U.S. Citizenship and Immigration Services

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

In Re: 13570212

Date: MAR. 1, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a visual effects artist, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish, as required, that he meets at least three of the ten initial evidentiary criteria for this classification. 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. Upon *de novo* review, we conclude that the Petitioner has not met this burden. Accordingly, 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,
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> (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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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, a visual effects artist, is employed as a 3D Generalist/Scene Assembler for [redacted] in California, where he works on video game, film, and television projects. The Petitioner graduated from the [redacted] College of Art and Design [redacted] with a bachelor of fine arts in visual effects in 2015 and worked as a 3D Generalist Intern for [redacted] prior to joining [redacted] in 2016.

### 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 Petitioner claims to meet six of the ten criteria, summarized below:

- (iii), Published materials in major media;
- (v), Original contributions of major significance;
- (vii), Display of work in artistic exhibitions or showcases;
- (viii), Leading or critical roles for organizations with a distinguished reputation;
- (ix), High salary or other significantly high remuneration; and
- (x), Commercial success in the performing arts.

The Director found that the Petitioner did not satisfy any of these evidentiary criteria. On appeal, the Petitioner asserts that the Director either disregarded probative evidence or reached erroneous conclusions with respect to each of the claimed criteria. After reviewing all the evidence in the record, we conclude that the Petitioner has not met at least three criteria and therefore does not satisfy the initial evidence requirements for this classification.

> *Published material about the individual in professional or major trade publications or other major media, relating to the individual'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 Petitioner submitted more than 40 exhibits under this criterion, primarily from Indonesian media outlets. This evidence included newspaper, magazine, and online articles, as well as stills from video interviews that appeared online and/or on local television stations. In determining that the Petitioner did not establish that he meets this criterion, the Director addressed only a few of the submitted exhibits, noting that some were not about the Petitioner and his work and some were not accompanied by proper translations. The Director further concluded that the Petitioner had not shown that the published material appeared in professional or major trade publications or other major media.

While the deficiencies observed by the Director are present in some of the submitted evidence, the Petitioner has demonstrated that articles published by the Indonesian daily newspapers *Kompas* and *The Jakarta Post* meet all elements of this criterion. The articles are about the Petitioner and relating to his work in the field, include the required title, date and author of the material, and are accompanied by sufficient supporting evidence to establish that these publications qualify as major media in the Indonesian market. Accordingly, we conclude that the Petitioner has satisfied this criterion.

*Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

The Petitioner contends that his recommendation letters reflect his eligibility for this criterion. In order to satisfy this criterion, a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[1] For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner has provided letters from his former professors at [redacted] from his supervisors at [redacted] and from his former employer. However, the Petitioner did not explain how the letters demonstrate that he has made original contributions of major significance in the field. The authors of the letters praise the Petitioner's talents, abilities, and dedication to his craft. For instance, [redacted] co-founder of [redacted] states that "what sets [the Petitioner] apart from the rest of the field is his ability to deliver the director's vision while maintaining aesthetics and a tremendous amount of details. His technical skill is at the very highest level and unmatched." [redacted] a visual effects professor at [redacted] similarly states that the Petitioner "continues to stand out from the rest of the field because of his attention to detail, his aesthetic eye, and his technical prowess" and praises his "unique abilities." Another [redacted] professor [redacted] comments on the Petitioner's "aesthetic eye and diligence to achieve what is ideal," and describes him as "a creative artist" with "a keen imagination and "a great work ethic."

While all three authors state that they consider the Petitioner to be a visual effects artist of extraordinary ability, the letters do not establish how the Petitioner's skills are viewed by the field as

[1] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

original contributions of major significance. The letters, for instance, do not specifically identify the Petitioner's contributions and explain how they have significantly impacted or unusually influenced the field in a major way consistent with this regulatory criterion. Moreover, having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. The record must be supported by evidence that the Petitioner has already used those skills and talents to influence the field at a significant level, which he has not shown.

On appeal, the Petitioner emphasizes that the previously submitted letters from [redacted], Head of CG at [redacted] and [redacted] Head of CG at [redacted] describe his original contributions and should have been accepted as evidence that he satisfies this criterion. The Petitioner highlights the following passage from [redacted]s letter:

> [M]any of [the Petitioner's] projects showcase not only his own style, but also manage to bring out the best in other's work, resulting in a consistent and complete final product. This is most evident in [his] contributions to [redacted] . . . and [redacted] Working in a small, critical team, [the Petitioner] was responsible for creating a look development setup for several sequences as well as optimizing the scene in order to ensure rendering would complete. He worked closely with me and the Director to ensure the best possible outcome aligned with the director's vision.

The Petitioner notes that [redacted]'s letter includes images of his work on [redacted] and asserts that those images represent what "is indeed the SIGNATURE LOOK of the game." We note that [redacted] stated that the images from [redacted] were provided "to show the extraordinary work process of [the Petitioner's] work"; he does not state that the Petitioner is credited with creating the signature look of the game. Even if he had stated that the Petitioner is responsible for the entire visual look of one or more video games for which [redacted] provided visual effects, his letter would not demonstrate how the Petitioner's contributions have had a major influence in the overall visual effects field beyond the projects to which he was assigned.[2]

[redacted] of [redacted] states that the Petitioner worked under his supervision on commercial projects for two well-known brands. He explains that the Petitioner "was in charge of creating a frosty effect around the hero object on the end title, which was the signature look on both commercials" and "was also responsible for the development aspect of the project, which was successfully delivered and received great reviews." However, [redacted]'s letter offers no additional insight into how this "frosty effect" was original or how the Petitioner's use of the effect in these two commercials influenced the visual effects field.

While the letters generally acknowledged the Petitioner's participation in high profile projects, they do not contain specific, detailed information identifying his original contributions and explaining the unusual influence his work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance in the field and its impact on subsequent work add

[2] *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 this criterion because she did not corroborate her impact in the field as a whole).

value. On the other hand, letters that lack specifics are not considered to be probative evidence that may form the basis for meeting this criterion.[3]

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

> *Evidence of the display of the individual's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii)

A review of the Petitioner's initial cover letter and memorandum in support of the petition reflects that he claimed to meet this criterion at the time of filing. He indicated that evidence related to this criterion could be found at his initial Exhibit D, which contained only the five recommendation letters referenced above. He did not further explain how the testimonial evidence satisfies this criterion other than noting that projects on which has worked as a visual effects artist have acquired a "worldwide audience."

The Director did not discuss the display criterion in his request for evidence (RFE); he did not acknowledge that the Petitioner claimed to meet the criterion, nor did he state that the Petitioner had submitted evidence that satisfies the criterion. Nevertheless, the Petitioner's letter in response to the RFE indicates his belief that "the Service accepted the evidence" submitted under this criterion.

In his decision, the Director emphasized that the RFE did not advise the Petitioner that he had satisfied this criterion. The Director acknowledged that the Petitioner submitted his IMDb page indicating that he had nine credits for film, television and video games, but determined that the evidence submitted at the time of filing and in response to the RFE did not demonstrate that the Petitioner's work had been featured or displayed in artistic exhibitions or showcases.

On appeal, the Petitioner emphasizes that he did in fact claim to meet this criterion at the time of filing. The Petitioner states that, "following the principals of *res judicata* . . . even if this argument was overlooked, the Service is now barred from raising such issue." While it appears that the Director overlooked the Petitioner's initial claim that he was submitting evidence related to this criterion, this omission did not equate to an affirmative finding that the Petitioner met the criterion, nor did it bar the Director from evaluating the Petitioner's claim in his final decision.

As noted, the Director's decision acknowledges the Petitioner's claim that he meets the display criterion and explains why the evidence submitted does not satisfy the requirements of 8 C.F.R. § 204.5(h)(3)(vii). The record reflects that the Petitioner sought to rely on recommendation letters from his employers and former professors to meet this criterion. These letters do not demonstrate that the Petitioner's work has been displayed at artistic exhibitions or showcases and as such, the record supports the Director's determination that this criterion was not met. The Petitioner does not address the adverse determination or claim that it was erroneous based on the evidence he submitted. For the reasons stated, his argument that the Director was barred from making an adverse determination because he did not address the criterion in the RFE is not persuasive. Accordingly, we conclude that this criterion has not been met.

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[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

*Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner claims that he meets this criterion based on his position with [redacted]. As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading. Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[4]

On appeal, the Petitioner asserts that the Director did not give sufficient weight to [redacted]'s recommendation letter in evaluating this criterion.[5] [redacted] states that the Petitioner had been assigned as "a critical member of the Scene Assembler team" for one of [redacted]'s "most important visual effects (VFX) projects for this year: [redacted] which is due for release in November 2019."[6] He further explains the importance of the Scene Assembler team in the visual effects process, noting that it is the last team involved and is the one that "delivers the finished cinematic product." In addition, [redacted] indicates that [the Petitioner] is personally responsible for 20% of the outcome of the VFX projects assigned to his team" but notes that due to binding non-disclosure agreements, he was not able to provide further information or details regarding the projects. Finally, he describes the job of a 3D Generalist/Scene Assembler, notes that it is "the most complicated with the heaviest responsibility" in comparison to other visual effects professionals, and states that "[i]n addition to being indispensable for his team, [the Petitioner] is unequivocally a critical member of our company."

The Director acknowledged that both [redacted] and [redacted] spoke highly of the Petitioner but determined that they did not establish how his work is leading or critical to [redacted] as a whole. The Director also noted that while both letters from [redacted] specifically highlighted his work on the latest film in the [redacted] franchise, this film was not listed among the Petitioner's film credits based on the IMDb.com profile he submitted.

On appeal, the Petitioner submits a letter from [redacted], [redacted]'s Head of Human Resources and Recruiting, who clarifies that the Petitioner was ultimately not credited for his work on [redacted] film because his team was assigned to another key project (the Netflix series [redacted]). She states that [redacted] has a permanent need for his skills and asks that USCIS "kindly treat this correspondence to confirm [the Petitioner's] critical role with our company."

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[4] *Id.* at 9-10.

[5] The Director's decision reflects that he considered all submitted recommendation letters in evaluating this criterion, including those from the Petitioner's former professors at [redacted] who discuss his role in the production of the award-winning short film [redacted] while at the university. On appeal, the Petitioner does not claim eligibility based on this evidence, but solely relies on his position with [redacted].

[6] We note that [redacted]'s letter is dated May 1, 2019, and the petition was filed in February 2020. The [redacted] film was not included on the filmography the Petitioner submitted from his Internet Movie Database (imdb.com) profile at the time of filing.

While both [redacted] and [redacted] describe the Petitioner as being a "critical" member of the company, the details provided in their statements do not demonstrate how his individual or team contributions to his assigned projects have been of significant importance to the outcome of the organization's activities to the extent that his role is critical within the meaning of 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner emphasizes [redacted]'s statement that he is responsible for 20% of his team's output, but it is reasonable to believe that his fellow scene assembler team members at [redacted] are expected to contribute proportionally to the outcome of a given film or video game project. [redacted] generally described the responsibilities of a scene assembler without specifically describing how the Petitioner himself performs in an essential position for [redacted] as a whole, while [redacted] simply describes his role as "critical" without elaborating.[7] The fact that the Petitioner's employer expresses its intent to employ him on a permanent basis is not sufficient to establish that his role with the company satisfies all elements of this criterion.

Accordingly, for the reasons discussed, the Petitioner has not established that he meets this criterion.

> *Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix)

To satisfy the requirements of this criterion, the Petitioner must establish that his salary, or total remuneration, is high or significantly high, respectively, based on a comparison with others in his field in similar positions and geographic locations.[8]

The Director acknowledged that the Petitioner submitted an October 2019 memorandum from [redacted] offering him permanent employment as a 3D Generalist/Scene Assembler at an annual salary of $85,000, with overtime pay of $66.40/hour. The Petitioner also provided comparative wage data for similar positions from several sources, including the U.S. Department of Labor's Bureau of Labor Statistics, Career One Stop, and Foreign Labor Certification Data Center, as well as salary data from *Glassdoor* and *Payscale*.

In the RFE, the Director advised the Petitioner that the memorandum offering him permanent employment does not constitute evidence of his actual earnings. Nevertheless, the Director noted that the offered salary appeared to be a competitive salary, but not a "high salary" in relation to others in the field. The Director requested copies of the Petitioner's IRS Forms W-2 or 1099 as evidence of his earnings and listed other evidence that would assist in the comparison between his wages and those of similarly employed workers in the field in his geographic area. In response to the RFE, the Petitioner re-submitted some of the salary data from Department of Labor resources and additional salary data obtained from the websites *Comparably* and *Simply Hired*. He did not submit any evidence of his earnings from [redacted] or any other employer.

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[7] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

[8] *Id.* at 11 (stating that it is the petitioner's burden to provide geographical and position-appropriate evidence to establish that a salary is relatively high).

The Director determined that the Petitioner did not meet this criterion because he "declined to provide evidence showing any salary or remuneration has been paid."

On appeal, the Petitioner provides copies of his IRS Forms W-2 for the years 2016 through 2019 for the first time. This evidence confirms that he has been paid the salary indicated in his offer letter. However, 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).

Further, even if we accepted this previously requested evidence on appeal, we note that the Director observed that the Petitioner's offered salary ($85,000/year) was competitive, but not high, based on the comparative data submitted. On appeal, the Petitioner focuses on three of the submitted sources of salary data for his occupation: (1) a *Glassdoor* survey listing a national average base pay of $59,515; (2) a $75,270 national median pay figure from the Bureau of Labor Statistics; and (3) a [redacted] metropolitan area mean wage of $86,237 from the Foreign Labor Certification Data Center. Based on this information, the Petitioner's earnings are competitive in his geographic area of employment and may be above average nationally. However, the evidence does not establish that he has commanded a "high salary" or "other significantly high remuneration" in relation to others in the field.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.* 8 C.F.R. § 204.5(h)(3)(x)

In order to satisfy this criterion, the evidence must show that the volume of sales and box office receipts reflect an individual's commercial successes relative to others involved in similar pursuits in the performing arts.[9]

As with the display criterion, the Director did not acknowledge the Petitioner's initial claim that he meets this criterion or otherwise address this criterion in the RFE.[10] The Petitioner's letter in response to the RFE indicates his belief that "the Service accepted the evidence" submitted under this criterion.

The Director addressed this criterion in the decision and emphasized that he did not conclude in the RFE that the criterion had been satisfied. The Director determined that the Petitioner, as a visual effects artist, has not established his commercial success in the performing arts, noting that this criterion requires evidence related to the volume of sales and box office receipts as a measure of a performing artist's success. The Director acknowledged the Petitioner's IMDb profile, but noted that simply being credited is not sufficient.

On appeal, the Petitioner contends that the Director was barred from making an adverse determination with respect to this criterion after failing to address it in the RFE. For the reasons already discussed, that argument is not persuasive. He does not otherwise address the Director's determination or the reasoning that supports it, nor does he explain how the evidence already submitted establishes that he meets this criterion.

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[9] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 11-12.

[10] At the time of filing, the Petitioner stated that the five recommendation letters referenced above were being submitted in support of this criterion.

The Petitioner also argues that evidence for this criterion should be considered as comparable evidence because he is a visual artist, rather than a performing artist, and the criteria is not readily applicable to him. The Petitioner asserts that "it is undisputed that projects that he was involved in were commercially successful." As noted, however, simply being "involved" or credited for a commercially successful project is not sufficient to establish eligibility under this criterion. The evidence must reflect the individual's commercial successes in relation to others and be accompanied by comparative box office receipts and sales data.

The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to a petitioner's occupation.[11] A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence he has included is "comparable" to that required.[12] General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative. Similarly, claims that USCIS should accept recommendation letters as comparable evidence are not persuasive.[13] Here, the Petitioner did not demonstrate why he cannot offer evidence that meets at least three criteria. In fact, he has consistently claimed that he can meet at least four criteria without needing to rely on comparable evidence.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner has previously been granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. The prior nonimmigrant approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Further, an immigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Nor are we bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), aff'd, 248 F.3d 1139 (5th Cir. 2001).

## III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or, in the alternative, evidence that meets at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

[11] *See also* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.
[12] *Id.*
[13] *Id.*

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. The record demonstrates that Petitioner is regarded as a talented visual effects artist with artistic and technical skills that are highly valued by his academic mentors and professional supervisors. The record also shows that he has received some media attention in his home country as a result of earning a position with a prestigious [redacted] animation studio, and he appears poised for continued professional success in his competitive field. However, the record does not demonstrate that the Petitioner is one of the small percentage at 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.