



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

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

In Re: 17041555

Date: MAY 26, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a video journalist,¹ 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 record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to individuals 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.

¹ The Petitioner states that the term "video journalist" is "[u]sed interchangeably with videographer or camera person." Copies of press credentials in the record refer to the Petitioner as a "senior cameraman" and "senior videographer."

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 evidence if they are 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 has worked for several television networks in Bangladesh, including [redacted] TV and Asian TV. When he filed the petition, the Petitioner was working for [redacted] TV in the United States as an I-1 nonimmigrant representative of foreign information media, and making a documentary for [redacted]. The Petitioner states that [redacted] TV seeks to employ him.

Because the Petitioner has not indicated or shown that he 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 have satisfied eight of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments;
- (ix), High remuneration for services; and
- (x), Commercial success in the performing arts.

The Director concluded that the Petitioner met two of the criteria, numbered (i) and (iv). On appeal, the Petitioner asserts that he also meets the other six claimed criteria.

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criteria numbered (i) and (iv). We will discuss the other claimed criteria below.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner is a member of Dhaka Reporters Unity (DRU), the Law Reporters Forum (LRF), and the [REDACTED]. The Petitioner submits letters from officials of DRU and the LRF, but these letters do not establish the associations' membership requirements. A letter from the [REDACTED] indicates that the Petitioner is "the senior and founding member of [REDACTED]" which does not indicate that others had a role in admitting him into the organization.

The Director acknowledged the Petitioner's memberships, but determined that the Petitioner did not submit evidence to show that the associations have membership requirements that conform to the language of the regulation.

On appeal, the Petitioner emphasizes that he "is a senior member [of] both DRU and LRF" and "is a founding member [of] [REDACTED]". The Petitioner states that his response to a request for evidence (RFE) included "supplemental letters from DRU and LRF as well as [REDACTED] [sic] documentation," but he does not elaborate or explain how these materials show that the Petitioner meets the requirements of the criterion. Review of the submitted materials confirms that they do not establish the respective associations' membership requirements.

The Petitioner describes the DRU as "the largest association of reporters working in Dhaka," and [REDACTED]'s general secretary describes that organization as "the largest and only such organization registered by the government in Bangladesh." The large size of an organization tends to argue against exclusive, restrictive membership requirements of the kind contemplated by the regulation.

The Petitioner has not established that he is a member of any association that requires outstanding achievements of its members, as judged by recognized national or international experts.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner submits English translations of articles about him that appeared in *Prothom-Alo North America*, *Weekly Aikal*, *Weekly Bornomala*, *Weekly Probash*, *Jugantor*, and *Bangladesh Protidin*. Some of the articles report that the Petitioner is working on a documentary about the [REDACTED] a 1971 benefit show organized by [REDACTED]. The other submitted articles report on the Petitioner's receipt of the [REDACTED] Award.

Background information shows that *Weekly Aikal*, *Weekly Bornomala*, and *Weekly Probash* are published within a few blocks of one another in the [REDACTED] New York, with readerships consisting of Bangladeshi immigrants in the New York area. Consistent with this information, advertisements in these newspapers promote local [REDACTED] businesses such as food markets and realtors.

The Petitioner submits evidence that the *Daily Prothom Alo* “is one of the largest Bangla newspapers with over 5.3 million readers per day,” but the Petitioner has not shown that any article about him appeared in that newspaper. The article about him appeared in *Prothom Alo North America*, a related but separate publication for which the Petitioner has not provided any circulation statistics.

Several of the articles refer to the Petitioner with adjectives such as “renowned” and “famous,” but we note that the Petitioner did not submit any evidence of media coverage while he was in Bangladesh. All of the articles appeared in U.S.-based publications in [redacted] 2019, a few weeks before the filing of the petition; there is no evidence of earlier media coverage.

The Petitioner did not provide information about the other media outlets.

In the denial notice, the Director determined that the publications appear to be narrowly targeted local newspapers that do not meet the regulatory requirements. On appeal, the Petitioner states that Bangladesh’s permanent representative to the United Nations called the establishment of *Prothom Alo North America* “a positive achievement for the expatriate Bangladeshis” (a quotation from a *Prothom Alo* story rather than directly from the official), but this praise does not establish that *Prothom Alo North America* qualifies as a professional or major trade publication or other major media. Rather, it is consistent with the narrow focus of the New York publication.

The Petitioner also asserts on appeal that his work appeared on “one of Bangladesh’s leading television networks.” His own work as a journalist, however, is not published material *about* him, and does not relate to his work.

The Petitioner’s evidence does not satisfy the requirements of this criterion.

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

The Petitioner states that he “has worked with leading television channels and won many awards from distinguished institutions for his incredible work. . . . Arguably, Petitioner’s work has been *exhibited* in prestigious venues to distinguished audiences.” A television news program is not an artistic exhibition or showcase. The Petitioner submits photographs showing him with various dignitaries and working at locations such as the United Nations General Assembly Hall, but his work was not on display at artistic exhibitions or showcases at those locations, and his work does not transform from informational to artistic because of where he performed that work.

In the RFE, the Director asked the Petitioner to identify and document the artistic exhibitions or showcases that displayed his work. In response, the Petitioner acknowledged that “there should be evidence of Petitioner’s work on display at an event that was artistic in nature,” but did not explain how his evidence satisfies that criterion. Instead, he stated that the Petitioner’s documentaries and his reporting from international political conferences “would also constitute display of his work.” The Petitioner states that, if this evidence does not meet the letter of the regulation, “then the evidence will be offered under *comparable evidence*” under 8 C.F.R. § 204.5(h)(4).

In the denial notice, the Director concluded that the Petitioner had not shown that his work has been displayed at artistic exhibitions or showcases as the regulation requires. The Director acknowledged the Petitioner's request for consideration as comparable evidence, but the Director stated that the Petitioner did not establish that the criteria do not readily apply to his occupation.

On appeal, the Petitioner maintains that showings of "his award-winning documentaries . . . are analogous to display or exhibition of [his] work." Documentary films can be shown in an artistic context, such as film festivals, but the Petitioner does not submit evidence of this kind. News broadcasts serve an informational purpose, rather than an artistic one, and do not constitute qualifying displays.

The Petitioner has not satisfied the requirements of this criterion.

Evidence that the alien 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 states that he meets this criterion as a senior founding member of the [redacted] and "also had a critical role for Asian TV and [redacted] Television." The Petitioner does not submit independent evidence to establish the distinguished reputation of the [redacted]; a letter from the organization's own general secretary is not first-hand evidence of how others outside the organization perceive the [redacted]. Also, the letter does not describe the nature of the Petitioner's role at the [redacted].

The Petitioner establishes that he held [redacted] titles at various television networks in Bangladesh, but he does not show that his roles were critical for those networks at the organizational level. He led camera teams, but did not establish that the camera teams were organizations with distinguished reputations in their own right.

Letters from colleagues indicate that these individuals hold the Petitioner in high regard, but, while they list various positions the Petitioner has held in his career, they do not explain how these roles were leading or critical to the entities that employed him.

The president of the DRU states that the Petitioner "has been playing an important role in the training and award selection committee" that grants "awards in several categories each year." Here again, the official does not explain how activities with the committee is critical to the DRU at the organizational level.

The Director concluded that, although "[t]he evidence shows that the petitioner is and was important to his current and former employers, . . . the evidence does not establish that his role was leading or critical . . . to the entire organization, as opposed to a department, assignment, or project within the organization."

On appeal, the Petitioner repeats prior assertions about his role as a founding senior member of the [redacted] and his journalistic work covering "significant international events." The Petitioner does not directly address or rebut the Director's conclusions.

The Petitioner has not satisfied the requirements of this criterion.

Evidence that the alien 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)

A letter from [redacted] Television indicates that the Petitioner earned a basic salary of 84,000 Bangladeshi taka (Tk) plus various benefits. Appointment letters from various employers show monthly salary amounts of Tk25,000 in 2000; Tk50,000 in 2006; and Tk73,000 in 2011.

A [redacted] official states that the Petitioner is a “highly paid video journalist by the standards of Bangladesh,” but the record does not establish what those standards are. The Petitioner submits a 2013 table from the Eighth Newspaper Wage Board of Bangladesh’s Ministry of Information, setting a wage range for “Grade 2” journalists (which includes the titles “Chief Photo Journalist” and “Senior Photo Journalist”) from Tk24,106 to Tk39,856. The Petitioner also submits a newspaper article that cites figures from the table.

The Petitioner asserts, on appeal, that the Director did not give enough weight to this table. But the table does not explain the significance of the ranges (for example, whether the ranges cover variations for experience, achievement, or other factors). More significantly, the table specifically relates to *newspaper* reporters and editors. The Petitioner does not establish that the Newspaper Wage Board has jurisdiction over wages paid to *television* journalists, and he provides no basis for comparing his salary to that of others in his occupation.

The Petitioner has not established that he commanded a high salary or other significantly high remuneration for services in relation to others in his 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)

The Petitioner states that “[h]is track record of over two (2) decades in the industry is a testament to his commercial success,” and that “his accomplishments as a prolific video journalist . . . should be considered in regards to his stature and extraordinary prowess in the field of expertise.” The Petitioner, however, identifies no documentary evidence of the kind described in the regulation. There is no presumption that length of experience in the occupation implies commercial success, and the Petitioner does not attempt to establish that a video journalist works in the performing arts.

The Petitioner’s employment as a video journalist with major television channels in Bangladesh is not tantamount to commercial success in the performing arts, and the Petitioner has not submitted evidence on a par with box office receipts or recording sales as the regulation requires. The Petitioner’s evidence does not satisfy any element of the wording of the regulation.

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 lesser 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 conclusion 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. U.S. Citizenship and Immigration Services 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 established a career with prominent employers, and he has submitted letters from various colleagues who assert that he is well-known in his field. The record, however, lacks the “extensive documentation” required by the statute to corroborate these claims, and the stated credentials of several of those colleagues appear to eclipse those of the Petitioner. The Petitioner has not established the required sustained national or international acclaim or demonstrated 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 Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.