



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

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

In Re: 11823566

Date: JUN. 04, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a television producer, 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 although the Petitioner satisfied the initial evidence requirements for this classification, he did not demonstrate his sustained national or international acclaim and establish that he is among the small percentage at the very top of his field of endeavor. The matter is now before us on appeal.

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. The Petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). 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 the 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 television director active in the Chinese television industry. The record reflects that he began work as a director in 2005 on the television series [REDACTED] and that he continued to do so during the pendency of the instant petition.

A. Regulatory 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 three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) relating to published material, judging, and to authorship of scholarly articles. First, the Petitioner provides an interview published in *The Beijing News* in which he discusses his work as a producer, as well as circulation statistics for and information about *The Beijing News* and other comparable media demonstrating that it is a major media publication. Accordingly, he has established his eligibility for the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii). Next, the record includes the Petitioner’s invitation to judge the 2017 [REDACTED] [REDACTED] Awards and a certificate of appreciation confirming that he did so, showing that he satisfies the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). Finally, the Petitioner submits evidence establishing that he meets the scholarly criterion at 8 C.F.R. § 204.5(h)(3)(vi) through publication of articles in *China Television* and *Contemporary TV* and by providing documentation establishing that *China Television* and *Contemporary TV* are professional publications. Accordingly we agree with the Director that the Petitioner meets has satisfied the criteria found at 8 C.F.R. § 204.5(h)(3)(iii), (iv), and (vi).

The Petitioner asserts on appeal that he also satisfies the additional evidentiary criteria related to membership, leading or critical role in an organization with a distinguished reputation, and commercial

success found at 8 C.F.R. § 204.5(h)(3)(ii),(viii), and (x).¹ As the Petitioner established that he meets at least three of the evidentiary criteria, we need not reach a finding on these additional criteria here. We will address the evidence submitted by the Petitioner regarding these criteria in the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that he 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. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2),(3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown his eligibility.

Regarding published material about the Petitioner, the record contains an interview with the Petitioner about his work as a producer for the television series [redacted] published in *The Beijing News* and two articles published in *People's Daily*. It also includes objective evidence sufficient to show that *The Beijing News* and *People's Daily* qualify as major media. With respect to a fourth article in the record, published online at toutiao.com, upon review, we note that it appears to focus on funding [redacted] rather than on the Petitioner himself. The record also contains articles published in *Life Week*, *Guangming Daily*, and *Liaoshen Evening News* about the Petitioner and his work as a producer for [redacted] television series.

Upon review, the Petitioner does not submit documentation showing that the seven articles, published over the course of a 15-year career in the television industry, are consistent with the sustained national or international acclaim necessary for this highly restrictive classification. The submitted media coverage shows that the Petitioner has received media recognition for producing multiple seasons of [redacted] an endeavor beginning in 2006. However, the Petitioner works in a high-profile industry in which most, if not all, projects receive media coverage to some extent. Without evidence that sets him apart from others in this field, the Petitioner has not established how the submission of these articles about him demonstrates that he is among "that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

With regard to the Petitioner's scholarly articles, he provides abstracts of articles published in the *China Television* and *Contemporary TV* and documentation about the intended audiences for these publications sufficient to show that they are professional publications. The Petitioner further submits evidence from the China Academic Journals database (CNKI) showing that his most frequently

¹ On appeal, the Petitioner does not contest the Director's finding that he had not satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(i). We therefore deem the issue waived and do not address it in our analysis.

downloaded *China Television* article has been retrieved 243 times. This evidence demonstrates that the Petitioner's work has received some recognition from others. However, the record does not include evidence sufficient to establish that CNKI's core users are persons in his field of endeavor. Instead, the Petitioner provides CNKI documentation identifying the database's core users as "ranging from top universities, research institutes, government think-tanks" among others, but this document does not indicate that the persons downloading his articles are in the field of filmmaking or his work has greatly influenced or impacted others in the field. Without evidence showing the significance of this statistical data, the Petitioner has not established that the downloads of his scholarly articles reflect recognition in his field in a manner consistent one who is among "that small percentage who [has] risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

As it relates to the judging criterion, the Petitioner argues on appeal that his participation as a judge for the [redacted] Awards is indicative of his sustained national or international acclaim as "only the top talent is invited to participate." As we note above, the Petitioner provided evidence showing that in 2017 he served on the judging committee responsible for selecting the [redacted] Awards semi-final round nominees. A review of the record further establishes that the Petitioner has achieved some national acclaim for his selection as a juror, as evidenced by a news article about the [redacted] Award semi-final jury in which he is identified by name, along with other notable actors and directors.

However, the evidence discussed above does not address how this single instance of judging is indicative of national or international acclaim maintained over a long period of time. For example, the Petitioner has not offered evidence sufficient to show that he has continued to receive recognition for his participation as a judge in a manner reflecting sustained national acclaim.² He therefore has not shown that he has sustained national or international acclaim and that his achievements have been recognized in his field of expertise, as required. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3).

Regarding the Petitioner's membership in organizations requiring outstanding achievements of their members, the Petitioner provided evidence of membership in the China Television Artists' Association (CTAA), including his membership card, the bylaws, and information about the CTAA executive committee. However, the Petitioner did not show how membership in the CTAA indicates that he has risen to the very top of his field of endeavor. He does not provide evidence, for example, to show how his membership in CTAA sets him apart from others in the field of television production or direction such that his membership is consistent with being among "that small percentage who [has] risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). Moreover, the Petitioner does not submit evidence demonstrating that he has received sustained national or international acclaim for his CTAA membership.

With respect to the Petitioner's service in a leading or critical role, we first note that the record includes inconsistent documentation related to the companies for which the Petitioner worked and his role at

² See 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (stating that in determining whether the petitioner has enjoyed "sustained" national or international acclaim, the officer should consider that such acclaim must be maintained, and referencing Black's Law Dictionary's (11th ed. 2019), definition of sustain as "to support or maintain, especially over a long period of time . . . To persist in making (an effort) over a long period of time.")

these companies. For example, with his initial filing, the Petitioner provided a document titled “Certificate of Critical Role” from [redacted], vice president of [redacted], [redacted]’s information sheet from the China TV Production Industry Association (CTPIA) website and his CTPIA member biography identifying him as president of [redacted]. [redacted] indicates that [redacted] was established in 2010 and that the Petitioner has been serving as [redacted]’s president since August 2010.

In contrast, with his response to the Director’s request for evidence (RFE), the Petitioner submitted a “Certificate of Critical Role” from [redacted] vice president of [redacted], [redacted]’s organization chart, the entity’s CTPIA information sheet, and the Petitioner’s CTPIA member introduction identifying him as a producer and president of [redacted]. The record also includes documentation indicating that [redacted] was founded in August 2010. In other words, the record contains two “Certificates of Critical Role” issued by two different companies, by two different individuals serving as the vice presidents, and identifying the Petitioner in different roles. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner does not explain the relationship between [redacted] and [redacted], or otherwise offer documentation to resolve these inconsistencies in a manner allowing us to determine the roles he played for either entity. Even were we to view this evidence in the most favorable light and conclude that the Petitioner performed work for both of these companies simultaneously, he does not offer evidence sufficient to establish that his roles for them have garnered national or international acclaim in the field consistent with one who is among “that small percentage who [has] risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2).

Regarding the Petitioner’s role as a producer for [redacted], [redacted] describes the Petitioner’s duties as participating in “the investment, production, and distribution” of a number of television programs. On the other hand, as a producer for [redacted], [redacted] notes that the Petitioner led a team to develop a “precise calculation and estimation of the project cost and cycle” for [redacted] and “successfully met the budget” for each of [redacted] productions. Although the certificates prepared by [redacted] and [redacted] provide detailed examples of how the Petitioner’s work benefits their respective companies, these documents do not discuss how the Petitioner has garnered national or international acclaim for this work.

As it relates to the Petitioner’s role as president of [redacted], [redacted] describes the Petitioner’s responsibilities as “developing and implementing the company’s overall strategy and annual business plan” and “establishing and improving the company’s management system and organizational structure.” [redacted] similarly describes the Petitioner’s role as [redacted]’s president as being responsible for “taking charge of the company’s daily operation and management” and “achieving company’s management objectives and development goals.” However, these certificates do not discuss whether these duties have garnered the Petitioner national or international acclaim consistent with being among that small percentage at the very top of the field. See section 203(b)(1)(A) of the Act. Accordingly, the Petitioner has not established that he drew significant attention from the field for duties performed in his roles as producer for and president of either [redacted] or [redacted] for these roles, or that the overall field considers him to be at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

The record also includes a letter of recommendation from [redacted] a film and television art director who indicates in his letter that he will work with the Petitioner on [redacted]. In his letter, [redacted] describes the Petitioner as a producer who considers “the creation cycle and production cost... from the perspective of improving the artistic quality of the work” and notes that the Petitioner “has successfully produced and broadcasted” [redacted]. [redacted] also states that [redacted] [redacted] “received good ratings and reputation” and “accumulated a lot of fans, which has also been recognized by the industry” and notes that the series has received many awards, including the 25th [redacted] Award for Outstanding [redacted] given to [redacted] and the 27th [redacted] Award in the same category given to [redacted].

Upon review, the record corroborates these statements and shows that this award is granted to television production teams. However, the record also shows that [redacted] and [redacted] [redacted] were among many television programs receiving these awards in their respective years. [redacted] [redacted] does not differentiate between the Petitioner’s work and that of the other television program awardees. In addition, the Petitioner does not provide evidence showing how the receipt of awards given to multiple shows sets him apart from that of other producers. Without evidence setting the Petitioner’s work as a producer apart from that of others, this evidence is not sufficient to demonstrate that he is among “that small percentage who [has] risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2).

[redacted] further states that [redacted] was awarded the 25th [redacted] Award for Best [redacted] and the 27th [redacted] Award for Best [redacted]. The record lacks evidence demonstrating that these awards are conferred on television production teams, or otherwise showing how awards granted for [redacted] and for [redacted] reflect the Petitioner’s sustained acclaim in the field of television production.

Finally, [redacted] indicates that [redacted] was awarded the 30th [redacted] Award (2013-2015) for Outstanding [redacted]. However, the record contains inconsistent evidence with regard to this award. With his initial petition, the Petitioner provided documentation showing that [redacted] [redacted] received this award; with his response to the Director’s RFE he offered evidence demonstrating that [redacted] was this award’s recipient. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. 582, 591-92. Without evidence resolving this inconsistency, we cannot determine if, as [redacted] attests, the Petitioner received this award for his role as producer of [redacted] reflecting his sustained national or international acclaim in his field.

Finally, regarding the commercial success criterion, the Petitioner provides a letter from [redacted] [redacted] financial director of [redacted] certifying the commercial value of [redacted] series, a printout from The World of Chinese website ranking [redacted] as one of the [redacted] [redacted] television shows of 2017, broadcast ratings for [redacted] and [redacted] and a discussion of “click rates” for [redacted]. In his letter, [redacted] includes DVD sales figures reflecting the commercial success of [redacted] and the television ratings demonstrate that this program has been widely viewed. Accordingly the record reflects that [redacted] has achieved some degree of commercial success.

However, the Petitioner does not offer evidence demonstrating that he has been recognized in the field for this success. For example, although [] attributes the high quality of [] to the Petitioner in his role as “president of our company and Executive Producer” of the series and asserts that the program has “achieved good social and economic benefits and commercial returns with high ratings, high reputation and high popularity,” he does not explain how the Petitioner has been recognized in the field for these achievements or has otherwise garnered sustained national or international acclaim for them. *See* 8 C.F.R § 204.5(h)(3). Further, the Petitioner does not offer evidence showing how this television program’s commercial success sets him apart from that of the success of other programs, and therefore other producers in his field of endeavor.

For these reasons, the Petitioner has not demonstrated his eligibility for the classification sought.

Finally, we acknowledge the Petitioner’s argument on appeal that the Director erred in concluding that he was not coming to work in his area of extraordinary ability. However, for the reasons discussed above, the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act. As such we need not determine whether he is coming to “continue work in the area of extraordinary ability” under section 203(b)(1)(a)(ii) of the Act.

III. CONCLUSION

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.