



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 14444575

Date: MAR. 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a journalist, 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 Texas Service Center denied the petition, concluding that although the record showed that the Petitioner met the initial evidentiary requirements for this classification, it did not establish that he has the requisite sustained acclaim at the national or international level, and that he is one of the small percentage of journalists at the top of his field.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate

international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a journalist who specializes in the area of [REDACTED]. Since 1998 he has written a weekly supplement in this area for the [REDACTED] periodical [REDACTED]. He states that he intends to continue working as a journalist in the United States, while also leading communication strategy for a company investing in [REDACTED].

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 six of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). After reviewing all of the evidence in the record, we disagree with the Director's conclusions regarding four of those criteria, and withdraw those aspects of his decision. However, we agree that the Petitioner has not otherwise established that he has enjoyed sustained national or international acclaim as a journalist, and that he is not one of the small percentage of journalists at the top of his field.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner submitted evidence which indicates that in 2017 he received the "National Rails Award" from the Rails Multimedia Group. A letter from the Multimedia Director of this organization states that the Petitioner was awarded ""for his extraordinary qualities as a journalist specialized in [REDACTED]" The Director indicated, without providing analysis, that this award was sufficient to meet this criterion.

The plain language of this criterion dictates that in order to qualify, an award must be given for excellence in a petitioner's field of endeavor. Although the initial letters from the awarding organization's multimedia director suggest that the award recognizes excellence in journalism, other evidence in the record contradicts these statements. An article posted to the website

[redacted] states that the National Rails Award “distinguishes an [redacted] leading personality noted for its work in the development, growth, and dissemination of the rail system for both the passenger and cargo sector.” It does not mention the field of journalism, or that the award is intended to award excellence in that field.

In response to the Director’s request for evidence (RFE), the Petitioner submitted a third letter from the director of the awarding company. He explains the history of the award, and describes the Petitioner’s years of contributions to the rail industry in [redacted] through his work as a journalist. However, this evidence does not indicate that the National Rails Award is granted for excellence in journalism, or that other journalists have previously received the award. In addition, the letter and website article referred to above indicate that the award is granted at an annual convention for the [redacted] rail industry, not at a meeting by or for journalists.

Further, upon review of the evidence submitted in support of this criterion, we conclude that it does not establish that the National Rails Award is nationally or internationally recognized in the field of journalism. As noted above, it is granted at a convention for the rail industry, and the only evidence of recognition beyond that convention and its organizer was the article posted to [redacted]. Neither demonstrates that others in the field of journalism recognize this award as standing for excellence. Therefore, we disagree with the Director’s conclusion and withdraw his finding that the Petitioner meets this criterion.

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)

In order to establish that they meet this criterion, a petitioner must submit evidence which meets all elements of this criterion. Specifically, the evidence must establish that material was published, that it is about the individual and their work in the claimed field of expertise, and that the medium in which it was published is a professional, major trade or other major medium.

The Director found that the evidence of material published in 2012, 2014 and 2019 qualified under this criterion, but did not otherwise identify or provide analysis of this evidence. A review of the evidence in the record finds several articles about the Petitioner, some of which were published in one of the qualifying types of media under this criterion. However, none of this material is about his work as a journalist. For example, an article published in the [redacted] newspaper [redacted] on [redacted], 2012 is about the Petitioner’s swim across the [redacted] and mentions that he wrote a book about his experience, [redacted]. Other articles about his swimming activities which mention the books he wrote about them were published in [redacted] and two websites. Also, an interview of the Petitioner about the state of the rail system in [redacted] which appeared in [redacted] [redacted] is also not about his work as a journalist.

In response to the Director’s RFE, the Petitioner asserted that these articles discuss his authorship of books “relating to his experiences in improving his health,” and that “the duties of a Journalist are to capture a story through the experience itself, in order to display the emotion that was experienced, so the viewers may witness and feel what it is like to be there.” He also refers to an article, said to have

been submitted as part of Exhibit 2 of his response to the RFE, which he asserts supports this description of journalism. However, this article is not present in the record, nor does the Petitioner point to other evidence to support this description on appeal. We note that the word “journalism” is defined as “the collection and editing of news for presentation through the media,”¹ which does not include autobiographical accounts published in a book.

In addition, even if the Petitioner’s definition of “journalism” was supported in the record, we note that while the articles generally mention that he wrote a book or works as a journalist, they are not about his work or profession but about his activities as an amateur long-distance swimmer (aside from the [redacted] article, which as noted is about the [redacted] rail system.) Accordingly, we disagree with the Director and withdraw his finding that the Petitioner 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 record includes evidence that establishes that the Petitioner served as the president of the jury for the 2019 [redacted] Award, which the materials indicate “is an incentive to innovation and quality in the [redacted] industry.” The Director, in his RFE, acknowledged this evidence, but sought further evidence to show that in this role, the Petitioner judged the work of others in journalism or an allied field. In his response, the Petitioner asserted that the [redacted] is an allied field to [his] work as a Journalist” since those subjects were the focus of his writing for more than 20 years. Drawing upon the definition of the word “allied,” he asserts that since he is “the most recognized journalist in [redacted]” focusing on [redacted] [redacted] that field “is inextricably connected” to his work as a journalist. We do not accept this interpretation of the regulation, the plain language of which requires that an individual judge the work of others in the same or an allied field. The fact that the Petitioner, as a journalist, specializes in writing about [redacted] does not create a connection between the field of journalism and those subjects, as the language of the criterion speaks of “an allied field” in the broader sense, whereas here the only connection between these disparate fields is the Petitioner himself.

In addition, we note that the record does not indicate that the award is intended for journalists, or that the Petitioner actually judged the work of any journalists while acting as a juror for the [redacted] Award. The materials posted on the website [redacted] the company which conducts the awards, indicate that the finalists for the award were [redacted] management and [redacted] companies, not individual journalists or even media companies. We therefore disagree with the Director’s conclusion regarding this criterion and withdraw his finding.

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)

To meet this criterion, a petitioner must submit evidence to establish that their work in the claimed field of expertise was displayed at an exhibition or showcase which was artistic in nature. In his decision, the Director found that the notices regarding the launch event for the Petitioner’s book

¹ Merriam-webster.com/dictionary/journalism, accessed on March 15, 2021.

[redacted] which took place at the [redacted] Museum in [redacted] [redacted] were sufficient to meet this criterion. After review, we disagree with and withdraw the Director's conclusion.

First, although the Petitioner's work was displayed, this was not work in the field of journalism. As previously noted, he wrote this book about his swim across the [redacted], not in his role as a journalist specializing in the subjects of [redacted]. Second, the event described in the evidence is a book launch for [redacted]. In general, the main goal of a book launch is to promote and sell a book, and the evidence in the record does not show that the launch for the Petitioner's book was distinguished by artistic elements. We note that the Petitioner asserted in his RFE response that the work of a journalist is artistic in nature. However, whether the work of a journalist, or an author of an autobiography, is artistic is not a consideration under this criterion, as it is the exhibition or showcase at which the work is displayed which must have an artistic nature. As such, this evidence does not demonstrate that the displayed work was in the Petitioner's field of journalism, or that it was displayed at an artistic exhibition or showcase as opposed to an event organized for commercial purposes.

The Petitioner also asserted in his response to the Director's RFE that this book and another he wrote about his open water swimming experiences, [redacted], were themselves artistic exhibitions or showcases where his work as a journalist was displayed. For the same reasons given above, we do not find that these books are works in the field of journalism. In addition, although the Petitioner submitted definitions of the words "exhibition" and "showcase," and asserted that the books he wrote are "medium[s] for exhibiting something or someone especially in an attractive or favorable aspect," we do not accept this interpretation of the language of this criterion. The individual words, sentences and paragraphs in a book or other written material do not constitute "work" for purposes of this criterion, just as the individual brushstrokes in a painting are not the "work" which is displayed in an art gallery or museum.

Further, the Petitioner additionally asserted in his RFE response that his work was displayed in the form of articles he wrote for the [redacted] weekly supplement, as well as in the form of speeches he gave about his swimming experiences through [redacted]. He repeated his argument that both the newspaper and the conferences are "mediums" for the display of his journalistic work, which he asserted is artistic in nature. However, as we noted above concerning the Petitioner's book launch event, it is the nature of the exhibition or showcase that this criterion requires to be artistic, and he has not established that a newspaper focusing on issues of [redacted] or [redacted] business conferences are artistic in nature.

Upon review of the evidence and per the discussion above, we conclude that the Petitioner has not established that he meets this criterion.

III. CONCLUSION

We find that the Petitioner does not satisfy the criteria relating to lesser awards, published material, participation as a judge, and display of his work, and withdraw the Director's findings regarding those criteria. Although the Director also found that the Petitioner meets two additional criteria, relating to his authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi) and leading or critical role at

8 C.F.R. § 204.5(h)(3)(viii), we need not reach those additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.² Accordingly, 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. In particular, although he states that his field of endeavor is journalism, with a specialty in the subjects of [REDACTED] we note that the majority of the articles published about him focus on his open water swimming adventures and the books he wrote about them. Similarly, the evidence regarding his participation in [REDACTED] business conferences focuses on his personal achievements as a swimmer rather than his expertise as a journalist. Further, although his knowledge and contributions in the area of [REDACTED] [REDACTED] has been acknowledged in that industry through an award and invitation to serve as a judge, the record does not include evidence that either of those honors are reserved for, or have been acknowledged by, other journalists.

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.

² See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).