



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

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

In Re: 12968384

Date: FEB. 17, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an illustration 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 evidentiary requirement for the classification through his receipt of a major, internationally recognized award or by 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 creates digital illustrations primarily for video games. His work has also been displayed in books featuring digital art as well as at exhibitions. He states that he intends to continue to create and display his digital illustrations 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 the display of his work at artistic exhibitions and his participation as a judge of the work of others in his field. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to his receipt of lesser nationally or internationally recognized awards and published material about him and his work in professional, major trade or other major media.¹ After reviewing all of the evidence in the record, we find that he meets the initial evidentiary requirements for this classification, but has not established that he has enjoyed sustained national or international acclaim and is one of the small percentage at the top of his field.

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)

The record includes several articles in which the Petitioner is mentioned, including interviews. In his decision, the Director found several issues with the material submitted. He stated that some were not

¹ Although the Petitioner initially claimed to also meet the criterion at 8 C.F.R. § 204.5(h)(3)(viii) relating to a leading or critical role for organizations having a distinguished reputation, he does not contest the Director's decision relating to this criterion on appeal or otherwise refer to it in his appeal brief. We will therefore consider this issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n. 2 (BIA 2009).

about the Petitioner, and that others appeared to have been published on blogs and websites and thus had “little probative value for meeting this criterion.” However, while the Director pointed out concerns over the quality of such published material, such as the fact that it may not be edited and may reflect undisclosed bias, we note that the criterion does not directly address the issue of quality. If the material otherwise meets the elements of this criterion, the quality of the writing may be addressed along with the totality of the evidence in a final merits determination, if applicable.

The Director also concluded that the English translations of foreign-language material in the record did not meet the requirements of 8 C.F.R. § 103.2(b)(3) as they were not accompanied by a certification as to their completeness and accuracy and to the translator’s competence. However, we note that both the initial submission and the Petitioner’s response to the Director’s request for evidence (RFE) included such a certification with a list of the translated documents and the exhibit number under which they were submitted. On review, we find that this evidence meets the requirements of 8 C.F.R. § 103.2(b)(3), and we will therefore consider the translated material in our review.

The Petitioner submitted an interview of him which appeared on the website gnn.gamer.com.tw dated [redacted] 2014. The article lists an author, and interviews the Petitioner about art he completed for a game created for [redacted].² This material is therefore about him and his work in his field. Other interviews of the Petitioner concerning his work as a digital illustration artist appeared in the [redacted] 2010 issue of *CG Art Style*, and in the [redacted] (2011) of *Mars CG* magazine. Other materials in the record are not about the Petitioner, as they were either written by him, do not mention his name or simply show his work without commentary or background about him.

The record also includes information about the media in which these materials appeared. For the website gamer.com.tw, also referred to as *Bahamut*, the evidence includes references to its internet traffic and ranking by independent sources as one of the most visited websites in Taiwan, and the country’s most popular gaming website. This evidence is sufficient to establish it as a major medium. However, the evidence regarding *CG Art Style* and *Mars CG* does not include such independent and verifiable evidence, or that they could otherwise qualify as professional or major trade publications. Although the Petitioner submitted additional evidence regarding *CG Art Style* on appeal, we will not consider that evidence, as this evidence was requested by the Director in his RFE. 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. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). Therefore, based solely upon the interview of the Petitioner which was published on gamer.com.tw, we disagree with the Director and conclude that he 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 Petitioner submitted evidence that he served as one of two jury members for the “League of Legends 2014 [redacted] Painting Competition” and one of seven professional

² We note that the article refers to the Petitioner as both [redacted] his artist name, and [redacted]’ an alias which is not explained in the record. However, photographs which accompany the article clearly show the Petitioner.

judges for the [redacted] Illustration Content in Taiwan” in 2015. We therefore agree with the Director 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 Petitioner submitted evidence that his work was displayed at the following artistic exhibitions:

- “Fantasy [redacted] Digital Art Exhibition,” [redacted] Public Assembly Hall, [redacted] [redacted] 2013
- [redacted] Painting – Personal Illustration Exhibition,” [redacted] Museum of Art, [redacted] Taiwan, June 29 to August 7, 2011 and [redacted] [redacted] 2011
- [redacted] Digital Art Creation Exhibition,” [redacted] Folklore Culture Museum, [redacted] 2013
- [redacted] Art Exhibition,” [redacted] Art Gallery, [redacted] [redacted] 2011

Accordingly, we agree with the Director’s conclusion that the Petitioner meets this criterion.

B. Final Merits Determination

As discussed above, the Petitioner has established that he meets the requisite three criteria, and therefore meets the initial evidentiary requirement for this classification. Although he also claims to meet a fourth criterion, relating to lesser nationally or internationally recognized prizes or awards, we need not consider whether he meets additional criteria. Rather, we will analyze the evidence of any prizes or awards received by the Petitioner together with the balance of the record in conducting a 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.

Although the Petitioner did not provide detailed arguments related to the final merits determination in his appeal brief, we note that in his initial submission he focused on reference letters in the record from other artists. The first such letter was written by [redacted] who states that she holds leadership positions with several artistic associations in Taiwan. [redacted] indicates that after viewing the Petitioner’s exhibition at the [redacted] Public Assembly Hall in 2013, she invited him to exhibit his work in [redacted]. She goes on to describe him as a “nationally famous illustration artist,” and notes his participation as a judge of the work of others. However, the letter does not provide additional or detailed information about the Petitioner’s acclaim as an artist beyond other evidence in the record, nor does it provide insight into how the Petitioner’s work has elevated his standing in the field of illustration art.

Another letter was submitted by [redacted] general manager of [redacted] Contents Academy, a training center for computer graphics students. He explains that the Petitioner was invited

to work as an instructor at the academy for seven months, during which he became familiar with the Petitioner's work. [redacted] also indicates that the Petitioner was a very popular instructor, and that he "has everything it takes to be a great animation artist." But he does not expand upon the "excellent achievement[s]" the Petitioner has already accomplished in his career, or indicate that his brief period as an instructor led to acclaim or elevated standing in the broader digital illustration field.

Other reference letters in the record mention that the Petitioner's work was featured as the cover art for the hardcover version of [redacted] a collection of digital art published in 2010. [redacted] one of the Petitioner's colleagues, states that this shows that "his work is highly rated among illustration experts." Although the record confirms that this art was selected from hundreds of others which appear in the book, these letters from the Petitioner's colleagues and employers do not show that this led to, or is indicative of, national or international acclaim in the field. In addition, the record includes one review of this book and another for [redacted] which also included examples of the Petitioner's work (although not on the cover.) These reviews generally praise the books and the quality of the art displayed in them, but do not single out the Petitioner's work or that of any of the hundreds of other artists whose work is displayed.

As discussed above in relation to the criterion at 8 C.F.R. § 204.5(h)(3)(vii), the Petitioner's digital paintings have also been displayed in artistic exhibitions in galleries and museums. The evidence relating to these exhibitions includes photographs, information about the venues that hosted them, and media articles covering them. For the exhibition held at [redacted] Public Assembly Hall in [redacted] this includes an article which was posted on two blogs and in *United Daily News*, which is described as a local newspaper. Similarly, the Petitioner's exhibition at the [redacted] Folklore Culture Museum was covered in two articles published in the [redacted] *Daily News*. However, the record does not include information about the circulation or readership of these publications, and thus does not show that these exhibitions received extensive national or international coverage or attention. Although the Petitioner did include some information about *Artist* magazine which indicates that it is distributed in Taiwan and abroad, the brief article regarding the [redacted] Art Exhibition simply announces the dates of this exhibition and does not mention the Petitioner or his work. In addition, the evidence submitted regarding the venues where these exhibitions were held does not demonstrate that they were highly regarded or prestigious to the extent that the exhibition of the Petitioner's work in them would have brought him acclaim or recognition. For instance, we note that the [redacted] gallery promotes itself as a free exhibition space for artists where they can "hold [their] own art exhibition show," and that the [redacted] Gallery is affiliated with an elementary school in [redacted]

Regarding the articles in the record which focused on the Petitioner more than the exhibitions in which his work appeared, we noted above that only one of these, published on the *Bahamut* website, appeared on a medium that was a professional, major trade or other major medium. That interview focused on his work which was created for the mobile game [redacted] and noted that he was one of six Taiwanese artists invited to create unique characters for the game. Another interview, published in the online magazine *CG Art Style* in 2010, presents his opinion on a wide range of topics related to digital artwork in games and as illustration art, as does a third interview published in *Mars CG* in 2011. While all of these interviews show that there is a level of interest in the Petitioner and his work as an artist, this evidence does not show that that interest is widespread in the field of digital illustration art.

The Petitioner also submitted evidence of his receipt of an award in the [redacted] Illustration Painting Competition” in 2018. The evidence indicates that this competition was organized by the Taiwan branch of [redacted] was limited to “creators” from certain Asian and Pacific island countries, and featured characters from a popular computer game. The Petitioner is listed as the recipient of the second place [redacted] award for his entry, which included a prize of NTD 10,000³ and a hooded sweatshirt. The Petitioner notes on appeal that the Director referred to a completely different award in his decision, which related to an e-sports competition. While we agree that the Director improperly considered unrelated material not in the record, the Petitioner did not submit evidence that the award he received was considered prestigious or otherwise recognized in the illustration art field at the national or international level. Despite the Petitioner’s claims, the fact that the competition was open to residents of several countries and was thus international in scope does not lead to the conclusion that the awards granted were prestigious and bestowed a high level of acclaim upon the recipients. In addition, the relatively small amount of the cash prize and the lack of evidence of recognition or mention of the competition beyond the organizer’s website do not support such claims.

The evidence in the record pertaining to the Petitioner’s service as a judge in digital illustration competitions in 2014 and 2015 demonstrates that he is considered to be an expert in this field due to his many years of creating content for video games and the display of his work at the aforementioned exhibitions and in published collections. However, this evidence does not show that this participation as a judge is indicative of the requisite level of acclaim for the requested immigrant visa classification. The evidence regarding the contests shows that they were open to all ages and skill levels, so that the Petitioner judged the work of amateurs as opposed to that of primarily professional artists, and the record lacks evidence that these contests and their winners were recognized outside of the websites of the sponsoring organizations’ websites to the broader field.

Lastly, while the Petitioner did not assert his previous claim to the criterion at 8 C.F.R. § 204.5(h)(3)(viii), we note that he submitted reference letters describing his roles at [redacted] and the [redacted] Arts Association. Regarding his former position as head of the 2D art team for several video game projects, [redacted] a former colleague, states that the Petitioner designed more than 50 characters for the game [redacted] Online,” and thus made a great contribution to the game which was well-received at an industry convention. But the record does not include evidence showing that the games to which the Petitioner contributed were highly regarded in terms of commercial performance or critical acclaim, or that the Petitioner was credited and recognized for playing an important part in their development. We note that the materials in the record which describe [redacted]’s success in developing video games refer to successes that occurred prior to the Petitioner’s employment with the company, or refer to games to which [redacted] letter does not state that the Petitioner contributed.

As for the [redacted] Arts Association, a letter from [redacted] chairman of the association’s council, explains that the Petitioner served as the organization’s executive supervisor from 2013 to 2014, in which role he elected or removed other supervisors and approved their resignation, among

³ Currently equivalent to approximately \$350.00 per <https://www.xe.com/currencyconverter/convert/?Amount=10000&From=TWD&To=USD>, accessed on February 12, 2021.

other duties. The materials from the association's website indicate that it was active in 2015 and 2016 in promoting art and artists by sponsoring exhibitions and other activities in [redacted]. While the Petitioner's invitation to serve in this role reflects a certain level of respect from his fellow artists, as well as his willingness to serve the local artistic community, the evidence does not show that this service brought him acclaim, or that the position is reserved for the small percentage of artists at the top of the field.

Considered together, the evidence establishes that the Petitioner is a successful digital illustrator who is respected by his peers, but does not show that he has enjoyed sustained acclaim at the national or international level. In addition, although he has contributed to online games and his work as an illustrator has been exhibited in artistic venues and in print, the totality of the record does not establish that he has achieved an elevated standing among the very few at the top of his 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 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. 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.