the festival premiered "many" Oscar-nominated films, he only identified one such film by name. The record contains no documentation or other independent evidence corroborating the claims set forth in his letter, nor is there evidence demonstrating that the festival is routinely attended by influential industry members or that his participation in the festival would have garnered significant media attention as he claims.

written, directed or produced another short film since the release of [redacted] in 2011. While these awards are admirable and demonstrate his recognition in the area of short filmmaking, standing alone they are not evidence that the Petitioner has extraordinary ability as an independent filmmaker whose work encompasses a wide range of genres including feature films, short films and documentaries. While his awards for his short films are acknowledged, they alone do not establish that the Petitioner has sustained national or international acclaim or that he has attained the status as one of that small percentage who have risen to the very top of their field of endeavor.

The Petitioner's work has appeared at several film festivals, which the Director recognized by granting the criterion related to artistic display. But the Petitioner has not established the significance of these particular festivals or shown that the festival appearances particularly highlighted the Petitioner's involvement in the films in a manner that would reflect or contribute to acclaim. Display of the Petitioner's work in the field at artistic exhibitions or showcases consists of screenings of his short films [redacted] and [redacted] at the [redacted] in 2006 and 2011, respectively; screening of his music video [redacted] at the [redacted] Celebrations in 2013; and screening of his feature film [redacted] at the [redacted] in 2018 and the [redacted] Awards Gala in 2019. As it is expected that filmmakers would exhibit their artistic work in front of audiences, we will evaluate the extent to which the display of the Petitioner's work is reflective of acclaim consistent with this classification.

While this evidence demonstrates that his films received additional recognition in the independent film field, the record contains little information regarding these festivals. Although the Petitioner submitted evidence demonstrating that 150 films and filmmakers attended the [redacted] Awards Gala, this evidence, and the minimal evidence submitted relating to the remaining festivals, does not indicate that any of the festivals were attended by influential industry members. Further, the Petitioner has not established that the selection of his film for these festivals resulted in significant media attention or otherwise resulted in national or international recognition. This evidence falls short of representing the Petitioner as one who has established sustained acclaim or that he has attained the status as one of that small percentage who have risen to the very top of their field of endeavor.

The record contains comparatively little evidence regarding the Petitioner's other film projects, which include numerous documentary shorts for various humanitarian organizations including the [redacted] [redacted] and [redacted]. As constituted, the record lacks sufficient independent evidence of the recognition he received or the exact role he played in these projects. With respect to the documentaries, it is unclear when, where or in what capacity these projects were released and how they were received by audiences and critics, as many of them were documented in the record solely through submission of captioned screenshots. [redacted] who worked with the Petitioner while he performed documentary work for the [redacted] states that the Petitioner "is a great storyteller with a unique ability to understand project objectives and translate them into impactful stories." However, as noted, the record contains little independent evidence of the Petitioner's work on documentary films produced for the [redacted] or other humanitarian organizations, or the attention he received for this work, to corroborate its claimed impact and influence on the Zimbabwean and international film industries.

Overall, during his 14-year career in his field, the Petitioner has established that he directed one award-winning feature film that garnered him national attention in Zimbabwe when it was first

released and when screened at international festivals in 2017 and 2018. His previous projects, the short films [redacted] and [redacted] also garnered some local media coverage in Zimbabwe. While these projects are noteworthy accomplishments for the Petitioner as a filmmaker, the evidence does not establish that they are reflective of a “career of acclaimed work” or that receiving the documented level of recognition for three projects during a 14-year career demonstrates a level of success consistent with being among “that small percentage who [has] risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

The Petitioner has also submitted testimonial letters that summarize and discuss the Petitioner's contributions in the field as a filmmaker. Most of these letters simply recount the Petitioner's career history and praise his work rather than offer specific examples of the Petitioner's impact on the field. For example, [redacted] Co-Founder of [redacted] states that “it goes without saying that [The Petitioner] has indeed garnered a spot at the top echelon of filmmakers in Zimbabwe and internationally.” Similarly, a letter from [redacted] a U.S. film producer, discusses his hybrid talent as “a director, editor, cinematographer, creative producer, writer, assistant director, and film festival jury president,” noting that “it is truly unique in this industry for a filmmaker to possess extraordinary abilities across different genres of film.” [redacted] an actor and filmmaker in Zimbabwe, states “I have worked with the likes of Christopher Lee, Sharon Stone, Danny Glover, and two time Oscar winner Denzel Washington and Oscar winner Kevin Kline. [The Petitioner] holds the same dedication to excellence that I have witnessed in these Hollywood greats.” While each of these individuals commends the Petitioner's work, they have not established that his work, or any of his films, were particularly influential in the Zimbabwean or international film industry such that they had an impact of major significance³ in the overall field that contributed to his national or international acclaim.

In evaluating the Petitioner's evidence, we take into account the probative analysis that experts may provide in opinion letters regarding the significance of an individual's contributions of major significance. Letters that specifically articulate how a Petitioner's contributions are of major significance in the field and their impact on subsequent work add value, while letters that lack specifics and simply use hyperbolic language do not.⁴ While the referenced letters praise the Petitioner's talents, accomplishments, and broad experience, they are not sufficiently detailed to support a conclusion that he has made impactful or influential contributions to his field reflecting a “career of acclaimed work in the field” garnering the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

Regarding the Petitioner's experience judging the work of others, an evaluation of this practice is acceptable under *Kazarian*, 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. The record reflects that the Beneficiary was the head juror for the [redacted] in 2010, which was a 10-day festival where the Petitioner and a panel of jurors screened 26 feature films, 18 short films, and 27 documentaries submitted from over 20 countries. Although the Petitioner submitted information regarding some of the winning films, the record contains no additional information regarding the festival or the manner in which the awards

³ *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 the original contributions criterion because she did not corroborate her impact in the field as a whole).

⁴ *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

were bestowed, and does not establish that the Petitioner garnered national recognition in the field based on his work as a judge in this competition. The record contains minimal background information regarding the nature or scope of the 2010 competition, or the level of recognition associated with being selected as a judge, and there is no indication that he was selected to serve as a judge or juror for similar festivals prior or subsequent to this single appointment. As a result, we cannot determine that the Petitioner's judging activities reflect that he is one of that small percentage who have risen to the very top of the field of endeavor.

Considered in its totality, the evidence in the record demonstrates that the Beneficiary is a talented filmmaker who is well-respected within Zimbabwe based on his broad experience in the film industry. While his experience is wide-ranging and includes several notable accomplishments, the Petitioner has not shown that his artistic achievements at this point of his career, in any one area or as a whole, are indicative of one who has risen to the very top of his field of endeavor with sustained national or international acclaim, as required. 8 C.F.R. § 204.5(h)(2)-(3).

The Petitioner seeks a highly restrictive visa classification, intended for individuals 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, after analysis of the totality of the evidence, we conclude that 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 that 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.

ORDER: The appeal is dismissed.