



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

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

In Re: 20812457

Date: AUG. 26, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a tattoo artist, seeks classification as an individual of extraordinary ability in the arts. *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 requirement for this classification through evidence of either a one-time achievement or that he meets three of the alternative evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

On appeal, the Petitioner submits additional documentation and a brief asserting that he fulfills at least three of the ten criteria at 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)(A) 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 sustained acclaim and the 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 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

### A. Evidentiary Criteria

The Petitioner is currently employed as a tattoo artist at [redacted] in [redacted]. [redacted] 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). In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, published material 8 C.F.R. § 204.5(h)(3)(iii) and artistic display at 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains that he also meets three additional evidentiary criteria, which will be discussed below.

*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)

To meet this criterion, the Petitioner must demonstrate his prizes or awards are nationally or internationally recognized for excellence in the field of endeavor.<sup>1</sup> Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field including, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.<sup>2</sup>

Here, the Petitioner submitted documentation indicating that he received the following awards:

- “Best Large Color” second place at the [redacted] (2019)

<sup>1</sup> *See* 6 USCIS Policy Manual F.2, *Appendices*, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>.

<sup>2</sup> *Id.*

- “Best of Day” at the [redacted] Tattoo Expo (2019)
- “Best Tattoo of Second Day” first place at the [redacted] Tattoo Week (2018)
- “Medium Color” first place and “Tattoo of the Day (Color) Saturday” third place at the [redacted] Tattoo Arts Convention (2019)
- “Best Large Color Tattoo” at the [redacted] Tattoo Arts Convention (2018)
- “Best Large Color” and “Best Portrait” at the [redacted] Tattoo Festival (2019)
- “Best Asian Theme” second place at the [redacted] Tattoo Competition (2019)
- “Third place in the category ‘Best of Color’” at the Tattoo Convention [redacted] (2018)
- “Best of Black and Grey” second place and “Best of Color” second place at the “Tattoo Convention [redacted] (2018)

While the Petitioner provided promotional information about the above tattoo expositions from their organizers’ websites and some media coverage relating to several of the events, this documentation does not indicate the significance of his particular awards. In addition, letters from the organizers of the [redacted] Tattoo Expo, [redacted] Tattoo Expo, [redacted] Tattoo Week, and the [redacted] Tattoo Arts Convention mention the Petitioner’s awards and discuss their tattoo conventions, but the record does not include evidence showing that the Petitioner’s specific awards were recognized by the field in general or outside of the aforementioned events. Without further information regarding the selection criteria for his awards or evidence of their national or international significance in the field, the Petitioner has not demonstrated that they are nationally or internationally recognized awards for excellence in the field. The Petitioner has not established therefore that he meets this regulatory 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.<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.

In his appeal brief, the Petitioner argues that the Director disregarded letters from experts in his field that were provided in response to the Director’s request for evidence.<sup>4</sup> He contends that these letters demonstrate that he “has made unique contributions of major significance to the field.”<sup>5</sup> As discussed below, these letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to demonstrate the nature of specific “original” contributions that the Petitioner has made to the field that have been considered to be of major significance.

For example, [redacted] owner of [redacted] asserted that the Petitioner’s “art is exceptional in [redacted] and Realistic Color. . . . [The Petitioner] has created a new style as far

<sup>3</sup> See 6 USCIS Policy Manual, Appendices, supra, at F.2.

<sup>4</sup> The appellate brief also lists a “sponsorship agreement from [redacted] dated September 2021,” but the document is unsigned, and the agreement post-dates the filing of the petition. Eligibility, however, must be demonstrated at the time of filing. See 8 C.F.R. § 103.2(b)(1).

<sup>5</sup> While we discuss a sampling of these letters, we have reviewed and considered each one.

as tattoo segment is concerned as one can clearly see how peers are getting inspired by this unique technique and trying to copy him all around the world.” Likewise, [redacted] owner of [redacted] tattoo shop in [redacted] California, contended that the Petitioner “has created a unique artistic movement which did not exist before. He calls it the [redacted] style. His designs are inspired by painters, movies, music and street culture of the 80’s and 90’s. This is really something innovative in our industry and entirely new in the tattoo world.” The statements from [redacted] and [redacted] however, are insufficient to demonstrate the Petitioner’s work has influenced the tattoo industry to the extent that it is of major significance in the field. The record does not include sufficient information or supporting evidence demonstrating that the Petitioner’s artistry has affected the field in a substantial way or otherwise constitutes original contributions of major significance in his field.

In addition, [redacted] a tattoo artist with [redacted] in [redacted] Poland, indicated that the Petitioner “created a new style which includes hyper realistic portraits of famous actors, or characters, all connected to the [redacted] of the United States. He created his own signature brand . . . . [The petitioner’s] art is exceptional in color hyper realistic [redacted]” Similarly, [redacted] owner of [redacted] in [redacted] Canada, stated that the Petitioner “is an extraordinary tattoo artist who has created his own artistic movement called the [redacted]” She further claimed that “many artists all over the world are influenced by [the Petitioner’s] art and some have already begun implementing his style in their own creations,” but she does not identify those individuals who have implemented his style, nor does the record show his level of influence on other tattoo artists in the field. While [redacted] and [redacted] both asserted that the Petitioner has created a new artistic style, they did not offer specific examples of how his [redacted] artistry has risen to the level of a contribution of major significance in his field.

Letters that specifically articulate how the individual’s contributions are of major significance to the field and his impact on subsequent work add value. Letters that lack specifics and simply 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>6</sup> Moreover, 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). Without sufficient information and evidence demonstrating that his work constitutes original contributions of major significance in the field, the Petitioner has not established that he meets this criterion.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

To qualify under this criterion, a petitioner must show that they played a leading or critical role for an organization or establishment, and that that organization or establishment has a distinguished reputation. When evaluating whether a role is leading, we look at whether the evidence establishes that the person is or was a leader within the organization, or a department or division thereof. A title, with appropriate matching duties, can help to establish that a role is or was leading. For a critical role, we look at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities or those of a division or department of the organization or establishment.<sup>7</sup>

<sup>6</sup> See 6 USCIS Policy Manual, Appendices, *supra*, at F.2.

<sup>7</sup> *Id.*

The Petitioner maintains on appeal that he has performed in a critical role for [redacted], [redacted], and [redacted] YouTube Channel, [redacted], [redacted], and [redacted].

With regard to his role for [redacted] the evidence indicates that the Petitioner has served as a tattoo artist at the shop since 2018. In his letter dated September 30, 2021, studio owner [redacted] stated: “Our studio has greatly benefited from [the Petitioner’s] contributions and he has played a critical role in its fast growth. Having [the Petitioner] as a member of our team has definitely made our tattoo studio strive [*sic*] and gave it the recognition we had anticipated.” While [redacted] asserted that his shop employs a number of “first class tattoo artists” and that the Petitioner’s work is “in very high demand in our studio,” he did not provide specific, detailed information demonstrating the critical nature of the Petitioner’s role.<sup>8</sup> For instance, [redacted] letter did not indicate the amount of revenue or new clients the Petitioner has brought into his studio, or otherwise explain how the Petitioner’s role was critical relative to the other tattoo artists employed at the shop. Nor did [redacted] letter identify specific examples of how the Petitioner has garnered recognition for the studio in a way that has been of significant importance to the outcome of the studio’s business. Accordingly, the evidence is insufficient to demonstrate that the Petitioner has performed in a critical role for [redacted].

The record also includes letters from [redacted], [redacted], and [redacted] indicating that they have endorsement or sponsorship relationships with the Petitioner. For example, [redacted] co-founder of [redacted] stated:

We are proud to be working with [the Petitioner] for our brand [redacted] as well as our [redacted] YouTube channel which averages over 3 million views a month . . . . [W]e are honored to be working with [the Petitioner] on his custom [redacted] [redacted] and we look forward to a long and successful relationship together.

....

We entered into a formal agreement with [the Petitioner] and he personally designed his 2019 [redacted] which we put into production the same year.

....

[The Petitioner] has permitted further global exposure of our line of [redacted] as well as our brand around the world. His role as an ambassador for our brand has been critical to our company as it has substantially increased our sales globally. Collaborating with artists . . . such as [the Petitioner] is critical to promoting our brand within the particular market niche our products cater to.

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<sup>8</sup> See 6 USCIS Policy Manual, Appendices, *supra*, at F.2 (stating that letters from individuals with personal knowledge of the significance of a petitioner’s leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

[redacted] statements do not offer specific sales figures for the [redacted] designed by the Petitioner or discuss his particular contribution in the context of the company's total sales revenue. Nor does [redacted] elaborate on the Petitioner's involvement with the [redacted] YouTube channel or the importance of his role relative to the many other artists who participate in the [redacted]. Without detailed and probative information showing that the Petitioner's particular [redacted] or promotional work has resulted in critical or essential outcomes for [redacted] or the [redacted] YouTube channel, the evidence does not establish that he has performed in a critical role for the company.

In addition, [redacted] owner of [redacted] asserted that his company "has greatly benefited from [the Petitioner's] critical endorsement of our products. We have planned to produce his personal [redacted] because he uses such a unique range of colors and skin tones in his tattoos."

Likewise, [redacted] creative director at [redacted] stated:

[The Petitioner] is a tattoo artist sponsored by [redacted]. After using our products for years, [the Petitioner] has become a very valuable addition to our business by promoting our products and brand when attending international and national conventions. . . . [The Petitioner] helps us by spreading brand awareness worldwide and proving that our quality is as high-quality as his work.

Additionally, [redacted] owner of [redacted] asserted that the Petitioner "is amongst our brand ambassadors of international reputation. He has been essential in the promotion of our brand worldwide as he participates in international conventions all year long." [redacted] further indicated that the Petitioner's "contributions thus far have been critical to further exposing our products to other markets and increase our sales globally."

The Petitioner also submitted his May 2018 – May 2020 "Sponsorship Contract" with [redacted]. His obligations under this contract included using [redacted] providing photographs of his completed tattoos with the [redacted] promoting the company on social media, and displaying [redacted] publicity material while at conventions.

The Petitioner, however, has not demonstrated that his specific endorsement and sponsorship collaborations with [redacted], [redacted] and [redacted] are integral to their operations as [redacted] product producers and distributors such that his promotional activities rise to the level of a critical role. For example, the record does not indicate the amount or percentage of their company sales growth attributable to his product endorsements. While the evidence indicates that the Petitioner has helped promote their brands, the information provided in the aforementioned letters and sponsorship contract is insufficient to demonstrate that his specific role was critical for the successes or outcomes of their business operations.

In addition, the evidence concerning [redacted], [redacted], [redacted], [redacted] and [redacted] does not establish that they have a distinguished reputation. For instance, the Petitioner provided articles about [redacted] in *Orange County Weekly* and *Tokewell* magazine, but he has demonstrated that this level of media coverage is insufficient to show

that the company has a distinguished reputation.<sup>9</sup> The record also includes information about the aforementioned companies from their own websites, but such self-promotional information is not sufficient to demonstrate that they have earned a distinguished reputation.

For all of the above reasons, the Petitioner has not established that he meets this criterion.

#### B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1B status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved multiple O-1B nonimmigrant visa petitions filed on behalf of the Petitioner, the prior approvals do not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Sunlift Int'l v. Mayorkas, et al.*, 2021 WL 3111627 (N.D. Cal. 2021); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).<sup>10</sup>

### 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).

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<sup>9</sup> *See* 6 USCIS Policy Manual, Appendices, *supra*, at F.2 (stating that Merriam-Webster's online dictionary defines distinguished as marked by eminence, distinction, or excellence).

<sup>10</sup> *See also* 6 USCIS Policy Manual, *supra*, at F.2(B)(3).

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.