



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

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

In Re: 19045495

Date: SEP. 02, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a director of photography, 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 the ten initial evidentiary criteria for this classification, as required. The matter is now before us on appeal.¹

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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

¹ We initially rejected the Petitioner's appeal as untimely filed on December 7, 2020. On July 21, 2021, we advised the Petitioner that we were withdrawing that rejection and reopening the matter in order to issue a decision on the merits of the case.

- (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 sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories 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 director of photography whose credits include [redacted] films produced and released domestically and internationally. The Petitioner indicates his intent to continue working as a director of photography for several upcoming [redacted] projects.

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 has claimed to meet up to eight of the ten criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material in professional or major media;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical roles for distinguished organizations or establishments;
- (ix), High salary or other significantly high remuneration²; and
- (x), Commercial success in the performing arts.

² Although the Petitioner previously claimed he could satisfy the requirements of 8 C.F.R. § 204.5(h)(3)(ix), he does not contest the Director’s determination that he did not meet this criterion, nor does he otherwise address this criterion on appeal. Accordingly, we consider this issue to be waived and will not further address it. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived).

The Director determined that the Petitioner has displayed his work at artistic exhibitions or showcases and therefore satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vii). We agree, as the record establishes that the Petitioner is credited as director of photography for several films that were screened at [redacted] film festivals in the [redacted]

On appeal, the Petitioner maintains that the Director erred as a matter of fact and misapplied the law in evaluating the evidence he provided in support of the remaining claimed criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). He maintains that he meets at least three and up to seven of the initial evidentiary criteria and is otherwise eligible for the classification sought.

Before turning to a discussion of the evidentiary criteria, we acknowledge the Petitioner's assertion that he "currently holds an approved O-1 petition as a person of extraordinary achievement in the [redacted] industry" and his argument that his O-1 nonimmigrant status "is *prima facie* evidence that he has met at least three regulatory criteria and has demonstrated a 'record of extraordinary achievement' as per 8 CFR 214.2(o)(3)(v)."

O-1 classification is reserved for nonimmigrants of extraordinary ability or achievement. However, the prior approval of an O-1 nonimmigrant petition does not preclude USCIS from denying a subsequent immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. In fact, the Petitioner "concedes that the regulations for the O-1 for [redacted] [redacted] productions are not identical to the EB-1 visas of extraordinary ability regulations and is not arguing that [his] O-1 status automatically qualifies for an immigrant visa." We emphasize that each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in the individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

Here, the Petitioner submitted evidence intended to establish his eligibility for classification as an immigrant of extraordinary ability, not as a nonimmigrant of extraordinary achievement in the [redacted] [redacted] industry. The Director's decision evaluated the evidence in the record to determine if it met the requirements for the immigrant classification sought, while also acknowledging the prior O-1 approvals in his decision. Further, in adjudicating an appeal, we are not bound by the prior decisions of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

We will address the Petitioner's claims with respect to the individual evidentiary criteria below.

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)

The Petitioner has been credited as the director of photography on several [redacted] films that received awards and award nominations at [redacted] film festivals. The Director concluded that "festival awards are not considered nationally or internationally recognized prizes or awards for excellence in the field of endeavor because they are limited to associates, participants or members of the

festivals.”³ We agree with the Petitioner that the record does not support the Director’s reasoning. The evidence demonstrates that the film festivals rely on a competitive selection process, which results in only a fraction of entered films being selected for screening. Further, the record does not indicate that these festivals place any strict limitations on who may enter their films for potential selection, such as a requirement that filmmakers be “associates” or “members” of the festival or any other group or single institution. While not every film festival that is billed as a “national” or “international” festival grants awards or prizes that would satisfy this criterion, the Director’s suggestion that *no* film festivals award qualifying nationally or internationally recognized prizes is incorrect.

Nevertheless, we conclude that the Petitioner has not demonstrated his receipt of nationally or internationally recognized prizes or awards for excellence. The Petitioner served as the director of photography for films that received festival awards at [redacted] Film Festival, [redacted] Film Festival, [redacted] Film Festival, [redacted] Film Festival, [redacted] Film Festival, and the [redacted] Film Festival [redacted], among other festivals. However, he did not establish that he received awards from these festivals. The regulation at 8 C.F.R. § 204.5(h)(3)(i) calls for evidence of “the alien’s receipt” of prizes or awards, rather than evidence of an individual’s participation in award-winning projects.

The Petitioner asserts on appeal that “an award granted to a production itself is also an industry recognition of the leading team members who produce it.” However, the documentation in the record does not simply identify award-winning productions. It identifies other individuals, usually directors, as the named winners of the awards or prizes. While the Petitioner submitted letters from the producers and directors of some of these award-winning films who attest to his critical role in the productions, this evidence is not sufficient to establish that he was the recipient of any of these awards. As such, we need not evaluate whether those awards were nationally or internationally recognized prizes for excellence in his field.

The Petitioner also seeks to rely on the regulation at 8 C.F.R. § 204.5(h)(4) which states that a petitioner “may submit comparable evidence” to establish eligibility if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) “do not readily apply” to their occupation. He maintains that the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) “does not ‘readily apply’ to [his] ‘occupation’ as a Director of Photography.” He also argues that “the entertainment industry considers nominations for national or international awards to be equal recognition of acclaim as the awards themselves.” Based on these claims, he states that USCIS “should accept the comparable evidence of the award nominations together with awards issued to the films produced using [his] cinematography.”

The record does not support the Petitioner’s assertion that there are no industry awards applicable to the occupation of “director of photography.” Specifically, he provided evidence indicating that several of the festivals mentioned above, including but not limited to the [redacted] Festival, the [redacted]

³ In making this observation, the Director cited to USCIS policy stating that “any limitations on competitors” should be considered when evaluating this criterion. See 6 USCIS Policy Manual F.2 appendix, <http://www.uscis.gov/policy-manual>. (stating that 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 awards or prizes; the national or international significance of the awards or prizes in the field; and the number of awardees or prize recipients, as well as any limitations on competitors (noting that “an award limited to competitors from a single institution, for example, may have little national or international significance”).

[redacted] Film Festival, and the [redacted] Film Festival [redacted], award “Best Cinematography” prizes to directors of photography. Further, the Petitioner’s own submitted filmography indicates that the 2010 [redacted] film [redacted] for which he is credited as director of photography, won “Best Cinematography” at the [redacted] Film Festival in 2011. The only supporting evidence related to this award is a screenshot from the website [redacted] indicating that the film received prizes for “Best Photography” and [redacted] at the 2012 edition of the festival. The record does not contain any additional evidence related to [redacted] the [redacted] Film Festival, or the national or internationally recognition associated with the festival’s awards, nor has the Petitioner specifically claimed that the “Best Cinematography” award he received at this festival was a qualifying award. Nevertheless, given that he submitted some evidence indicating that he has received an award for “Best Cinematography,” and that his films have been screened at several festivals that award “Best Cinematography” or “Best Photography” prizes, his claim that this criterion does not apply to his occupation is not persuasive.

As noted, the Petitioner also emphasizes that nominations for nationally or internationally recognized prizes or awards should be considered comparable evidence under this criterion. For the reasons already discussed, the record does not support the Petitioner’s claim that this criterion does not readily apply to his occupation or otherwise established that comparable evidence should be considered under 8 C.F.R. § 204.5(h)(4). He emphasizes that he served as director of photography for [redacted] which was nominated for, but did not win, the prestigious [redacted] prize at the 2005 [redacted] Film Festival. The record reflects that this award is given to the director of the winning film. The Petitioner cannot establish his eligibility under this criterion based on evidence that he contributed to a film that earned an award nomination for another individual as this does not constitute evidence of his receipt of a nationally or internationally recognized award. While his contribution to a film that received a [redacted] Film Festival award nomination is noteworthy and would be considered in a final merits determination, it cannot serve as evidence that the Petitioner satisfies this criterion.

For the foregoing reasons, the Petitioner has not established his receipt of nationally or internationally recognized prizes or awards for excellence in his field.

Documentation of the individual’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 asserts that he satisfies this criterion based on his membership in the Belgian Society of Cinematographers (SBC). To satisfy this criterion, the Petitioner must show that membership in this association is based on individual members being judged by recognized national or international experts as having attained outstanding achievements in the field. In support of his claim, he initially submitted a letter from SBC co-president [redacted] who states that the society’s membership is “a highly select group” that includes “several of the most influential professionals.” He further states that membership is achieved “only through invitation,” that it is “a great honor,” and that the Petitioner’s membership in the SBC “was granted on account of his superior credentials and accomplishments in the field of Cinematography.”

This letter was accompanied by a screenshot of the SBC website (www.sbcine.be) which provides the society's mission statement and lists the current board of governors but does not identify the membership requirements or the SBC's procedures for admitting new members. The provided screenshot indicates that the SBC's bylaws are available on the website, but the Petitioner did not provide a copy of this document.⁴

In a request for evidence (RFE), the Director advised the Petitioner that additional documentation, such as the relevant sections of the SBC constitution or bylaws, would be needed to establish the SBC's membership criteria and requirements and to demonstrate that the individuals responsible for admitting new members are recognized as national or international experts in the field.

In response to the RFE, the Petitioner submitted a second letter from [redacted], a letter from SBC member [redacted], and a screenshot of a [redacted] 2019 article published on the SBC website titled [redacted] [redacted] which includes a photograph of the Petitioner, with a summary of his past and upcoming work. [redacted] states:

[Members] achieve membership through invitation only based on their achievements in cinematography. All SBC members conduct important work in the profession of cinematography and enjoy a high level of distinction in the field. To be admitted for SBC membership, specifically, a candidate must be sponsored by two existing members of the Society. The candidate submits a written statement indicating why they would like to join. Candidates are then reviewed by the SBC commission which meets once a year to vote on new members to join. New members are accepted only if they are considered to have outstanding achievements and receive at least two thirds of the vote in accordance with the SBC bylaws.

In his letter [redacted] states that he personally "nominated and ushered" the Petitioner into the SBC "[d]ue to his outstanding achievements." He further explains that "SBC members are required to have served as director of photography on distinguished films that gained recognition and distinction in the industry" and that this "level of achievement is reached by all SBC members."

In determining that the Petitioner did not demonstrate that he meets this criterion, the Director noted that the submitted information from the SBC website "did not reveal any detail regarding the organization's requirements" for membership, such as the association's bylaws or constitution. The Director further observed that "[n]o information established that the individuals who review prospective members' applications are recognized as national or international experts."

On appeal, the Petitioner maintains that the Director failed to review the letters provided by [redacted] [redacted] and [redacted]. The Petitioner further asserts that "the plain language of the 'membership' criterion contains no requirement that an association's constitution alone satisfy the criterion" and that there is "no existing requirement that an association's constitution be available on its website in order to satisfy this criterion." He emphasizes that petitioners "should be afforded an opportunity to use any relevant and credible evidence to make their case."

⁴ Specifically, the provided screenshot of the SBC website shows that the site provides links to downloadable PDF versions of the association's statute or bylaws in the French and Dutch languages.

We agree with the Petitioner's assertion that the Director should have addressed the letters from [redacted] and [redacted] in evaluating this criterion. However, we conclude that their letters alone do not establish that the Petitioner's membership in the SBC meets all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(ii). [redacted] second letter indicates that there is a "commission" within the SBC that reviews and votes on prospective members. He does not elaborate on the "commission" or the process it undertakes to admit new members, nor does he identify those who vote on prospective members as recognized national or international experts in the field. The Petitioner submitted evidence that [redacted] who has director of photography credits on several major motion pictures, is an internationally recognized expert in the field, but the fact that he nominated the Petitioner for SBC membership does not lead to a conclusion that the commission that reviews and judges the credentials or achievements of SBC prospective members is solely comprised of such experts.

[redacted] also states that "new members are accepted only if they are considered to have outstanding achievements and receive at least two-thirds of the vote in accordance with the SBC's bylaws." [redacted] letter does not, however, identify the section of the bylaws where membership requirements are stated, elaborate on how the association defines "outstanding achievement," or otherwise address the membership requirements stated in the bylaws that he references. As he does not directly quote specific sections of the SBC bylaws, it is unclear whether they use the phrase "outstanding achievement" or comparable language, and whether they further define or list criteria identifying what the association deems to be qualifying achievement(s).

The Petitioner maintains that "there is no existing requirement that an association's constitution be available on its website in order to satisfy the criterion." As noted above, the screenshot provided from the SBC website indicates that the bylaws or statute of the association are publicly available on its website, and the Petitioner has had multiple opportunities to submit them for the record. Nevertheless, we acknowledge that there is no explicit requirement that a petitioner submit an association's statute, bylaws, or constitution as evidence in support of this criterion, and we have considered the alternate evidence that the Petitioner submitted. We conclude that the submitted letters do not address the SBC's membership criteria and requirements with the necessary specificity, and therefore do not provide sufficient probative details to meet the Petitioner's burden of proof.

For the reasons discussed, the Petitioner did not demonstrate that he satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

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)

Evidence of published material in professional or major trade publications or in other major media publications about the person should establish that the circulation (online or in print) is high compared to other circulation statistics and show who the intended audience is, as well as the title, date, and author of the material.⁵

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

The Director acknowledged that the Petitioner submitted copies of several published articles but concluded that none of the published material satisfied all requirements stated in the regulation at 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner maintains that four of the previously submitted articles meet this criterion and contends that the Director made several errors in evaluating this evidence.

The Petitioner submitted two articles which feature him and his work as a cinematographer. One of these articles, titled [REDACTED] was published by the online magazine *VoyageLA*. The Petitioner submitted information from the magazine's website stating that its "mission is to build a platform that fosters collaboration and support for small businesses, independent artists, entrepreneurs, local institutions and those that make our city interesting." Based on this limited information regarding the intended audience of *VoyageLA*, it cannot be deemed a professional or trade publication. The Petitioner submitted data from *HypeStat* indicating that *voyagela.com* receives over 7,000 visitors daily and has an Alexa traffic rank of 152,753. He also provided a data from *SimilarWeb* which indicates that *VoyageLA* has a global rank of 227,513 and a country rank of 62,138. The Petitioner has not explained how this evidence supports a determination that *VoyageLA* qualifies, in the alternative, as "major media" by having a high circulation or distribution relative to other online publications. Accordingly, the Petitioner did not establish that the article published by *VoyageLA* satisfies this criterion.

The Petitioner also claims eligibility based on an article that he claims was published in *Kodak Lens Magazine* in 2007. The submitted article is accompanied by an English translation and is about the Petitioner and his work as a director of photography. However, the submitted copy of the article does not identify the date of publication and the title of the magazine that published it, as required by 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the article is not accompanied by any supporting information regarding *Kodak Lens Magazine*, its intended audience, or its circulation or distribution figures relative to other magazines. The supporting documentation consists of two articles that discuss Kodak and its standing in the photography industry over time; the articles do not mention *Kodak Lens Magazine*. For these reasons, this article does not satisfy all elements of the criterion.

The two remaining articles that the Petitioner references on appeal were published by *The Hollywood Reporter* and *The Washington Post*. The Petitioner provided evidence to establish that these qualify as major media publications, and that the articles include the required title, date, and author of the published material. Therefore, we must evaluate whether the articles are "about" the Petitioner and relating to his work.

The subject of both 2012 articles is [REDACTED] her relationship with her brother [REDACTED] [REDACTED], her acting career, and the release of the short film titled [REDACTED] which featured [REDACTED] as lead actress, co-director, and executive producer. *The Hollywood Reporter* article, titled [REDACTED] [REDACTED] provides biographical information regarding [REDACTED] and her personal life and relationships, her previous acting credits, and briefly discusses the shooting of [REDACTED] at the [REDACTED]-designed [REDACTED] over a two-day period in 2009. The Petitioner, who served as director of photography for the short film, was quoted in the portions of the article that discuss the film's shooting. He briefly comments about shooting a specific scene and about making [REDACTED] appear younger on film, and he speculates about the cost of renting the [REDACTED] [REDACTED] for the production. *The Washington Post* article, titled [REDACTED] [REDACTED] is much shorter, covers similar topics as *The Hollywood*

Reporter article and links to that article. The article mentions that the Petitioner served as the film's cinematographer and he is briefly quoted as stating that [redacted] "did a good job."

The Director concluded that *The Hollywood Reporter* article is not about the Petitioner and did not address *The Washington Post* article, which, as noted above, is similar in its focus and content.

On appeal, the Petitioner states that "the Service's regulations and relevant case law do not mandate that the entire focus of articles must be on the [petitioner]." Citing to *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. 1995) and *Racine v. INS*, 1995 WL 153319 (N.D. Ill. 1995), the Petitioner maintains that he need only establish that "there is published material about him" and submit articles that "demonstrate his work within the field." The cited decisions address the specific issue of whether published materials about a petitioner must demonstrate that they are "one of the best" the field, at the "top of the field," or a "star" in the field. There is nothing in *Muni* or *Racine* to suggest that the district court determined that any article that mentions a person's name and their field of work should automatically be deemed to be "about" that person, regardless of the context or the remaining content of that article.⁶ While the Petitioner's name is mentioned in *The Hollywood Reporter* article and he is quoted in those portions of the article that mention [redacted] we agree with the Director's determination that the article is not about him, nor is the similar article that appeared in *The Washington Post*.

For the reasons discussed, the Petitioner has not shown that any of the submitted articles meet all regulatory requirements 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)

To satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been 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.

The Director acknowledged that the Petitioner submitted letters of support from experts in his field which are highly complimentary of his work and professional accomplishments. However, the Director determined that the testimonial evidence did not establish that he has made original contributions of major significance in the field. He included quotes from several letters and emphasized that while they discuss the Petitioner's artistic vision and technical knowledge as applied to specific productions, the letters lacked specificity as to how the Petitioner's work has impacted the field or how his techniques have been widely used or accepted within the field such as, for example, evidence that other directors of photography have adopted his camera or lighting techniques. The

⁶ With respect to this criterion, the Court in *Muni* stated:

Under the INS' own regulations, all Muni need show is that there is "[p]ublished material about [him] in professional or major trade publications or other major media, relating to [his] work in the field for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iii). The articles Muni submitted, which appeared in various newspapers and hockey magazines, clearly fit this requirement; even the INS admits that some of the articles "discuss [Muni's] hitting ability and his record as a defenseman" (Admin.Rec. at 4).

Id. at 445.

Director cited case law indicating that USCIS may, in its discretion, consider advisory opinions as expert testimony, but that USCIS is ultimately responsible for making the final determination regarding eligibility. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988).

On appeal, the Petitioner maintains that “*Matter of Caron International* is not a blanket permission to disregard or dismiss all testimonial evidence because the Director holds a different personal opinion of a beneficiary’s contributions to the field.” He notes that *Caron* instead “addresses a specific set of facts where expert testimony is contradictory or questionable, which may then be dismissed or given less weight by the Service. The Petitioner, citing to *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012), states that the testimonial evidence submitted is “uncontroverted” and should be found to be “reliable, relevant and probative” absent “specific reasons for questioning the credentials of the experts, taking issue with their knowledge, or otherwise finding reason to doubt the veracity of their testimony.”

The Director, however, did not disregard, dismiss, or otherwise fail to consider the submitted expert letters. Rather, the decision reflects that he granted some weight to the letters but found them insufficient to establish eligibility. It is the Petitioner’s burden to both specify his original contributions and to document the major significance of those contributions in the field. A petitioner’s submission of credible letters from reputable individuals in their industry does not automatically lead to a determination that this criterion has been satisfied, particularly if the letters do not shed light on the specific nature of the original contributions and their impact or influence on the field. Letters of this kind can help to explain the nature of the Petitioner’s contributions but should be supported with corroborating documentary evidence to establish the major significance of those contributions. Further, letters that specifically articulate how an individual’s contributions are of major significance to the field and its impact on subsequent work add value, while those that lack specifics do not add value and may not be considered to be probative evidence that may form the basis for meeting this criterion.⁷

Upon review, we observe that the individuals who provided letters in support of the petition attest to the Petitioner’s artistic and technical talents as a cinematographer, list his film credits, highlight the critical or commercial success of certain films, and contain assertions that he is well known, highly regarded, and in demand throughout the industry. We have no reason to question the credentials of the industry experts who provided letters in support of the petition or to doubt the credibility of their statements or the sincerity of their praise for the Petitioner’s work. However, the letters focus on the Petitioner’s contributions to specific projects or his overall standing in the field rather than specifically articulating how his contributions are of major significance in the field and have impacted subsequent work. We address a representative sample of the letters below but have reviewed and considered each one.

Cinematographer [redacted] who worked with the Petitioner on the film [redacted] states that his contributions were “critical to the production’s success,” “elevated the story with his artful compositions, his stellar lighting and his fluid camera moves, and “demonstrated working knowledge of camera equipment and techniques . . . superior to the overwhelming majority of his peers.” Director and visual effects supervisor [redacted] who has worked with the Petitioner on several commercial projects, states that he “possesses the unique talent and skill to make every project . . . successful,” is “well-regarded among his industry peers,” is a “true artist who paints the most beautiful images with

⁷ See USCIS Policy Manual, *supra*, at F(2) appendix.

light onto the screen” and “brings out the best in every production and every person that he works with.” Director [redacted] who worked with the Petitioner on the feature films [redacted] and [redacted] states that his “artistic vision and expertise” led these films to achieve “tremendous success” and praises his “artistic intuition, technical expertise and deep knowledge of filmmaking.” [redacted] a visual effects artist and supervisor who worked with the Petitioner on several films, credits him with being able to “frame and capture shots that most other cinematographers are simply incapable of achieving” and emphasizes that the Petitioner has been involved in commercially and critically successful projects and that his services are in demand.

While the letters submitted with the initial filing describe the Petitioner’s original contributions to specific productions in some detail, they do not comment on how these contributions to individual projects were of major significance, such that they had a remarkable influence or impact in the field of cinematography.

The Petitioner provided additional expert testimony in response to the Director’s RFE. [redacted] who produced [redacted] and [redacted] states that the Petitioner’s contributions to these two films “were new, original and entirely his own.” [redacted] asserts that “he devised, carried out, captured and presented extraordinary cinematography used in these films, which both went on to enjoy major significance in our industry.” He describes the Petitioner’s work in technical detail and notes that the films received significant film festival awards that are “among the highest milestones in the [redacted] genre.” The Petitioner also maintained that these two films, “provoked widespread public commentary in the field.” In this regard, he submitted reviews, articles and [redacted] rankings from media sources including [redacted] [redacted] [redacted] and [redacted] [redacted]. While these films received recognition from [redacted] film festivals and online media focused on the [redacted] genre, this recognition has not been linked to the Petitioner’s cinematographic contributions to the movies and does not establish how those contributions were of “major significance in the field” consistent with 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner also submitted a letter from [redacted] who produced and directed the [redacted] feature [redacted]. [redacted] credits the Petitioner with delivering “elegant cinematography,” with managing “all camera and lighting decisions in the production to artfully author new original visual imagery,” and with creating an atmosphere of [redacted]. [redacted] asserts that “[r]eaching the level that [the Petitioner] has in this industry, which amounts to the highest level in the field, itself constitutes an original contribution of major significance.” While [redacted] asserts that the Petitioner’s standing in the field alone represents an original contribution of major significance, the regulation at 8 C.F.R. § 204.5(h)(3)(v) does not indicate that attaining “the highest level in the field” is a relevant factor in determining whether an individual has made an original contribution of major significance in the field. Rather, a petitioner’s overall standing in the field is evaluated in a final merits determination. [redacted] praises the Petitioner’s artistic and technical work on [redacted] and his overall success in the filmmaking industry but does not identify how his contributions to this film have impacted subsequent work in the field of cinematography.

In a second letter submitted in response to the RFE, [redacted] states that the Petitioner has used “his exceptional camera and lighting skills” to make original contributions to numerous award-winning productions, including “several short films that have major significance in the industry.” Specifically,

he highlights the fact that six of the Petitioner's short films "have exhibited and won awards at [redacted] film festivals." [redacted] asserts that "winning awards at [redacted] festivals means your film is then shortlisted for [redacted], the highest recognition that exists in film." He further states that "by contributing essential cinematography to films that have been shortlisted for [redacted] [the Petitioner] has performed work in this industry that is outstanding, substantial and meaningful."⁸ [redacted] appears to equate the Petitioner's contributions to short films that were potentially eligible for [redacted] voting with original contributions of major significance, but this interpretation of "major significance" does not take into account the requirement that the Petitioner demonstrate how his specific contributions have impacted or influenced subsequent work in his field.

Overall, the letters submitted in response to the RFE pointed to media coverage of the Petitioner's films, awards or award nominations received by those films, and his overall standing and reputation in his field, but do not contain specific, detailed information identifying or explaining the unusual influence his work has had in his field. The Petitioner similarly maintains his films have been "widely recognized, written about, and discussed, and are plainly evidenced as being considered important and impactful in the field" and states that "an individual who is not making influential original contributions simply would not be able to garner such recognition in his field."

However, we emphasize that evidence related to awards, award nominations, published materials, and the critical and commercial success of the Petitioner's work has been considered under the appropriate criteria. None of that evidence specifically recognizes the Petitioner for making an original contribution of major significance that has impacted or influenced his field, nor does the record sufficiently establish a connection between that evidence and the significance of any original contributions he has made to the field of cinematography. For the reasons discussed, the Petitioner has not established that he meets this criterion.

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)

To meet this criterion, the evidence must show that the volume of sales and box office receipts reflect a petitioner's commercial successes relative to others involved in similar pursuits in the performing arts.⁹ At the time of filing, the Petitioner stated that he "has played a critical role as a Director of Photography for a slew of commercially successful blockbuster films." He submitted box office receipts obtained from the website *Box Office Mojo* for the following four films:

⁸ The Petitioner submitted a copy of the [redacted] for the [redacted] and a copy of the [redacted]. This evidence indicates that a film that wins a qualifying award at the listed festivals is eligible [redacted] voting. While the six of the Petitioner's short films were selected for screening at five of these festivals, the record does not establish that any of the films received one of the specific awards listed in the [redacted]. For example, [redacted] was nominated for qualifying awards at [redacted] and at the [redacted] Film Festival but did not win either award. The film [redacted] received an "[redacted] Award" at the [redacted] Film Festival, but the only qualifying awards listed for this festival are [redacted] for Best [redacted] Short Film and Best [redacted] Short Film.

⁹ See 6 USCIS Policy Manual, *supra*, at F(2) appendix.

- [redacted] (2013) – The report from *Box Office Mojo* indicates that the film has achieved \$6.8 million in gross receipts in [redacted] and \$477,341 in [redacted]. It ranked second in the [redacted] market in its first weekend of release in [redacted] 2013 with over \$4 million in sales.¹⁰
- [redacted] (2015) – The report shows total gross receipts of \$3.35 million in [redacted]. It ranked second in the [redacted] market in its first weekend of release with \$1.4 million in receipts.
- [redacted] (2007) – The report indicates total gross receipts of \$97,785 in [redacted] and it ranked 11th during its opening weekend in the [redacted] and [redacted] market with \$27,490 in receipts in [redacted] 2007.
- [redacted] (2013) – The *Box Office Mojo* report indicates lifetime gross domestic receipts of \$122,305 and an “all time domestic rank” of 11,012 in the U.S. market.

The Director determined that, while the Petitioner submitted some documentation of box office receipts, he did not provide sufficient supporting evidence to establish that any of the films on which he is credited as a director of photography enjoyed commercial success relative to other films.¹¹

On appeal, the Petitioner objects to the Director’s determination that the record contained “no evidence” demonstrating the relative commercial success of his films, noting that the figures from *Box Office Mojo* included weekly rankings for each film in its respective market. The Petitioner emphasizes that “in its opening release weekend, [redacted] 2013, [redacted] grossed \$4,022,572 making it the #2 highest-grossing film in [redacted] ahead of other major motion picture earners in [redacted] at the same time.” He makes a similar claim regarding the film [redacted] which also ranked second in the [redacted] market during its opening weekend.

The Petitioner also submits more complete [redacted] and [redacted] box office data from *Box Office Mojo* for the [redacted] 2013 opening weekend of [redacted]. As noted, it ranked second in both markets among movies that were in [redacted] theatres the same weekend. However, we cannot determine based on a single weekend’s receipts how the film performed overall relative to others in these markets. The evidence indicates that the film’s overall gross receipts in [redacted] were over \$6.8 million. While [redacted] earned over \$4 million in its opening weekend, there were 10 other films ranked in the top 25 that weekend that had already surpassed \$6.8 million in receipts in [redacted]. For example, movies such as [redacted], [redacted] and [redacted] all had cumulative gross receipts between \$25 million and \$40 million in the [redacted] market as of [redacted] 2013. Similarly, six of the movies in the [redacted] box office’s top 10 during the same weekend had also already outperformed [redacted] in terms of gross receipts in that market. This evidence illustrates that a single weekend’s box office receipts do not reflect a film’s overall commercial success relative to other films released in the same markets, and the Petitioner has not provided evidence that would allow for comparisons of total receipts over a longer period of time.

¹⁰ The Petitioner stated in his cover letter accompanying the initial submission that this film earned over \$23.6 million domestically and “a total of \$80,573,774 worldwide.” However, he did not submit any corroborating evidence of the film’s U.S. or global receipts.

¹¹ The Director also raised concerns regarding that the evidence from *Box Office Mojo* do not “show how the foreign currency was converted into United States currency.” The Petitioner provided sufficient evidence to establish that *Box Office Mojo* is a reliable source of sales figures and rankings and we do not share the Director’s concerns regarding the reported sales figures.

The Petitioner has also requested review of previously submitted testimonial evidence which addresses the commercial success of his work. Specifically, the letter from [redacted] the producer and director of [redacted] film [redacted] states that he and his team “were informed by the studio’s leading executives that [redacted] was one of [redacted]’s most watched original films of 2018” and “was the number one film for [redacted] original or otherwise, in nearly every single territory around the globe” in its initial month of release. [redacted] also emphasized that the film’s viewership surpassed that of two other [redacted] released in the same month – [redacted] [redacted] and [redacted] starring [redacted]. Finally, he explains that [redacted] deems information regarding viewership to be proprietary and it is therefore not reported by media sources.¹²

The Petitioner submits additional evidence related to [redacted] and its standing as [redacted] provider of streaming film and television content. We observe that the “commercial success” criterion is inherently sales based, while [redacted] subscribers pay a flat fee for unlimited streaming, such that individual movies do not generate “sales” in the traditional sense. The Petitioner maintains nevertheless that “becoming one of [redacted]’s most watched [redacted] films in a given year amounts to a major commercial success in the performing arts.” However, [redacted]’s letter, which relates general, second-hand information from unidentified sources within [redacted] does not provide sufficient information regarding the commercial success of [redacted] relative to that of other streaming service movie releases. While the Petitioner emphasizes that [redacted] does not release this information for media reporting, it has not been established this information is otherwise unobtainable for any purpose.

Testimonial evidence in the record indicates that [redacted] was sold to [redacted] for \$1.8 million, but the record does not provide a contract or any context for this figure to establish that it would be considered a “commercial success” relative to other content sold for streaming as a [redacted]

For these reasons, even if the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) allowed for the submission of streaming data and rankings or some other measure of “commercial success” in lieu of box office receipts, additional evidence would be needed to demonstrate that the Petitioner meets this criterion based on the commercial success of [redacted]

For the reasons discussed, the Petitioner has not established that he meets this criterion.

B. Summary and Reserved Issue

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining claimed criterion at 8 C.F.R. § 204.5(h)(3)(viii), which relates to whether the Petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, cannot change the outcome of this appeal. Therefore, we reserve this issue.¹³

¹² [redacted] stated that [redacted] has an industry-wide standard that they do not release numbers or ratings with regards to how many times a film and/or episode of television on their platform is viewed.”

¹³ 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); see also *Matter of L-A-C*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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. Here, the Petitioner has established that he has worked on some successful film projects and has received recognition for his work as a director of photography. But he has not shown that this recognition rises to the required level of 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).

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.

ORDER: The appeal is dismissed.