



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 15898883

Date: MAR. 26, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a multimedia 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 Director further determined that the Petitioner did not establish that he seeks to enter the United States to continue work in his area of extraordinary ability. 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,
- (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, an engineer and multimedia artist, is the producer/creator of an online animated video series titled [REDACTED], which can be viewed on his [REDACTED] [REDACTED] Instagram TV and YouTube channels. The record reflects that the Petitioner has a bachelor’s degree in telecommunications engineering from a [REDACTED] university and was employed by a U.S. engineering firm at the time he filed the petition.

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 claimed to meet five of the ten criteria, summarized below:

- ∑ (i), Lesser nationally or internationally recognized awards or prizes;
- ∑ (iii), Published materials in major media;
- ∑ (iv), Participation as a judge of the work of others;
- ∑ (v), Original artistic contributions of major significance; and
- ∑ (vii), Display of work at artistic exhibitions or showcases.

The Director determined that the Petitioner did not meet any of the claimed criteria. On appeal, the Petitioner submits a short statement asserting that the previously submitted evidence was “underestimated” and that he believes he satisfies at least three of the previously claimed criteria. He specifically addresses the awards, published materials, original contributions, and display criteria at 8 C.F.R. § 204.5(i), (iii), (v) and (vii), respectively. With respect to the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), the record reflects that the Petitioner did not address this criterion when responding to the Director’s request for evidence (RFE) and, on appeal, he does not contest the Director’s

determination that he did not meet the criterion. Therefore, we consider that issue to be waived and will not further address it.¹

After reviewing all the evidence in the record, we conclude that the Petitioner has not established, as required, that he meets at least three of the initial evidentiary criteria for this classification.

Documentation of the individual'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)

In order to fulfill this criterion, the Petitioner must establish that he has been the recipient of awards or prizes that are nationally or internationally recognized for excellence in the field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.²

The record reflects the Petitioner's receipt of the following awards:

- Σ 2016 "Producer and Creator of Animated Videos of the Year" - granted by [redacted]
- Σ 2019 Animated Video Producer of the Year – granted by [redacted]
- Σ 2019 Animated Videos Producer with International Prominence - granted by [redacted]
- Σ 2020 Animated Videos Producer with International Prominence - granted by [redacted]

The Director concluded that the awarding entities mentioned above grant awards to celebrities across many fields (including sports, arts, political, social and entrepreneurial fields) and are "not specific to the Petitioner's field." The Director also determined that the Petitioner did not submit evidence that the awards "were recognized beyond the context where these specific certificates were presented."

Upon review, we find sufficient evidence to establish that the Petitioner meets this criterion based on his receipt of the [redacted] awards in 2019 and 2020. The fact that the awards are issued across various artistic and entertainment fields does not disqualify them from meeting this criterion, as it is evident that the specific recognition the Petitioner received was for work in his field. Further, the Petitioner submitted evidence from both [redacted] and international media reflecting recognition of these awards beyond the context of the awards ceremony itself. This evidence included an article from [redacted] publication [redacted] that includes a photograph of the Petitioner with his award trophy

¹ See, e.g., Matter of M-A-S-, 24 I&N Dec. 762, 767 n.2 (BIA 2009); Sepulveda v. U.S. Att'y Gen., 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); see also, Hristov v. Roark, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

² 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 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

from the 2020 [redacted] Florida award ceremony, and evidence that other winners of the [redacted] [redacted] awards have received media recognition associated with their awards. Accordingly, we conclude that the Petitioner has satisfied this criterion.

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 Director acknowledged that the Petitioner submitted several print and online articles in support of this criterion but determined that none of the published materials satisfied all requirements set forth at 8 C.F.R. § 204.5(h)(3)(iii). The Director determined that some of the articles did not feature the Petitioner as the subject of the story and the evidence did not indicate that the articles were published in major media or other qualifying publications. On appeal, the Petitioner asserts that he provided evidence that he and his work have been recognized by "important digital media."

The Petitioner submitted articles about him and relating to his work as the creator of [redacted] [redacted] which were published by madmimi.com, panorama.com.ve, gentedehoy.com and the print publication [redacted]. We agree with the Director's determination that the record does not include evidence demonstrating that these are professional or major trade publications or other major media.³

The Petitioner's evidence also includes an online article titled [redacted] [redacted] published by [redacted] media outlet [redacted]. The article is an interview with the Petitioner about his background and his popular animated video channel, it identifies the author, and it includes the require title and date of publication and English translation. Further, the Petitioner submitted sufficient evidence of [redacted] media rankings to establish that [redacted] qualifies as a major medium. Therefore, we conclude that the Petitioner meets this criterion based on this evidence.

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)

In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that he has made original contributions of major significance in the field. 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 Director determined that the evidence submitted in support of this criterion, which included sixteen letters of reference and screenshots from the Petitioner's Instagram profile, supports that he has made original contributions, but did not demonstrate the major significance of those contributions in his field.

³ See USCIS Policy Memorandum PM 602-0005.1, supra at 7 (instructing that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

On appeal, the Petitioner states:

I wanted to clarify that several letters were sent from professors and political activists explaining the petitioner's contribution, and the officer concluded that they are not related to the petitioner's field, I wanted to clarify that the content of the animated videos is political and socio-economic and is in that context where his great contribution is, that is why this method of expanding the message is where the contribution lies and it seems that the officer did not interpret it that way.

In a letter in support of the petition, the Petitioner emphasized that his work "has made an impression on distinguished individuals in both academic and broadcasting communities in [redacted] its international diaspora and populations across the Western Hemisphere." He explained that he "has written, produced and published consistent cartoons and other media that are culturally and politically aware of the realities in [redacted] and wider Latin American life," and that are "significant for their dark humor and powerful messages as well as their bold . . . critique of the [redacted] [redacted] The Petitioner noted that he had achieved "a significant following on social media of over 65,000 followers on his page [redacted]"

The submitted reference letters recognize the originality of the Petitioner's work but do not explain the remarkable influence or impact of this work in his field.⁴ [redacted], a [redacted] broadcaster, comedian, and author, recognizes the Petitioner's "talent and special ability" as well as his "courage by showing the current political reality [redacted] in a satiric way." He also states that the Petitioner has made an "artistic contribution to [redacted] society, showing the truth in a different and very original style." [redacted] states that the Petitioner's animated videos "show not only in country's political arena but also the social phenomena of immigration and the difficulties that brings to people to adapt to new cultures." He further notes that the Petitioner's work "generates such an influence that inspired me and my production team to compose a song for his show on Instagram TV" which is copyrighted and available on major music platforms. He concludes that the Petitioner "has made a very significant contribution in the areas of politics, humor and animated videos."

[redacted] states in his letter that he appreciates "the production quality" of the Petitioner's work and "his talent to make these animated videos that cover in depth political and social issues of our times in a very original way." He notes that the Petitioner "contributed greatly not only to the arts but also to humor, with his style to make these animated videos in the socio-political arena, showing the current social issues in a sarcastic way that has never been seen before." A letter from broadcaster and voice actor [redacted] similarly praises the professional production value of the Petitioner's work. He states that the Petitioner is "creating new ways to divulge a political message thanks to his extraordinary ability to make these animated videos," and states that the Petitioner has made "a great contribution" to the arts as well as through his ability to "deliver a humorous political message in this difficult era for [redacted] Graphic artist and illustrator [redacted] states that the Petitioner's video series "is a new way of protesting and spreading the message of repressed [redacted] and "must be counted as a contribution to both the world of

⁴ While we address only some of the 16 letters provided, we have reviewed and considering each one in evaluating whether the Petitioner has satisfied this criterion.

animation and the global defense of freedom.” While the submitted letters from professionals in the broadcast and media fields praise the production quality of the Petitioner’s animated video series and the Petitioner’s novel approach to the expression of social and political commentary, they do not explain with specificity how his work has been influential or impactful in the field.

The Petitioner also provided reference letters from university professors who address the political, social, and cultural elements of his work. [redacted] states that she has analyzed the content of the Petitioner’s videos and praises “the courage of this young man who takes the sad and touching reality of the social and political events [redacted] as an inspiration, . . . regardless of the consequences.” She asserts that the Petitioner’s artistic contribution “could be of extreme use for the free and democratic expression of a country that recognizes, respects and values human talent.” [redacted] notes the difficulty of keeping students and the general public engaged in political, economic and sociocultural topics. He praises the Petitioner for his “unique” method of cultural expression and states that his “contribution is of outmost significance because he introduces his viewers to the graphic language significant elements of the Latin American culture and idiosyncrasy.” [redacted] states that the Petitioner has created “a new form of Artistic Peaceful Protest,” and praises him for “adapting and finding new methods to allow [redacted] to be informed and heard.” He further states that the Petitioner’s “unique approach to the spread of freedom of expression is of great significance” and that he has made a “contribution to [redacted] and the world at large.”

The letters discussed above, and other letters submitted in support of this criterion, do not contain detailed, probative information that explain how the Petitioner’s original contributions have already had an impact of major significance in the field. While they praise his artistic talents and original approach to socio-political messaging, the influence and significance of the Petitioner’s contributions are explained in very general terms or described in terms of their potential to guide or influence the work of others in the future. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value.⁵ On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.⁶

The Petitioner also points to media coverage of his work, his awards, and his Instagram following as evidence that is relevant to this criterion. The Petitioner’s awards and published material about him have been considered under the appropriate criteria in the analysis above. The record does not sufficiently establish the link between that evidence and the significance of any original contributions he has made to the field of video animation or to the social and political discourse in his home country. The media articles reflect that he has garnered some recognition based on both the popularity and subject matter of his video series, they do not demonstrate the major significance of his contributions to the field. Further, although the Petitioner has received awards as a video and animation producer, the record does not reflect that such awards are granted based on a recipient’s original contributions of major significance in a given field. Finally, we acknowledge that the Petitioner indicates that his following on Instagram is indicative of the significance of his contributions, but he does not provide any comparative evidence or information that supports that claim.

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁶ *Id.* at 9.

For all of the reasons discussed above, we conclude that the evidence does not establish that the Petitioner has made contributions of major significance in his 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)

The Petitioner claims that he meets this criterion based on his presentation at a February 2020 conference hosted by [redacted] in [redacted] Ohio. He provided a letter from [redacted] Chief Operating Officer of [redacted], who states that the Petitioner "gave the lecture [redacted]" during which he "showcased his animated videos about the practical, daily lives [redacted] in America." [redacted] explained that [redacted] "created this major conference to bridge the newly exposed consumer gap between the [redacted] communities and current businesses interacting with the Hispanic and Latino peoples in Ohio." She described the conference attendees as representatives of [redacted] companies, as well as members of the local Hispanic Chamber of Commerce and local Hispanic entrepreneurs representing their establishments. The Petitioner did not provide any other documentation related to the conference, such as promotional materials, a conference program, or additional evidence related to his own presentation.

In a request for evidence (RFE), the Director advised the Petitioner that it was not clear that his lecture and presentation at this conference, as described in [redacted]'s letter, satisfies the plain language of this criterion. The Director advised the Petitioner that he could submit additional evidence, such as materials created to promote and publicize the exhibition or showcase of his work, and/or evidence that the venue where his work was displayed was an artistic exhibition or showcase.

Although the Petitioner submitted a timely response to the RFE, his response did not include any additional evidence related to this criterion, nor did he address the criterion in the accompanying support letter. Accordingly, the Director concluded that he did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner appears to address this criterion in his statement on appeal. He states that he "gave a conference" and asserts that "the officer did not take it into account, even alleging arguments that are not in accordance with what the law establishes." However, as noted, both the RFE and the denial decision reflect that the Director considered the initial evidence related to the [redacted] conference but found it insufficient to establish that the Petitioner satisfied this criterion. The Petitioner has not articulated why he believes the Director's determination was "not in accordance" with the applicable regulation at 8 C.F.R. § 204.5(h)(3)(vii). We agree with the Director's determination that additional evidence would be needed to demonstrate that the Petitioner's lecture at this conference qualifies as an artistic exhibition or showcase of his work and therefore conclude that he did not meet this criterion.

B. Summary and Reserved Issue

As explained above, we conclude that the Petitioner satisfies only two criteria, related to awards and published materials. See 8 C.F.R. 204.5(h)(3)(i) and (iii). As such, the Petitioner cannot satisfy the

initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3) and is not eligible for this classification. Because the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Director's separate determination that the Petitioner did not establish that he is coming to the United States to "continue work in the area of extraordinary ability" as required under section 203(b)(1)(A)(ii) of the Act.⁷

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet 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.

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 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). The record reflects that the Petitioner has recently earned some recognition for his online video series, but such recognition does not rise to the level of sustained national or international acclaim in the multimedia or video animation field. In fact, in his statement in support of the appeal, he emphasizes that "[i]t is important to clarify that the petitioner is not in the top of the field but he is unique in his field."

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.

⁷ 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.)