



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

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

In Re: 10856895

Date: FEB. 3, 2021

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 the record did not establish that the Petitioner met the initial evidence requirement for this classification through receipt of a major, internationally-recognized award or meeting at least three of the evidentiary criteria under 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 an artist who works through the medium of oil painting, and has worked in the past as a professor teaching design courses. She earned a Master of Arts degree in 1996 from [redacted] University, and has published textbooks on display and lighting design. She states that she intends to open an art studio in the United States and continue to create and exhibit her paintings.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she 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 the display of her work at artistic exhibitions and her authorship of scholarly articles in her field. On appeal, the Petitioner asserts that she also meets four additional evidentiary criteria. After reviewing all of the evidence in the record, we agree with the Director's findings regarding the display and authorship criteria, but also conclude that the evidence of her work as a judge for the [redacted] Design Award is sufficient to meet the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, because she has met the initial evidence requirements for classification as an individual of extraordinary ability, we will not analyze her claims to any additional criteria, but will consider the entirety of the record in a final merits analysis below.<sup>1</sup>

### 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

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<sup>1</sup> We note that the Petitioner submitted new evidence along with its brief on appeal. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

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 she meets that standard.

The record indicates that the Petitioner's career in the arts includes painting and exhibiting her oil paintings as an artist, as well as teaching and writing about display design as an associate professor. Because she has indicated that she intends to focus on her painting in the United States, we will first consider the evidence pertaining to her career as an artist.

We initially note that much of the evidence pertaining to the Petitioner's activity as an artist is in the form of articles that were posted on websites or web portals such as sina.com, sohu.com, and ifeng.com. In support of her assertion that these should be considered to be professional media or other major media, and thus show that the posting of these articles reflects recognition she gained through the exhibitions of her work and awards she received, the Petitioner submitted reports showing statistics for these websites, including the number of visitors and rankings. For each set of evidence, the Petitioner refers to these rankings and asserts that they show that the website "and its subdomains" are major media. However, we will not assume that statistics for an entire web portal such as these apply to each of that portal's "channels," let alone every article posted within that portal.

In addressing the final merits determination on appeal, the Petitioner initially refers to the evidence of her receipt of awards for her paintings. The record shows that the first of two awards she received in 2018 was the [redacted] Award" at the [redacted] Summer Exhibition in 2018. Evidence from the host venue, [redacted] Art Museum, as well as articles posted on artron.net and sohu.net, verifies that out of the 280 artists who participated in the exhibition, a total of 30 received the same award as the Petitioner, and that two artists out of that group received an "annual award." The evidence therefore shows that the Petitioner did not receive the top prize from this exhibition, and that approximately one out of every nine artists who participated received the same award as she. In addition, while the Petitioner submitted evidence from the art museum's website which included a list of other exhibitions it has held since 2016, including the [redacted] edition of the [redacted] Summer Exhibition held in 2017, this evidence does not demonstrate that it or the exhibition are prestigious or well-known such that this award was nationally or internationally recognized and brought acclaim of that scope to the Petitioner. Further, given the number of prizes awarded at the same level as the Petitioner's, this evidence does not demonstrate her place as one of the small percentage of artists at the top of her field.

The Petitioner also submitted additional articles about the 2018 [redacted] Summer Exhibition which were posted on the websites mentioned above, as well as sina.com. We note that one of the articles, initially posted on sohu.com, was later posted without change on two other websites, although different sources and editors are listed. This article described the opening ceremony and speeches, lists the names of the awarded artists, and indicates that more than 100 people attended the opening ceremony. However, as noted above, the posting of these articles on popular web portals is not sufficient to demonstrate that the Petitioner garnered national or international acclaim from this award, as the evidence regarding viewership or traffic is much too broad to provide information regarding the viewership of these individual articles. Further, the fact that the same words and pictures were used in each article does not reflect widespread interest in the exhibition, awards or artists, as the opinion of only a single source is provided.

The second award highlighted by the Petitioner was her designation as [redacted] Artist” by the [redacted] Education Organization Committee, also in 2018. An article from artron.net explains that the ten recipients of this award were selected by several rounds of online public voting, but the basis or criteria of this voting is not explained here or elsewhere in the record. It also indicates that as one of the top three vote-getters, the Petitioner signed a contract with a multimedia company through which she “will enjoy the global promotion of [redacted] for half a year.” In addition, the work of all ten recipients were displayed in an exhibition at the [redacted] Expo. However, a program from this expo shows that one of the Petitioner’s works was included among that of many artists. Notably, hers was one of six works pictured on page [redacted] of the program, as part of a section titled “Original Artwork Display and Trading Area” which began on page [redacted] of the program. Further, the program does not mention her selection as a [redacted] Artist.” Although the artron.net article shows that there was a ceremony for the ten winning artists in this competition, which included the signing of contracts by the three top winners, the evidence indicates that it was just one part of a much larger industry event.

The Petitioner also submitted evidence showing that she received a “Nomination Award” for her entry for the design of the [redacted] Award” trophy in 2000. An article in *Beijing Youth Daily* indicates that hers was 1 of 4 design proposals selected out of 30 submissions, and invites readers to submit votes. A later article published in the same periodical announces that another design was selected for the trophy after 500 votes were received and a panel of expert judges conferred. Although the Petitioner submitted evidence that the circulation of *Beijing Youth Daily* was about 600,000 in 2004, suggesting that this contest and her status as a finalist brought her acclaim in the field, the relatively small number of submissions and votes received for this competition does not reflect widespread interest in either the Petitioner’s design or her finalist status in the competition, or acclaim from either the general public or other artists.

Regarding the public display of her artwork, in addition to the two group exhibitions described above, the evidence shows that the Petitioner’s paintings were also displayed at other venues, in both group and solo exhibitions. These include solo exhibitions at the [redacted] art center (also referred to as the [redacted] Art Place”) that took place from [redacted] 2018, and the [redacted] Art Space from [redacted], 2018. As with the 2018 [redacted] Summer Exhibition, the evidence related to this first exhibition consists of two articles, one of which was posted on three different websites/web portals and appears to be attributed to the same individual or group. In addition, we note that several individuals are repeatedly named as participants or in other roles associated with these exhibitions. For example [redacted] is named as the owner of [redacted] Art Space, but is also pictured and identified as a speaker at the [redacted] exhibit and the [redacted] Summer Exhibition. The record does not include evidence which demonstrates that either of these solo exhibitions attracted other than local interest or garnered acclaim for the Petitioner and her work outside of her group of acquaintances and colleagues. Similarly, although a solo exhibit of her work in [redacted] Germany in 2015 might suggest broader acclaim for the Petitioner, the record shows that that exhibit also received only local attention from a German newspaper.

Beyond art exhibitions in galleries and shows, the Petitioner’s work was also displayed in printed publications. This includes four of her works pictured on two pages, along with a brief biography, in the [redacted] 2010 edition of *Art Observation*, which the evidence indicates is sponsored by the [redacted] Academy of Art. Although only partially translated, this evidence shows that the journal also

presented the works of other artists as well as art news and reviews. A similar article appeared in *China Financial Culture* in [redacted] 2019, but also includes critiques of the Petitioner's work from five artists, art professors and critics. Another article, described as a "theme essay" submitted by a reader and published in the [redacted] 2018 edition of the [redacted] magazine *Community*, describes the Petitioner's work and includes photographs of two of her paintings. However, the evidence regarding these publications does not show that they have a significant level of circulation or visibility, in the art field or the general public. Statistics from [redacted] also known as the [redacted] database, show that both *Art Observation* and *Community* appear to have limited annual circulation, and other metrics for the former publication do not compare favorably to those provided in the record for another publication, *Art & Design*. Also, no information from [redacted] was provided regarding *China Financial Culture*, and the websites from which information about this magazine were provided do not appear to be linked to the magazine or the publisher. Although these materials contain favorable critiques of the Petitioner's work, the evidence does not show that they were widely read or distributed in the art world or in the general public, and thus are not indicative of acclaim at the national or international level.

In addition to the media items discussed above which reported on exhibitions of her work or displayed or critiqued her work, the Petitioner also submitted two interviews of her in which she discusses her art and inspirations, both of which were posted to websites in early 2019. One of these interviews was conducted by the previously-mentioned [redacted] and posted on sohu.com, while the other was posted on artron.net and attributed to [redacted] Art Network Special Report." As we initially stated, we will not consider the evidence regarding the popularity of web portals such as sohu.com to reflect upon every material published within its channels or subdomains. Certainly the fact that interviews of her were conducted and published reflects some interest in her and her paintings, but the Petitioner has not provided sufficient evidence to show that these interviews were widely read and thus garnered acclaim for the Petitioner at the national or international level.

The record also includes reference letters from artists and others in the art world who provide their thoughts on the contributions the Petitioner has made to the field.<sup>2</sup> [redacted], an artist and Chairman of the [redacted] indicates that he met the Petitioner in May 2018, and was immediately attracted to and impressed by her painting. He describes some of her works, and states that she "has completely formed her own unique style of painting," and that her "innovations have been a priceless contribution to the art society..." [redacted] describes the Petitioner's paintings as "innovative and different from others," and notes that some have been published in magazines and exhibited at the 2018 [redacted] Expo. Others also use the term "innovative" when describing her work, and similarly reference the articles on the websites and in the magazines discussed above. However, as we noted in our analysis of those articles, they do not show that the Petitioner has received sustained and widespread acclaim for her work. We further note that most of the letter writers state that they personally know the Petitioner or have a connection with [redacted] University, which she also attended, and thus do not indicate that any innovations she has made have been widely acclaimed. Also, although the statements in these letters describe her work as innovative, they do not indicate that others in the field have adopted elements of or been inspired by the Petitioner's work in creating their own art.

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<sup>2</sup> All of the reference letters have been reviewed, including those not specifically mentioned in this decision.

While the Petitioner did not claim the criterion at 8 C.F.R. § 204.5(h)(3)(x), she did submit evidence of the commercialization of some of her work. A letter from an interior designer indicates that he and his colleagues “introduce[d] [the Petitioner] and her works to many of our high-end clients,” and mentions two specific hotels to which her work was recommended. In addition to not explicitly indicating that the Petitioner’s paintings were purchased for public display by these clients, these statements are not supported by documentary evidence such as contracts or sales receipts. Additional evidence regarding sales of her work include a contract with a silk production company planning to use the image of her work in their products, and an agreement regarding the auctioning of two of the Petitioner’s paintings. However, the record does not include evidence confirming the sale of these items and the compensation received by the Petitioner. Therefore, this evidence is not sufficient to demonstrate that her work as an artist has been successfully commercialized to the extent that demonstrates acclaim in the field of art at the national or international level.

We note although the Petitioner’s paintings were included in *Art Observation* in 2010, the majority of the evidence regarding her work as an artist comes from the two years immediately preceding the filing of her petition. Even if we were to find that she has garnered national or international acclaim for her paintings, which per the above discussion we do not, we would not find that that acclaim occurred over a sustained period as required.

Turning to the academic and design aspect of the Petitioner’s career, the record shows that she authored textbooks in the area of display and lighting design, which was sufficient to satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(vi). These include [redacted]

[redacted] two editions of [redacted] (2007 and 2011), and [redacted]. A letter from the publisher of [redacted] states that 5900 copies of the book were printed and that they “sold well and received very well accolades [*sic*] by teachers and students in professional art colleges.” Additional evidence indicates that it was one of nine textbooks listed for a course taught at [redacted] University, and was available at several libraries in China.

A similar letter from China Youth Press states that the 2011 edition of [redacted] was printed seven times for a total of 16,000 copies, and “has been widely used by related majors in more than 30 colleges and universities in various regions of the company.” In addition, a letter dated July 2010 from China Youth Press, presumably referring to the 2007 edition of this book, states that it is a [redacted] national-level planning textbook for general higher education and the environmental art design textbook of [redacted].” As with [redacted] evidence was submitted showing that it is available in several libraries in China, as well as at least one in [redacted] but there was no direct evidence of its use as a textbook by universities other than [redacted] University. In addition, although a notice from the Chinese Ministry of Education regarding the topics and selection of textbooks for the [redacted] was submitted, it only describes the process for review and publication of textbooks, and does not indicate any special status afforded to selected textbooks.

Some of the reference letters previously mentioned make reference to the Petitioner’s work as a teacher and author, but do not offer specific additional information regarding this activity beyond the evidence discussed above. While that evidence indicates that the Petitioner had some degree of success as an author of textbooks in the design field, it is not sufficient to demonstrate that this success placed her in the small percentage of teachers at the top of the art and design field.

As stated in our brief review of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3), we find that the Petitioner's appointment as a judge for the [redacted] Creative Works Award in 2018 was sufficient to demonstrate that she served as a judge of the work of others in her field, specifically other designers. The evidence shows that she served on a panel that judged ten entries which included paper tube furniture, building block toys, a zodiac calendar, and a storage box, and that this event was a part of [redacted] Week and held in conjunction with the annual meeting of the [redacted] Chamber of Commerce.

However, while her solicitation for participation in this event demonstrates recognition of the Petitioner's status as an expert in the field of design through her work as a teacher and textbook author, the evidence does not establish that this was an honor indicative of national or international acclaim in the field, especially considering her focus in the areas of [redacted] and [redacted] design. Although the Petitioner did conduct review in her field in this role, we note that the articles submitted about the [redacted] Awards stress its focus on the [redacted] and [redacted] industries. For instance, the [redacted] 2018 article posted to sina.com states that the aim is to recognize "the quality of human settlements and urban construction and encouraging the industry to continue to innovate." In describing the review process, it notes that the judging committee includes "many [redacted] industry scholars, senior experts in [redacted] building and [redacted] housing, executives of brand development companies, senior executives of well-known consultants, and experts in brand building in the [redacted] industry." Another article posted to xinhua.net notes that the award ceremony included a round table discussion with executives from [redacted] construction companies, development companies, Internet companies, and [redacted] innovation companies," and that the Chairman of the [redacted] Award Committee spoke about the need for transformation in the construction industry. Further, another article on xinhua.net which focused on the specific creative works award for which the Petitioner served as a reviewer acknowledges that the reviewers included artists, but notes that most of the designers participating have a background in architecture. This evidence does not show that the Petitioner garnered recognition in the design field through her participation as a judge in this event, or that her selection as a reviewer reflects a standing as one of the small percentage of [redacted] and [redacted] designers at the top of the field.

### III. CONCLUSION

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 of her work as an artist and designer 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 she 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 her 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.