



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

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

In Re: 19217950

Date: SEP. 15, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a creative technologist, 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 evidentiary requirements for the requested classification through evidence of either a one-time achievement (a major, internationally recognized award) or meeting at least 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’s occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

At the time his petition was filed, the Petitioner was employed by [redacted] as a creative technologist. He earned a master of science degree in media arts and technology from the University of [redacted] in 2011, and has since worked to create interactive and experiential multimedia displays for tradeshow, tourist attractions and museums. He states that he intends to continue in this field in the United States.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his leading or critical role for distinguished establishments and the display of his work in the field at artistic exhibitions or showcases. Upon review, we agree that he meets these criteria. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to four additional criteria, which we will discuss below. After reviewing all of the evidence in the record, we find that the Petitioner does not meet the initial evidentiary requirements for this classification, and has therefore not established that he is an individual of extraordinary ability.

*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)

In order to meet this criterion, a Petitioner must provide evidence of their membership in an association that is in their field, and that that association requires outstanding achievements as a condition of membership. In addition, the Petitioner must show that the quality of those achievements are judged by recognized national or international experts in their fields.

The record shows that the Petitioner is a professional member of the Society for Experiential Graphic Design (SEGD). However, it does not include evidence which provides any level of specificity regarding SEG D's membership requirements, or information regarding any judging process for membership applicants. Pages submitted from the association's website simply state that design memberships "are for people whose primary occupation or course of study is experiential graphic design or related fields..." This material then lists the different types of membership and the benefits associated with each, a list of members, and a brief history of SEG D.

In addition, in responding to the Director's request for evidence, the Petitioner submitted a letter from SEG D's [REDACTED]. She provides background information on the association which is similar to that included on its website, and lists what she states are well-known SEG D members. But she does not provide further information regarding the requirements for SEG D membership at the Petitioner's or any level, nor does she shed light upon the membership application judging process.

On appeal, the Petitioner points out that the Director failed to acknowledge the submission of [REDACTED]'s letter. However, since that letter serves only to verify evidence that was already in the record, we find the Director's omission to be harmless. He also asserts that the totality of the evidence submitted under this criterion is sufficient to meet the preponderance of the evidence standard. But the Petitioner does not refer to evidence of any specific SEG D membership requirements or application review process, instead making conclusory statements and repeating the regulatory language on several occasions. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, \*1, \*5 (S.D.N.Y. Apr. 18, 1997).

In addition, in his appeal brief the Petitioner focuses on evidence of the successful completion of projects to which he contributed, and asserts that since this work is considered to be outstanding, as evidenced by reference letters, media reports and other evidence in the record, it served as the basis for his membership in SEG D and he therefore meets this criterion. But this argument fails, as the record lacks any evidence that shows that his role in those projects was considered when he submitted his application for membership, let alone who would have considered them.

For all of the reasons discussed above, we agree with the Director's conclusion that the Petitioner does not meet 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)*

There are several elements which must be satisfied for evidence to meet the requirements of this criterion. Specifically, a petitioner must show that the material has been published, that the publication is a professional or major trade medium or other major medium, that the material is about the petitioner, and that it relates to their work in the field for which classification is sought. Here, the Petitioner submitted materials published on several websites, some of which, like those published on

cnbc.com and nytimes.com, are clearly major media and relate to his work in the field. These articles discuss [redacted] projects to which other evidence verifies the Petitioner contributed. However, as noted by the Director in his decision, they are not about the Petitioner but about the projects. They do not discuss the Petitioner's contribution to the projects, provide information about him and his work, or even mention him by name. Materials that do not pertain to a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

The record also includes the Petitioner's profile pages on the SEG D website and on the website of *Communication Arts* (commarts.com). Regarding the SEG D profile, we note that the association promotes member profile pages as a significant membership benefit on its website, allowing members to network with each other. In his decision, the Director described this evidence as "self-manufactured" and thus lacking in evidentiary weight. The Petitioner asserts on appeal that this conclusion runs counter to a plain language interpretation of the criterion, and that the profile otherwise meets all elements as described above. However, we note that the criterion also states that the evidence *shall* include the title, date, and author of the material. Because none of this information is present in this material, it does not meet the requirements of this criterion.

The material published on commarts.com consists of the Petitioner's profile, which is also missing a date of publication and author, and consists of photographs showing some of his work. Also included were a series of photographs of an installation at the [redacted] in [redacted] which also lists the Petitioner as a contributor among others, and a feature article about one of his former employers, [redacted] that does not mention him. As with the SEG D profile, the commarts.com profile lacks essential information to qualify under this criterion. Further, the other materials are not about the Petitioner: the material on the [redacted] installation does not provide information about the Petitioner other than his name and job title, and the article about [redacted] is about the history and founders of that company. As such, none of this material meets all of the required elements of this criterion.

*Evidence of the alien'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 regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions, but that they 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. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

In his initial submission, the Petitioner did not specifically claim to meet this criterion. Instead, he submitted two reference letters relating to his academic career and referred to these as comparable evidence. These letters, from two of the faculty members who served on his master's thesis committee at [redacted] describe his thesis and other work which he completed as a graduate student. When responding to the Director's RFE, although the Petitioner continued to assert that this evidence should be accepted under 8 C.F.R. § 204.5(h)(4), he also stated that the evidence serves to show his original contributions of major significance to his field. We further note that on appeal, he briefly refers to

additional reference letters as establishing his qualification under this criterion, although he does not specifically identify the contributions to his field shown by those letters.<sup>1</sup>

The letters from [redacted] and [redacted] of [redacted] s [redacted] [redacted] program, describe the Petitioner's work during his graduate studies. They explain that for his thesis, he focused on [redacted] and that this work resulted in a [redacted] system that was used in the program's immersive facility. [redacted] lists two conference papers, a doctoral dissertation and a master's thesis that cite to the Petitioner's thesis, which he states "confirms its pioneering importance." In her letter [redacted] [redacted] describes other projects that the Petitioner completed during his time at [redacted] all of which were included in the annual [redacted]. However, as noted in the Director's decision, the assertions by these experts that these were contributions of major significance to the Petitioner's field are not supported by documentary evidence. The record does not include copies of the citing articles, or other evidence which would otherwise indicate the extent and nature of the influence of the Petitioner's work on the authors or on the overall field. [redacted]'s conclusion that his work has "contributed significantly to the landscape of immersive and generative art as well as [redacted]" simply repeats the regulatory language and provides no measure of the significance of the Petitioner's contributions as a graduate student, particularly to the broader field beyond [redacted].

On appeal, the Petitioner expands his claim to this criterion to the additional reference letters submitted with his petition, and in particular those from [redacted], CEO of [redacted] and [redacted] CEO of [redacted] both former employers of the Petitioner.<sup>2</sup> These letters describe many projects that the Petitioner contributed to during his employment with these companies, and refer to media coverage of the projects which is included in the record. [redacted]'s letter concludes that the Petitioner's work "has contributed significantly to the [redacted] experiences, directly impacting their cultural outreach." While this is undoubtedly true, his impact on these individual projects does not show that his work has impacted or influenced the overall field in any way. Although [redacted] also writes about the Petitioner's contribution to the company's open source software toolkits, which he states are widely used by others in the field of creative technology to create user interfaces, the record does include evidence to support this statement or show the impact of these toolkits on the broader field.

Similarly, the Petitioner's work on immersive projects for the [redacted] and other [redacted] was described in a letter from [redacted], Director of [redacted]. She indicates that she worked directly with him on digital installations for the [redacted] in the [redacted], and also that she is familiar with his work on an installation at the [redacted]. She also refers to the Petitioner's "significant contributions to the [redacted] public space, and Creative Technology field," but does not expand upon what these are beyond the completion of these projects.

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<sup>1</sup> Because the Petitioner has submitted evidence which he asserts supports his claim to the criterion at 8 C.F.R. § 204.5(h)(3)(v), he cannot demonstrate that this criterion does not apply to his occupation as required under 8 C.F.R. § 204.5(h)(4). We will therefore not further address his claim to have submitted comparable evidence.

<sup>2</sup> All of the reference letters submitted have been reviewed, including those not specifically mentioned in this decision.

Other letters also describe the Petitioner's contributions to immersive projects installed at several venues, and praise his work and the impact it had on these projects. However, although they confirm that he has played an important role in several creative technology projects which have been well received, they do not establish that his influence has reached beyond those individual projects to affect the way others in his field do their work, or has otherwise made original contributions of major significance. Accordingly, we agree with the Director that the Petitioner has not established that he meets this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix)

The Petitioner submitted several forms of information regarding his salary, including Forms W-2 for the years 2017, 2018 and 2019. These show that in those years, he earned more than \$117,000, \$121,000 and \$125,000, respectively. To show that his salary was high in relation to others in his field, he submitted the May 2019 edition of the *Occupational Outlook Handbook's* (OOH) section about graphic designers, which shows that in the [ ] metropolitan area where he lives and works, the annual mean salary is \$68,690.

In responding to the Director's RFE, and specifically his statement that the record did not include evidence to show that his salary was high in relation to other creative technologists, the Petitioner asserted that no statistics were available for that specific occupation "on the BLS website," and that the occupation of graphic designer "most mirrors the responsibilities and aspects of [the Beneficiary's] position, work in the field, and achievements as a "Creative Technologist."" On appeal, the Petitioner repeats these arguments, and reminds the AAO that he must only establish that he has met the requirements for this criterion by a preponderance of the evidence. Upon review, we agree with the Director that he has not done so.

We first note that the fact that salary data does not exist for the specific occupation of creative technologist on the websites where the Bureau of Labor Statistics salary data is posted does not relieve the Petitioner of his burden to submit evidence in support of his assertions. The Director's RFE suggested several types of evidence that could be submitted by the Petitioner to show the relative salaries of others in his field, including media reports, lists or reports from professional organizations (such as SEGDA), and other compensation surveys. The Petitioner chose not to submit such evidence despite the Director's specific request, and does not assert that this evidence also does not exist for the occupation of creative technologist.

In addition, the Petitioner provides no support other than his own assertion for his position that the salary statistics for the position of graphic designer serve as an appropriate basis to compare his salary to that of others in his field. This is particularly striking because at the bottom of the first page of the OOH section on graphic designers it is stated that the occupational code for that occupation, 27-1024, excludes "Web and Digital Interface Designers." In addition, evidence in the record repeatedly refers to the Petitioner's previous job titles as "developer" and "senior developer" and describe his use of various software tools, thereby suggesting more appropriate occupational codes for which BLS data is readily available. Therefore, the Petitioner has not submitted evidence to establish that his salary is high in relation to others in his field, and does not meet this criterion.

### 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 that 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.

**ORDER:** The appeal is dismissed.