



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

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

In Re: 19407241

Date: JAN. 21, 2022

Appeal of Nebraska Service Center Decision

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

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

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

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate

international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

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

## II. ANALYSIS

The Petitioner, a citizen of Peru, is a [ ] artist and [ ] painter. Because he has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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

- (i), Lesser Awards;
- (iii), Published material in major trade publications or other major media;
- (v), Original Contributions
- (vii), Display of work at artistic exhibitions or showcases.
- (viii), Leading or Critical Role
- (x), Commercial Success

The Director found that the Petitioner met only one of the evidentiary criteria pertaining to display of his work at artistic exhibitions or showcases. On appeal, the Petitioner maintains that he meets two additional criteria relating to his receipt of lesser nationally or internationally recognized prizes or awards and published material. The Petitioner has not pursued his initial claim that he meets the criteria related to original contributions under 8 C.F.R. § 204.5(h)(3)(v), performing in a leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii), or commercial success under 8 C.F.R. § 204.5(h)(3)(x). Therefore, we deem these issues to be waived and will not address these criteria in our decision. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

After reviewing all of the evidence in the record, we concur with the Director's determination that the Petitioner has satisfied the criterion related to artistic display. However, the record does not reflect that he has met the requisite three evidentiary criteria.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

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

This criterion contains several evidentiary elements the Petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that an individual is the recipient of the prizes or the awards (in the plural), that the awards are nationally or internationally recognized, and that the plain language of the regulation also requires evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to the event. The Petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The Petitioner claims that he has participated in numerous competitions in Peru and received awards for excellence in his field, including 1st Place in the [redacted] Painting Competition and 1st Place in [redacted] contest, both in 2001. In support of this assertion, the Petitioner submitted several newspaper articles discussing the competitions published in *La Industria*, which the Petitioner claims is the daily newspaper of the City of [redacted]. The Petitioner also claimed that he was invited to participate in various other competitions, and that he also engaged in a subsequent display of his work with other prior winners of the [redacted] competition in 1992. Counsel's letter of support also claimed that the Petitioner won 3rd Place in the [redacted] [redacted] Painting Competition, but no documentation to support this assertion was submitted.

In a request for evidence (RFE), the Director noted that the Petitioner had not demonstrated that the claimed awards were nationally or internationally recognized, and requested additional evidence in support of his eligibility under this criterion.<sup>1</sup> In response, the Petitioner submitted screenshots from the websites [www.eldominical.pe](http://www.eldominical.pe) and [www.larepublica.pe](http://www.larepublica.pe) in support of the claimed national recognition of the [redacted] contest, as well as a screenshot of the website [www.peru.com](http://www.peru.com) which the Petitioner claimed displays photos of his artwork. No additional evidence pertaining his [redacted] [redacted]' award the [redacted] Painting Competition was provided.

In denying the petition, the Director determined that the record was insufficient to demonstrate that any of the claimed awards were nationally or internationally recognized for excellence in his field of endeavor. The Director determined that absent evidence that the awards received coverage in major media or major trade publications, the level of national or international recognition of the awards could not be determined. Further, the Director noted that the record lacked documentation from the awarding entities detailing the nature of the competitions.

At the outset, we note that the Petitioner did not submit certified English language translations for any of the documents it submitted in support of this criterion. As noted by the Director in the RFE, all foreign language documents must be accompanied by a full translation that the translator certifies

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<sup>1</sup> See 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field).

pursuant to 8 C.F.R. § 103.2(b)(3). That provision states: “Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” The record reflects that both at the initial filing and in response to the RFE, the Petitioner presented an English translation for each submitted document but did not provide any certificates of translation. The English translations do not contain a certification from the translator certifying that the translations are complete and accurate, or that the translator is competent to translate from the foreign language into English. In fact, none of the translations even identify the translator. Because the Petitioner did not offer properly certified English language translations, we cannot meaningfully determine whether the translated material submitted before the Director is accurate and thus supports his claims.

On appeal, the Petitioner focuses on the [redacted] Painting Competition, and asserts that the Director’s finding that this award lacked national or international recognition was erroneous. In support of this assertion, the Petitioner submits a letter from [redacted] Cultural Manager and organizer for the [redacted] Painting Competition from 1991-2005. [redacted] provides additional information about the contest, explaining that it was sponsored by [redacted] and the [redacted] in conjunction with the Municipality of [redacted] where it took place. In her letter, she states that the Petitioner was the 1st place winner of the contest in 2001 and the 3rd place winner of the contest in 2000. According to contest terms and conditions submitted with her letter, the contest was open to Peruvian citizens and resident foreigners, and allowed each entrant to submit one work of art, with the “techniques used and topics on which they are based” to be freely chosen. [redacted] also confirmed that the competition has been covered in *La Industria*, as previously asserted by the Petitioner.<sup>2</sup>

The Petitioner relies on this evidence, and the perceived reputation of the [redacted] company nationally and internationally, as sufficient evidence to establish that the competition is nationally recognized in Peru. The Petitioner also points to a letter from [redacted] Chairman of the Jury of the competition that was previously submitted, who stated that the Petitioner had won numerous national awards and was recognized for his work throughout Peru.

Upon review, we agree with the Director’s determination. Although the Petitioner demonstrated that he received the above-referenced awards, he did not submit sufficient documentary evidence that the awards garnered national or international-level media coverage to demonstrate that his prizes or awards satisfy the plain language requirements of this criterion. The record indicates that the [redacted] Painting Contest received media coverage in *La Industria*, which appears to be a local newspaper based in the city of [redacted]. Despite the assertions of the Petitioner and [redacted] who claim that the publication has significant media reach, there are no objective circulation figures for the publication showing that its news coverage is indicative of national or international recognition. Moreover, as previously noted, the articles submitted from *La Industria* were not accompanied by the requisite certified English translations, and therefore have little probative value.

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<sup>2</sup> Unlike the evidence submitted prior to adjudication, all foreign language material submitted on appeal was accompanied by certified English translations as required by 8 C.F.R. § 103.2(b)(3).

Moreover, despite the Petitioner's assertions regarding the prestigious reputation of the contest, the record is insufficient to support such claims. We acknowledge the supplemental documentation submitted on appeal provides additional information regarding the contest, including the fact that it is open to all Peruvian citizens or resident foreigners. However, while the Petitioner provides evidence indicating the winners were selected from a pool of national contestants, he has failed to produce evidence that this award is recognized at a national level. Selection from a national pool of candidates does not necessarily impart national significance to an award. Again, media coverage by newspapers specific to one location or region, such as *La Industria*, is insufficient to reflect the award is nationally or internationally recognized.

The Petitioner did not establish that the prizes and awards are nationally or internationally recognized for excellence in the field, or that the reporting entities enjoy a national or international audience.<sup>3</sup> For these reasons, the Petitioner did not demonstrate that he satisfies this criterion.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)*

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

In support of the petition, the Petitioner submitted several magazine and newspaper articles from publications including *Aparte*, *Ellos y Ellas – Caretas*, *Enfoque* (the Sunday Supplement of *La Industria*), *El Comerico*, *La Industria*, *Expreso*, and *Ophelia* accompanied by certified English translations. Noting that the record did not establish that these articles were published in professional or major trade publications or other major media, the Director requested additional evidence regarding these publications and their circulation statistics.

In response to the RFE, the Petitioner submitted evidence of a YouTube video entitled [redacted] which the Petitioner claimed was aired on Peruvian television in [redacted] 2015. He also submitted additional evidence, such as excerpts from the website [www.peru.com](http://www.peru.com) regarding his work and an article published in *Peru Shrimp*.

In denying the petition, the Director noted that while the Petitioner asserted that the submitted articles were published in major media or professional or major trade publications, he did not supplement the

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

record with evidence such as published circulation statistics. The Director also declined to afford evidentiary weight to the Petitioner's YouTube video.

On appeal, the Petitioner asserts that the Director failed to properly analyze information regarding the media. The Petitioner submits a letter from the Peruvian Radio and Television Institute, which is addressed to the Petitioner and indicates it is in response to the Petitioner's request for "a copy of the [redacted] program where you were interviewed on [redacted] 2015." Although the letter states that the aforementioned program "aired from 2015 to 2019," and provides link to download a copy of the program, there is no information regarding where this program was aired, the nature of this interview, or the extent to which the Petitioner was interviewed.

This regulatory criterion requires "published material" in professional or major trade publications or other major media and "the title, date, and author of the material." Video clips are not published material in professional or major trade publications or other major media consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Absent additional evidence, the Petitioner did not establish that the screenshot of the YouTube video constitutes published material about him relating to his work. The Petitioner did not provide a transcript or other evidence detailing or showing the content of the material.

The Petitioner also provided no information related to the distribution data of the newspapers or magazines in which the presented articles were featured to establish this published material has a national rather than a regional reach within country. Publications with only a regional reach are not generally considered to be major media and the Petitioner has not established these publications are professional or major trade publications as required by the regulation. The Petitioner submitted no additional evidence that might amount to major media, professional publications, or major trade publications, and on appeal acknowledges that "[a]dmittedly we did not provide circulation statistics for the publications where articles appeared about the beneficiary and his work," and that "we made every effort to secure circulation statistics without success." Although the Petitioner asserts that *El Comercio* "is the oldest and largest national newspaper in Peru" and provides a report from Reporters Without Borders commenting on the Internet traffic for the El Comercio Group, this documentation alone does not demonstrate that *El Comercio* is a professional or major trade publications or other major media as contemplated by this criterion. Additionally, the Petitioner's assertions regarding the publication *La Industria* are not supported by independent, objective evidence.

Further, as noted by the Director, USCIS need not rely on the self-promotional material of the publisher. See *Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at \*7 (C.D. Cal. July 6, 2007) *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on a company's self-serving assertions on the cover of a magazine as to the magazine's status as major media). Additionally, as the Director further noted, there are no assurances about the reliability of the content from *Wikipedia*, an open, user-edited internet site. See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).

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

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.