



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

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

In Re: 18487978

Date: NOV. 24, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an artist, 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, an artist, studied at the National Academy of Fine Arts and Architecture, Department of Painting, in [ ] Russia. He claims that he has worked as a painter and has displayed his works at numerous venues and exhibitions. Because he 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).

Initially, the Petitioner claimed that he met six of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), summarized below:

- (i), Lesser Awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material in major trade publications or other major media;
- (iv), Participation as a judge of the work of others in his field;
- (v), Original contributions of major significance; and
- (vii), Display of work at artistic exhibitions or showcases.

The Director found that the Petitioner met only two of the evidentiary criteria pertaining to judging the work of others and display of his work at artistic exhibitions or showcases. On appeal, the Petitioner maintains that he meets three additional criteria relating to his receipt of lesser nationally or internationally recognized prizes or awards, published material, and original contributions of major significance to his field. The Petitioner has not pursued his initial claim that he meets the criteria related to memberships in associations in the field that require outstanding achievements of their members under 8 C.F.R. § 204.5(h)(3)(ii). 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 criteria related to judging and artistic display. 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 in his field, and provided a two-page list of his claimed awards in a letter accompanying the petition. The Director acknowledged his submission of various certificates of achievement, and documentation establishing his receipt of awards including a 2019 gold medal from [redacted] and a 2019 diploma from the [redacted] Directorate for Internal Affairs, but determined that the Petitioner had not demonstrated that the referenced awards were nationally or internationally recognized. Although the Director requested additional evidence demonstrating that these awards were nationally or internationally recognized in a request for evidence (RFE), the Petitioner declined to submit such evidence. Instead, the Petitioner submitted documentation demonstrating his receipt of additional awards that he received subsequent to the filing of the petition, which the Director declined to consider.<sup>1</sup> The Petitioner also submitted a letter from [redacted] Fine Arts Chair at the [redacted] stating that the Petitioner won a gold medal at the [redacted] Fine Art exhibition contest. However, no corroborating evidence documenting the Petitioner's receipt of this award or demonstrating its national or international recognition was submitted.

On appeal, the Petitioner asserts that the Director's decision was erroneous because he "has submitted extensive evidence demonstrating the national significance of his awards." He argues that "the evidence on the record here unequivocally demonstrates that [his] prizes and/or awards are in no way local in nature, but rather are major, nationally and internationally recognized awards in the field of fine arts."

Upon review, we agree with the Director's decision. While the Petitioner submitted documentation demonstrating his receipt of several certificates, a diploma, and a gold medal, these documents alone do not demonstrate that he has won nationally or internationally recognized prizes or awards for excellence in the field. The Petitioner did not submit any other documentary evidence demonstrating that his prizes or awards are nationally or internationally recognized for excellence, despite the Director's request for such documentation. The regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that "[documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Simply submitting evidence of the Petitioner's receipt of prizes and awards is not sufficient to meet this criterion unless the Petitioner submits evidence establishing that the prizes and awards are nationally or internationally recognized for excellence in the field. Although the Petitioner demonstrated that he received the above-referenced prizes or awards, he did not submit sufficient documentary evidence, such as the selection criteria for the acclaim associated with the awards or evidence that the awards garnered of national or international-level

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<sup>1</sup> As noted by the Director, 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). As these prizes or awards were awarded subsequent to the filing of the petition in February 2020, they cannot establish the Petitioner's eligibility as of the date of filing, and we need not evaluate whether they otherwise satisfy the regulatory requirements of this criterion.

media coverage, to demonstrate that his prizes or awards satisfy the plain language requirements of this criterion.

For the reasons discussed above, the Petitioner has not submitted documentation sufficient to establish his eligibility for 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 meet the requirements of this criterion, the Petitioner must satisfy multiple evidentiary requirements. First, the published material must be about the Petitioner and the contents must relate to the Petitioner's work in the field under which they seek classification as an immigrant. The published material must also appear in professional or major trade publications or other major media. The final requirement is that the Petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the Petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion. Upon review of the record, we concur with the Director's determination that the Petitioner did not meet this criterion.

In support of the petition, the Petitioner submitted several articles which the Director found insufficient. In the RFE, the Director noted that several of the submitted articles did not include the author, and further found that the Petitioner had not demonstrated that the circulation of the submitted media was indicative of professional or major trade publications or other major media. In response, the Petitioner submitted additional articles, more information pertaining to the originally submitted articles, and a transcript of a radio interview.

In denying the petition, the Director determined that the Petitioner had not submitted sufficient evidence to satisfy this criterion, noting that several articles lacked the name of the author, where others were not supported by citation statistics. The Director also declined to afford evidentiary weight to the Petitioner's radio interview as it was not published material consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Regarding the additional documentation submitted in response to the RFE, the Director found these submissions insufficient. The Director noted that while the Petitioner asserted that the submitted articles were published in major media or professional or trade publications, he did not supplement the record with evidence such as published circulation statistics from an official or independent website or other publicly available source. On appeal, the Petitioner asserts that the Director failed to properly analyze information regarding the media, and asserts that he "has submitted detailed information regarding the circulation and popularity of the media at issue."

We do not find the Petitioner's appellate assertions sufficient. For example, the Petitioner submitted two articles published in *Russkaya Reklama*, along with an overview of the publication from the organization itself. The Petitioner also supplemented the record in response to the RFE with information about *Offer a Job* and *Zlagoda*, publications which also featured articles about the

Petitioner.<sup>2</sup> The Director found this evidence insufficient to establish that these publications were professional or major trade publications or other major media as contemplated by the regulation, and we concur with that conclusion. The evidence relating to each of these publications is in the form of a statement from the publication itself rather than published circulation statistics from an official or independent website or other publicly available source. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at \*7 (C.D. Cal. July 6, 2007) *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on a company's self-serving assertions on the cover of a magazine as to the magazine's status as major media). For these reasons, the referenced articles do not satisfy all elements of the criterion.

The Petitioner also provided a biographical excerpt published in *Who's Who in Ukraine*, along with an excerpt from the organization's website explaining the nature of the publication. According to the publisher, *Who's Who in Ukraine* is a series of books that include the biographies of individuals in various sectors of economic activity in the Ukraine that are distributed free of charge, and such biographies are maintained in a digital encyclopedia at [www.who-is-who.ua](http://www.who-is-who.ua). According to this statement, the Petitioner's brief biography appeared along numerous other brief biographies in one of the various editions of the book, and appears along with approximately 150,000 other biographies in the publisher's digital encyclopedia. The regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, expressly requires evidence of the author of the published material. Here, it does not appear that the Petitioner's profile with no byline in a directory included among tens of thousands of other individuals is the type of published material contemplated by the regulation. The evidence does not reflect an author of the book or its date of publication (aside from the date range of 2003-2004), and as such does not meet the plain language requirements of this criterion

In light of the above, the evidence discussed above does not meet the plain language requirements for this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iii).

*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.<sup>3</sup> 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 the acceptance of his artwork by the professional artistic community and its inclusion in various artistic forums and galleries, along with several reference letters commenting on these achievements, demonstrate his eligibility for this criterion.

Regarding the Petitioner's reference letters, although he provided evidence reflecting the originality of his artwork through recommendation letters praising him for his works, the authors do not provide specific examples of contributions that are indicative of major significance. In general, the letters

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<sup>2</sup> Although we discuss a sampling of the articles and publications, we have reviewed and considered each one.

<sup>3</sup> *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)).

recount the Petitioner's artistic achievements but do not demonstrate that his contributions in the field of fine arts have made the required impact in the field. On appeal, the Petitioner asserts that the Director's discounting of the numerous opinion letters he submitted was erroneous. Upon review of the record, we concur with the Director's determination that the Petitioner did not satisfy the requirements of this criterion.

For example, the letter from [redacted] discussed previously above, indicates that the author, in his professional opinion, believes that the Petitioner's works "definitely display his ability to become a successful artist." While the letter shows promise in the Petitioner's artistic abilities, it does not establish how his artwork already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts.

The updated letter from [redacted] founder and owner of [redacted], in [redacted] and Director and Board Member of the [redacted] in [redacted] New Jersey, discussed the occasions during which she viewed the Petitioner's work on display, and noted that she facilitated his invitation to display his work at [redacted]. While we acknowledge that the public display of his work is an impressive accomplishment, any art with exposure such as the Petitioner's can be viewed as contributing to the field. It must also be demonstrated that such contributions are of major significance in the field. To rise to the level of contributions of major significance, the Petitioner's work can be expected to have an influence on similar artists and similar works of art. *Visinscaia v. Beers*, 4 F. Supp. 3d 126 at 134 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). Although [redacted] recognizes the Petitioner's talents within her letter and asserts that the display of his work at the various venues she discusses is a significant accomplishment, 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 and discuss his career as an artist. However, the authors do not provide a description of how the Petitioner's works of art, 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 Petitioner's talents and the significance of his 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.<sup>4</sup> 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.<sup>5</sup> 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).

While the above letters compliment the Petitioner on the quality of his work, the record does not show how his paintings and artwork have had a majorly significant impact in the field, have significantly influenced the work of other artists, or otherwise equate to original artistic contributions of major significance in the field. The authors' assertions do not explain how the Petitioner's paintings and

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<sup>4</sup> See *id.*

<sup>5</sup> 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).

works of art 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 fine arts is not sufficient. Without additional detail explaining his accomplishments and their influence on the field, the letters submitted do not establish that the Petitioner's artwork has had a demonstrable impact in his field commensurate with a contribution of major significance.<sup>6</sup>

The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the Petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.*

On appeal, the Petitioner relies on several of our non-precedent decision as well as *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994) in support of the assertion that the Director should have accepted the expert opinion letters as evidence. Specifically, the Petitioner states that the court in *Buletini* "held that expert statements respecting the Petitioner's contributions must be fully considered, even if the expert opinions came from people who knew or had worked with the Beneficiary." *Buletini*, 860 F. Supp. at 1232. Regarding the contributions criterion, the *Buletini* court was referring to the Director's failure to consider all the forms of evidence that the Petitioner in that case submitted such as the book he authored, the Petitioner's medical dictionary he authored, and the Petitioner's study that appeared in the largest circulation newspaper in the Petitioner's home nation. *Id.* at 1232-1233. These are *forms* of evidence that the *Buletini* court determined the Director had failed to consider; the court did not indicate that the Director was required to discuss each and every piece of evidence within the record. Moreover, although the Petitioner references non-precedent decisions by our office, these decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

Further, the Petitioner's appeal brief does not provide analysis of how any of his work as an artist has significantly impacted the field. The Petitioner references the fact that his work has been displayed in top artistic venues including the [REDACTED] and points to the "unequivocal acceptance of his artwork by the professional artistic community." While we acknowledge that the Petitioner's work has been displayed in various venues, the record does not contain evidence to establish this relevance, such as evidence that these venues and galleries recognize artwork that has influenced the field as opposed to recognizing quality paintings and other works of art. Here, while the Petitioner has demonstrated that his works are admired by others in the field, he has not demonstrated that they have influenced similar artists and similar works of art. Again, while any art with exposure such as the Petitioner's can be viewed as contributing to the field, he must also demonstrate that his contributions are of major significance.

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.

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<sup>6</sup> Although we discuss a sampling of the letters submitted, we have reviewed and considered each one.

### 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.