



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

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

In Re: 18488051

Date: NOV. 12, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an author, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements of this classification through either evidence of a one-time achievement (a major, internationally recognized award) or meeting three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

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 writer and author currently working and residing in Guatemala.

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 only one of the evidentiary criteria pertaining to the judging the work of others in the field.

On appeal, the Petitioner submits a brief and asserts that the Director’s decision “discounts the significance of the evidence through merely skepticism.” He further asserts that he meets at least three additional evidentiary criteria; specifically, the evidentiary criteria relating to lesser awards, memberships, and original contributions of major significance in the field. The Petitioner has not pursued his initial claim that he meets the criterion related to commercial success in the performing arts under 8 C.F.R. § 204.5(h)(3)(x). Therefore, we deem this issue to be waived and will not address this criterion in our decision. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

After reviewing all of the evidence in the record, we concur with the Director’s determination that the Petitioner has satisfied the criterion related to judging. The Petitioner provided evidence that he has served as a juror for an international literature contest and a poetry contest. By having some influence over the selection of award winners, the Petitioner participated as a judge as described in the regulation. However, the record does not reflect that he has met the requisite three evidentiary criteria.

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 Director determined that the Petitioner did not submit sufficient evidence to satisfy this criterion, and we agree with that determination.

The Petitioner claims that he has received numerous awards for excellence. While the Director acknowledged his submission of documentation establishing his receipt of numerous awards, he

determined that the Petitioner has not demonstrated that the referenced awards were nationally or internationally recognized.

On appeal, the Petitioner asserts that the Director's determination was erroneous, noting that the letters and documentation submitted in support of the petition establish the national and international recognition of the awards beyond the awarding entities. For example, the Petitioner asserts that his selection as the Guatemalan Delegate to the [redacted] International PEN Congress required him to meet a rigorous selection criteria, as explained in a letter from [redacted] of the PEN Guatemala Center. He further asserts that his receipt of two awards from the National Association of Guatemalan Writers (the [redacted] in 1993 and the National Award for [redacted] in 1996) constitute nationally recognized awards as both recognition for his literary achievements and his career as a university professor. He also provides evidence of his receipt of the [redacted] Medal in 2006 and the [redacted] Award in 2011, along with numerous other certificates recognizing his excellence in the field of academics.

As it relates to showing that these awards are nationally or internationally recognized for excellence in his field, the Petitioner provided copies of certificates, photographs of medals, two article excerpts from what appear to be Guatemalan publications discussing the [redacted] International PEN Congress, and an expert opinion letter from [redacted], a professor at [redacted] University [redacted]. In response to the Director's request for evidence (RFE), the Petitioner submitted letters from individuals associated with the awarding organizations discussing the Petitioner's career achievements and attesting to the prestigious reputations of their respective organizations.

Upon review, we agree with the Director's decision. As noted by the Director, while the letters from various awarding organizations speak highly of the Petitioner and his accomplishments, they do not demonstrate that he has won nationally or internationally recognized prizes or awards for excellence in the field. While several of the letter writers recount the various certificates or awards the Petitioner has received from their respective organizations, there is insufficient evidence to demonstrate that his receipt of these awards and accolades are nationally or internationally recognized in the literary field.

For example, a sworn declaration by [redacted] who served as the [redacted] of the National Association of Writers and Friends of the National Bank of Guatemala, attests to the fact that the Petitioner was the recipient of the [redacted] award and the National Award for [redacted]. [redacted] states that the association's public acknowledgement of the Petitioner as a national writer is an honor bestowed upon individuals who contribute to national culture through their literary work, and that the [redacted] is awarded only to a small group of Guatemalan writers who stand out for their contributions in literary works. A letter from [redacted], a writer, poet, radio host and cultural promoter based in [redacted] comments on the Petitioner's receipt of the [redacted] award in 2011 "as a worthy Guatemalan artist," noting that he was personally present at the event. A letter from [redacted] professor and member of the [redacted] of the National School of Agriculture of Guatemala, states that the Petitioner was granted the [redacted] Medal by the organization in 2005 in recognition of his illustrious career as a writer. [redacted] notes that the Petitioner also served as a professor for and [redacted] of the National School of Agriculture until his retirement in 2007. The Petitioner also submitted a letter from [redacted] [redacted] the College of Agricultural Engineers of Guatemala and member of the General Assembly of Presidents of the Professional Associations of Guatemala, confirming that the Petitioner

was named [redacted] in 2016 for his “important contributions to the general culture of our country and the world.”

While each of these letters confirms that the Petitioner received an award or a form of recognition for his various literary (and academic) contributions from their respective organizations, they do not establish that his receipt of such honors constitutes awards that are nationally or internationally recognized. A prize or an award does not garner national or international recognition from the competition in which it is awarded, nor is it derived from the individual or group that issued the award. Rather, national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. This recognition should be evident through specific means; for example but not limited to, national or international-level media coverage. Additionally, unsupported conclusory letters from those in the Petitioner’s field are not sufficient evidence that a particular prize or award is nationally or internationally recognized.

While the Petitioner has submitted evidence of various events and engagement in the literary field, and their perception within the field, the limited evidence of media coverage garnered by the Petitioner’s awards in such activities is insufficient to establish the level of national or international recognition associated with the awards and recognition he received from the various organizations discussed herein. Although the Petitioner submitted evidence in the form of excerpts from Guatemalan newspapers discussing the [redacted] PEN International Congress, there is insufficient evidence to demonstrate that the Petitioner’s invitation to participate in the congress was nationally or internationally recognized.

The letter from [redacted] a professor at [redacted] University, comments on the Petitioner’s literary and academic achievements. [redacted] states that the Petitioner “has received international recognitions for excellence in the field of Latin American literature” by virtue of his selection to attend the [redacted] PEN International Congress, and in a second letter submitted on appeal, she further comments on the Petitioner’s two awards from the National Association of Guatemalan Writers, noting that “this only further illustrates the prestige enjoyed by [the petitioner] on a national level.” While these letters praise the Petitioner’s literary accomplishments, [redacted]’s conclusory assertions regarding the level of national and international recognition bestowed by such honors are not supported by independent, objective evidence.

While the above materials, and the others in the record,¹ confirm the Petitioner’s receipt of various awards and honors, they do not demonstrate the national or international significance of the awards won.² The record lacks other evidence establishing that these awards are nationally or internationally recognized for excellence in the literary field, as required. Moreover, it appears that some of the certificates referenced, such as the “Certificate of Distinguished University Professor” and “Plaque of Emeritus Professor of [redacted]” do not pertain to his proposed field of endeavor, as they recognize his academic achievements as a university professor and not his literary accomplishments.

¹ While we only discuss a sampling of the documents here, we have reviewed the record in its entirety.

² See 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing guidance on the review of evidence submitted to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)) (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field).

For the reasons discussed above, the Petitioner has not submitted documentation sufficient to establish his eligibility for this criterion.

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 claimed his membership in the following associations:

- PEN International;
- Editorial Council, Universidad [redacted] de Guatemala;
- Guatemala National Association of Writers and Friends of National Books;
- Editorial Council, PEN Guatemala;
- [redacted] and
- Asociacion de Esritores Lationamericanos (ADELA)

After reviewing the Petitioner's material, the Director determined that he did not meet the requirements of this criterion because he did not establish that the associations required outstanding achievements as a condition of membership or that admittance was determined by nationally or internationally recognized experts in the field. Specifically, the Director determined that while the record contained letters from individuals discussing the membership requirements for the respective associations, they were not supported by corroborating evidence. On appeal, the Petitioner reiterates that the support letters previously submitted by various association members demonstrate that he meets this criterion, and argues that the Director's request to view bylaws or constitutions of the associations was erroneous.

After reviewing the record, we agree with the Director that the Petitioner has not established that any of the claimed organizations require outstanding achievements to qualify for membership. For example, the Petitioner presented evidence that he was a member of the editorial councils of PEN International and PEN Guatemala, and relied on a letter from [redacted], [redacted] PEN Guatemala, who outlined the membership requirements for these organizations. While [redacted] states that membership in both PEN International and PEN Guatemala "is granted to writers recognized nationally and internationally, who have at least two outstanding works published and submitted to the General Assembly of the PEN Guatemala Center by at least two distinguished members of said assembly," no independent documentation to support these assertions was submitted. Similarly, a letter from [redacted], [redacted] PEN Guatemala Center, summarized the requirements for membership and election to the editorial council, but did not supplement his assertions with documentation from the organization confirming these requirements. And a letter from [redacted], [redacted] ADELA, states the criteria for admission "are the following: 1) Literary genre of your work, 2) awards or recognitions, 3) participation in events, 4) associations to which you belong or have belonged and 5) the titles of your literary work for which you must send a photograph of the covers of your books." This letter is also not supported by independent, objective evidence of ADELA's membership requirements. Additionally, we note that the statements by [redacted] and the other letter writers do not demonstrate that membership in their respective organizations constitutes a membership contemplated by the regulation, as these vague

requirements do not indicate that they require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

While the referenced letters confirm the Petitioner's claimed memberships in the above-referenced associations, along with their missions, he failed to submit evidence of the membership requirements for these associations.³ We will not presume exclusive membership requirements from the general reputation of a given association, as the association's reputation may derive from its size, the number of symposiums it hosts or other factors independent of the exclusive nature of its membership. The record lacks documentation, such as bylaws, membership requirements, or other appropriate evidence, establishing that the organization requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.⁴

On appeal, the Petitioner additionally refers to his participation as a judge/member of the Fulbright Commission at the US Embassy in Guatemala, his jury service for an international literature contest and national poetry contest, and his selection to serve as a commentator on several books. He asserts that the Director erred by not considering these memberships, and notes that his selection "to serve in these capacities is evidence of his recognition as an extraordinary writer." The regulation at 8 C.F.R. § 204.5(h)(3)(iv) is a separate criterion pertaining to judging. While some of these activities might also be relevant to whether the Petitioner has satisfied the membership criterion, he must demonstrate the relevance of his judging activities to this criterion. The record does not contain evidence to establish this relevance.

For example, the Petitioner failed to submit evidence to establish that any of the named entities above constitute "associations" which have members admitted as anticipated by the regulation. In the alternative, if we were to accept the named entities as qualifying associations under the regulation, the Petitioner provides no evidence of the membership requirements for these associations. Further, the plain language of the regulation requires evidence that membership *in the association*, and not a subsequent selection to a committee or jury panel, requires outstanding achievement.

For the reasons discussed above, the evidence does not demonstrate that the Petitioner satisfies the regulatory requirements of the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii).

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 satisfy the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only have they made original contributions but that those contributions have been of major significance in the field.⁵ 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. Here, the Petitioner contends that his authorship of

³ While we only discuss a sampling of the letters here, we have reviewed the record in its entirety.

⁴ Although the Director specifically requested documentation such as the relevant sections of the bylaws and constitutions to demonstrate the membership requirements of the respective organizations and associations, the Petitioner declined to submit such evidence. As the record does not contain official documentation of the associations' membership criteria, we cannot evaluate whether the Petitioner's memberships are qualifying. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

⁵ See 6 USCIS Policy Manual, *supra* at F.2 appendix.

various literary works, and several reference letters commenting on such works, demonstrate his eligibility for this criterion.

Regarding the Petitioner's reference letters, although the Petitioner provided evidence reflecting the originality of his literary works through recommendation letters praising him for his contributions, the authors do not provide specific examples of contributions that are indicative of major significance. In general, the letters recount the Petitioner's literary and academic achievements but do not demonstrate that his contributions in the literary field have made the required impact in the field. On appeal, the Petitioner asserts that the Director discounted the expert opinion letter from [redacted] as it pertains to this criteria, and asserts that the Director's conclusion regarding whether his work was of major significance was erroneous.

The first letter from [redacted] describes the Petitioner's success as an author of poetry and novels addressing the "complex ethnic and cultural make-up" of Guatemala, and states that all of the Petitioner's work is "original, compelling, and significant." While [redacted] asserts that the Petitioner's work has impacted the field of Latin American literature, she does not explain how the Petitioner's work constitutes a contribution of major significance in the literary field.

In her second letter submitted on appeal, [redacted] states that "there is no doubt in my mind that [the Petitioner] is one of the most significant members of his generation of writers from Guatemala. I base this judgment on having read several of his works, which I found to be rich and of the highest quality." While [redacted] recognizes the Petitioner's talents within her letters, she does not provide the nexus between his talents and the manner in which he has made original contributions of major significance in his field.

The remaining letters pertaining to the Petitioner's work recite his professional achievements, including his career as both a university professor and an author, and focus on his accomplishments and talents. However, the authors do not provide a description of how the Petitioner's authored works, individually or as a whole, have made an impact in his field in accordance with the regulation. The letters, solicited from the Petitioner's colleagues, primarily contain broad attestations of the significance of the Petitioner's work without providing specific examples of original contributions that rise to a level consistent with major significance. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.⁶ 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.⁷ USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The authors' assertions in the above-referenced letters do not explain how the Petitioner's novels and poems have been widely implemented or relied upon by others in the field. Simply stating that the work has gained the Petitioner national and international recognition or that it has majorly impacted the field of Latin American literature is not sufficient. Without additional detail explaining his

⁶ See *id.*

⁷ See *id.*; see also *Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

accomplishments, the letters submitted do not establish that the Petitioner's literary works have had a demonstrable impact in his field commensurate with a contribution of major significance.

Further, the Petitioner's appeal brief does not provide analysis of how any of his work as an author have significantly impacted the field. The Petitioner references documents, such as flyers and brochures for presentations and festivals, indicating that excerpts from his books and poems were recited. While this evidence demonstrates that the Petitioner's work has been presented in various venues, the record does not contain evidence to establish this relevance, such as evidence that these venues and festivals recognize literary works that have influenced the field as opposed to recognizing quality books and poems.

Finally, we note that the Petitioner has supplemented the appeal with evidence demonstrating that he published a new novel, [REDACTED], in [REDACTED] 2021. While we acknowledge his claim that three recipients of the Guatemala National Literature Award wrote the forward to the book, and that there is a huge demand for the book and potential interest in adapting the story into a movie, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). In this matter, the petition was filed in November 2019. We will therefore not consider this evidence.

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.

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 has garnered national or international acclaim in the field, and 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. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.