



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

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

In Re: 15236626

Date: JAN. 24, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a wood carving craftsman, 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 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 wood carving craftsman, specializes in the field of woodcarving. He claims that he has worked as a wood craftsman and has displayed his works at numerous venues and exhibitions.

A. Procedural History

The Petitioner's initial Form I-140 indicated he was applying for a national interest waiver as a member of the professions holding an advanced degree or an individual of exceptional ability.¹ *See* the Act section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director issued a request for evidence (RFE) noting the table of contents and submitted evidence indicated the Petitioner sought classification as an individual of extraordinary ability rather than an individual of exceptional ability and therefore would consider the petition as a request for an individual of extraordinary ability. The RFE requested additional evidence to determine if the Petition met seven of the ten criteria for an individual of extraordinary ability under 8 C.F.R. § 204.5(h)(3)(i) – (x). The Petitioner responded to the RFE with a letter from counsel stating the Petitioner “is an individual of extraordinary ability in the field of woodcarving, who has demonstrated that he has sustained national and international acclaim and that his achievements have been recognized in his field of expertise. Additionally, he submitted more evidence for consideration as an individual of extraordinary ability and did not contest the Director's decision to proceed with an analysis of the criteria under 8 C.F.R. § 204.5(h)(3).

The Director denied the petition, noting that he considered the Petitioner's initial request to seek classification as an alien of exceptional ability to be a clerical error and found the Petitioner did not meet the criteria for an individual of extraordinary ability. On appeal, the Petitioner submits a letter from counsel indicating he now wishes to be classified as “an individual of exceptional ability in accordance with section 203(b)(2) of the Act ... and/or as an individual with extraordinary ability in accordance with section 203(b)(1) of the Act.” We are unable to consider both visa preference

¹ In the initial I-140, the Petitioner checked box 1.h in Part 2, Petition Type, indicating he was applying for a national interest waiver as a member of the professions holding an advanced degree or an individual of exceptional ability.

categories as the Petitioner must file a separate Form I-140 for each requested visa category and pay the required fee for each submitted Form I-140, which the Petitioner has not done in this case.² Additionally, a petitioner may not raise a previously unclaimed eligibility criterion for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). *Cf. Matter of Jimenez*, 21 I&N Dec. 567, 570 n.2 (BIA 1996) (finding that claims of eligibility for a waiver presented for the first time on appeal are not properly before the Board of Immigration Appeals and that the Board will not issue a determination on the matter). If the petitioner had wanted those claims to be considered, he should have presented those claims and submitted evidence pertaining to those claims with the petition.

We will therefore only consider whether the Petitioner has satisfied the criteria for recognition as an individual of extraordinary ability as that is the visa category to which the Petitioner submitted evidence during his initial petition as well as in response to the Director's RFE.

B. Evidentiary Criteria

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 seven of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), summarized below:

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

The Director found that the Petitioner met only one of the evidentiary criteria pertaining to participation as a judge of the work of others in his field. On appeal, the Petitioner maintains that he meets the additional criteria. After reviewing all of the evidence in the record, we concur with the Director's determination that the Petitioner has satisfied the criteria related to participation as a judge. 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.

² Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Worker, *If You Want USCIS to Consider Multiple Visa Categories for a Beneficiary*, located at: <https://www.uscis.gov/forms/all-forms/petition-filing-and-processing-procedures-for-form-i-140-immigrant-petition-for-alien-worker>.

The Petitioner claims that he has received numerous awards for excellence in his field. While the Director acknowledged his submissions of documentation establishing his receipt of numerous awards, he determined that the Petitioner has not demonstrated that the referenced awards were nationally or internationally recognized.

On appeal, the Petitioner asserts that the Director's decision was erroneous, noting that the letters and documentation submitted in support of the petition establish the national and international recognition of the awards beyond the awarding entities. For example, the Petitioner asserts that his selection for the UNESCO Seal of Excellence required him to meet a rigorous selection criteria, as explained in documentation from UNESCO. He further asserts that his receipt of two "Best Craftsman of the Year" awards in 2012 and 2015 from [redacted] competitions in [redacted] constitutes a nationally recognized award as recognition of his craftsmanship. In support of his assertion, the Petitioner provided UzDaily online articles announcing the 2015 [redacted] competition would be taking place as well as the announcement of the winners from the 2015 competition.

Upon review, we agree with the Director's decision. While the record indicates the Petitioner received the UNESCO Seal of Excellence it does not establish that this constitutes an award that is nationally or internationally recognized. A prize or an award does not garner national or international recognition from the competition in which it is awarded, nor is it derived from the individual or group that issued the award. Rather, the national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. This recognition should be evident through specific means; for example but not limited to, national or international-level media coverage. Here, the Petitioner has not submitted documentation indicating that his receipt of this award was nationally or internationally recognized.

Additionally, the Petitioner submitted evidence alleging he received two awards for Best Craftsman of the Year from [redacted] competitions in 2012 and 2015. However, the media article submitted regarding the 2015 [redacted] competition does not list the Petitioner as an award winner from the competition but instead lists another participant as earning the Best Craftsman award. When the record includes inconsistent evidence, "it is incumbent upon the [P]etitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner's submission of a certificate indicating he was awarded Best Craftsman of the Year during the 2015 [redacted] does little to clarify whether it was the Petitioner or the other individual listed in the article that won Best Craftsman of the Year. As such, the Petitioner has not shown that he earned an award in 2015. Furthermore, the Petitioner has not submitted any documentation indicating his receipt of the 2012 award was nationally or internationally recognized.

The Petitioner has not submitted evidence indicating these awards were nationally or internationally recognized. While the above materials, and others in the record,³ confirm the Petitioner's receipt of various awards, they do not demonstrate the national or international significance of the awards won.⁴

³ While we only discuss a sampling of the documents here, we have reviewed the record in its entirety.

⁴ *See 6 USCIS Policy Manual F.2 appendix*, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing

The record lacks other evidence establishing that these awards are nationally or internationally recognized for excellence in the wood craftsman field, as required.

For the reasons discussed above, the Petitioner has not submitted documentation sufficient to establish his eligibility for this criterion.

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).

The Petitioner claimed his membership in [redacted] the Association of Artisans, Craftsmen, and Folkists of [redacted]. After reviewing the Petitioner's material, the Director determined that he did not meet the requirements of this criterion because he did not establish that the associations required outstanding achievements as a condition of membership or that admittance was determined by nationally or internationally recognized experts in the field. Specifically, the Director determined that while the record contained letters from individuals discussing the membership requirements for the association, they were not supported by corroborating evidence. On appeal, the Petitioner reiterates that the support letters previously submitted by association members demonstrate that he meets this criterion.

After reviewing the record, we agree with the Director that the Petitioner has not established that his claimed association requires outstanding achievements to qualify for membership. For example, the Petitioner presented evidence that he was a member of [redacted] and relied on a letter from the unidentified head of [redacted] Regional Department of [redacted], who outlined the requirements the Petitioner met for membership.⁵ While the author of the letter stated the [redacted] Association requires outstanding achievement of its members, as judge by nationally or internationally recognized experts in the respective fields of Folk Arts," no independent documentation to support these assertions was submitted. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), c~ff'd, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). A letter from [redacted] CEO of [redacted] indicated the association covered 13 departments and 157 divisions with 15,000 craftsmen as members. However, the letter does not describe the requirements of membership in [redacted].

While the referenced letters confirm the Petitioner's claimed memberships in the above-referenced association, along with their missions, he failed to submit evidence of the membership requirements for these associations. The record lacks documentation, such as bylaws, membership requirements, or other appropriate evidence, establishing that the

guidance on the review of evidence submitted to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)) (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field).

⁵ The name of the author of the letter was not translated or otherwise identified in the record.

organization requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or field.⁶

For the reasons discussed above, the evidence does not demonstrate that the Petitioner satisfies the regulatory requirements of the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii).

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 support of the petition, the Petitioner submitted an undated article titled [redacted] written by [redacted].⁷ The article offers a brief biography of the Petitioner as well as his background in wood carving but does not indicate where the article was published. The Petitioner submitted a letter, dated October 2018, from [redacted] the [redacted] of *Buxoroyi Shifokori*, which asserts the Petitioner published an article, titled [redacted] in *Buxoroyi Shifokori* about rug weaving in [redacted] Uzbekistan, and claims the Petitioner's expertise lies in oriental rugs. The letter concludes that the Petitioner has published an article in *Buxoroyi Shifokori* regarding the art of wood carving titled [redacted] which appeared in the paper on [redacted] 2017, and was edited by [redacted]. In response to the Director's RFE, the Petitioner submitted a letter dated April 16, 2020, from [redacted] the [redacted] of *Buxoroyi Shifokori*, which states [redacted] edited an article about the Petitioner titled [redacted]. The letter claims the article describes the Petitioner's "novel decorations of customary workmanship" and indicates *Buxoroyi Shifokori* is a weekly "Wednesday newspaper supplement" dedicated to fashion, living, beauty, etc. and is published on a weekly or monthly basis.

Here, we find the Petitioner has not submitted evidence that the published material about him appeared in professional or major trade publications or other major media. The first letter from the publisher has little probative value as it described a separate article published by the Petitioner about rug weaving, which is unrelated to the Petitioner's work in the wood working field, while giving no information about *Buxoroyi Shifokori*'s status as a professional or major trade publication or other media. Additionally, the second letter from the publisher described *Buxoroyi Shifokori* as a weekly newspaper supplement but provided no documentation indicating *Buxoroyi Shifokori* is a professional or major trade publication or has a significant national or international distribution that would indicate it would qualify as major media.

We also find that the Petitioner has not provided the published item's title, date, and author. Here, the record contains inconsistencies regarding the title of the published item. The title appearing in the copy of the published item submitted with the original petition differs significantly from the titles listed in the

⁶ Although the Director specifically requested documentation such as the relevant sections of the bylaws and constitutions to demonstrate the membership requirements of the respective organizations and associations, the Petitioner declined to submit such evidence. As the record does not contain official documentation of the associations' membership criteria, we cannot evaluate whether the Petitioner's memberships are qualifying. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

⁷ The translation of the article did not include a date of publication or indicate where the article was published. [redacted] [redacted]'s name appeared at the bottom of the translated article but no other authors were identified.

two letters from [redacted] of *Buxoroyi Shifokori*. Additionally, the copy of the published item attributes [redacted] as the author while the letters from the publisher indicated the Petitioner authored the article himself while [redacted] was the editor. The record contains inconsistent documentation relating to the title and author of the published item, which must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not contain any independent, objective evidence that clarifies the title of the published item or the name of the author.

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

Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only have they made original contributions but that those contributions have been of major significance in the field.⁸ For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. Here, the Petitioner contends that his ability to revive [redacted] methods to make woodworking more sustainable, his “rethinking and creative modification” of [redacted] woodcarving styles, along with several reference letters commenting on these achievements, demonstrate his eligibility for this criterion.

Regarding the Petitioner’s reference letters, although he provided evidence reflecting the originality of his wood working through recommendation letters praising him for his works, the authors do not provide specific examples of contributions that are indicative of major significance. In general, the letters recount the Petitioner’s achievements in wood working but do not demonstrate that his contributions in the field of wood working have made the required impact in the field. On appeal, the Petitioner asserts that the Director’s discounting of the numerous opinion letters he submitted was erroneous. Upon review of the record, we concur with the Director’s determination that the Petitioner did not satisfy the requirements of this criterion.

The Petitioner provided a letter from [redacted] director of [redacted] [redacted] that stated the Petitioner had a “huge impact on [redacted] [redacted] craftsmanship.” [redacted] claimed the Petitioner is an “internationally acclaimed artist and master of decorative and architectural wood carving” as well as the “[w]inner of the coveted title of International Wood Carver of the Year, awarded by the [redacted] The letter from [redacted] also alleges the Petitioner “produced treasures that grace royal palaces and architecture of all kinds.”

Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*,

⁸ *See 6 USCIS Policy Manual* F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing guidance on the review of evidence submitted to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)).

22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Here, the letter from [redacted] does not appear credible as [redacted] does not mention how he became familiar with the Petitioner's work and the assertions made regarding the Petitioner's award of International Wood Carver of the Year as well as having his products displayed in royal palaces are not corroborated by independent evidence in the record. The record does not include evidence of, or mention of, an International Wood Carver award. Additionally, the record does not mention the Petitioner's work being displayed in royal palaces as the documentation of the Petitioner's work product in the record only includes a business card and unattributed pictures of the Petitioner sitting in front of a display of finished wood working crafts as well as pictures purporting to be wood working products completed by the Petitioner.

The letters from the Petitioner's business colleagues, [redacted] and [redacted] indicate the Petitioner uses the highest quality materials and creates outstanding wood carvings. However, the letters do not provide specific examples of the Petitioner's contributions to wood carving or how his contributions influenced the wood carving field. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.⁹ Although the Petitioner's colleagues recognize the Petitioner's talent, they do not describe the Petitioner's accomplishments with specificity or provide a nexus between his talents and the manner in which he has made original contributions of major significance in his field.

Similarly, the letters from [redacted] from the [redacted] and [redacted] [redacted] from [redacted] indicate the Petitioner is very talented in his field but do not specifically identify his contributions or indicate how they influenced his field. For example, [redacted] stated the Petitioner has an "innovative nature and is an accomplished ace" who has been "highlighted in both neighborhood and national magazines and books." [redacted] stated the Petitioner is a "regarded master of his work" who "adorns his artful culmination with splendidly and uncommon completed points of interest." While these letters include high praise for the Petitioner, they do not contain enough specificity regarding the Petitioner's contributions to wood working or how these contributions influenced his field. Additionally, [redacted] claimed that the Petitioner's use of "animal like structures" is an impressive contribution, however it must be demonstrated that such contributions are of major significance in the field. To rise to the level of contributions of major significance, the Petitioner's work can be expected to have an influence on similar wood carvers and similar works of wood carvings. *Visinscaia v. Beers*, 4 F. Supp. 3d 126 at 134 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). Although [redacted] recognizes the Petitioner's use of animal like structures as an

⁹ Officers should take into account the probative analysis that experts in the field may provide in opinion letters regarding the significance of the person's contributions in order to assist in giving an assessment of the person's original contributions of major significance. That said, not all expert letters provide such analysis. Letters that specifically articulate how the person's contributions are of major significance to the field and their 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. See 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>.

accomplishment, he does not provide the nexus between the Petitioner's talents and the manner in which he has made original contributions of major significance in his field

The remaining letters pertaining to the Petitioner's work appear to have little probative value. The letter from the CEO of [REDACTED] appears to reference a different individual who is an expert in ceramics. The letter from [REDACTED] member of the Chamber of Commerce and Industry [REDACTED] appears to include boilerplate language similar to other documents in the record. As a general concept, when an alien has provided affidavits from different persons that contribute to the alien's eligibility claim, but the language and structure contained within the affidavits is strikingly similar, the trier of fact may treat those similarities as a basis for questioning the claims of the alien. *See Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006). When affidavits contain such similarities, it is reasonable to infer that the alien who submitted the strikingly similar documents is the actual source from where the suspicious similarities derive. *See Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007). The letter from [REDACTED] indicates the Petitioner's talents have "been recognized by local people and foreign citizens" but then states the Petitioner was "the lead rug weaver." As mentioned above, the letter from [REDACTED] the [REDACTED] of *Buxoroyi Shifokori*, includes an irrelevant section claiming the Petitioner published articles about rug weaving. These mentions to rug weaving have a striking similarity and appear to serve no purpose in explaining the Petitioner's talents in wood carving but bring into question the validity of these letters.

While the above letters compliment the Petitioner on the quality of his work, the record does not show how his wood carvings have had a majorly significant impact in the field, have significantly influenced the work of other wood carvers, or otherwise equate to original artistic contributions of major significance in the field. The authors' assertions do not explain how the Petitioner's wood carving techniques and products have been widely implemented or relied upon by others in the field. Simply stating that the work has gained the Petitioner national and international recognition or that it has majorly impacted the field of wood carving is not sufficient. Without additional detail explaining his accomplishments and their influence on the field, the letters submitted do not establish that the Petitioner's wood carving has had a demonstrable impact in his field commensurate with a contribution of major significance.¹⁰

On appeal, the Petitioner relies on several of our non-precedent decision as well as *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994) in support of the assertion that the Director should have accepted the expert opinion letters as evidence. Specifically, the Petitioner states that the court in *Buletini* "held that expert statements respecting the Petitioner's contributions must be fully considered, even if the expert opinions came from people who knew or had worked with the Beneficiary." *Buletini*, 860 F. Supp. at 1232. Regarding the contributions criterion, the *Buletini* court was referring to the Director's failure to consider all the forms of evidence that the Petitioner in that case submitted such as the book he authored, the Petitioner's medical dictionary he authored, and the Petitioner's study that appeared in the largest circulation newspaper in the Petitioner's home nation. *Id.* at 1232-1233. These are *forms* of evidence that the *Buletini* court determined the Director had failed to consider; the court did not indicate that the Director was required to discuss each and every piece of evidence within the record. Here, we have considered the letters and find them insufficient to establish eligibility for

¹⁰ Although we discuss a sampling of the letters submitted, we have reviewed and considered each one.

the criterion because they do not discuss the impact of the Petitioner's work and show that it has been of major significance to the field, as required by the plain language of the regulation. Moreover, although the Petitioner references non-precedent decisions by our office, these decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

Further, the Petitioner's appellate brief argues he has significantly impacted the field by making wood carving "more sustainable" as well as by "rethinking and creative modification of [redacted] woodcarving styles." Counsel also argues the Petitioner is one of the few "masters of woodcarving in [redacted] who work in three-dimensional style, in which he uses various stones, miniatures, and engraves." The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984). The assertions made in his appellate brief are not supported by the expert testimony or other documents in the record and therefore are not entitled to any evidentiary weight in determining if the Petitioner has made contributions of major significance to his field.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

Evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

In order to satisfy the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi), a petitioner must establish that they have authored scholarly articles in the field and the publication qualifies as a professional publication, major trade publication, or other major media.¹¹ Upon review of the record, we concur with the Director's determination that the Petitioner did not meet this criterion.

The Petitioner argues he has written scholarly articles in the form of an article titled "[redacted]" dated 2016, a 2013 non-fictional book titled "[redacted]" as well as a collection of articles titled "[redacted]" As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article. For other fields, a scholarly article should be written for learned persons in that field. ("Learned" is defined as "having or demonstrating profound knowledge or scholarship").¹² Learned persons include all persons having profound knowledge of a field.

The Petitioner has not demonstrated he has written scholarly articles. His "[redacted]" article is a half-page, five paragraph summary of the history of wood carving published in the *Bukhoro*

¹¹ *See* 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing guidance on the review of evidence submitted to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)).

¹² *See* Webster's II New College Dictionary (3rd ed. 2005).

Mavjlari magazine. The article offers a basic lesson on the history of wood carving that gives no indication that it was written for learned persons in the wood carving field. The Petitioner's book, "[redacted]" is described in the record through a book review written by [redacted]. The review indicates the book is "an absolutely first-rate book for beginners in wood sculpture, well thought out and well executed." Here, the Petitioner has not demonstrated his article or book are scholarly articles as they appear to be written for a general readership or amateur wood carvers rather than learned individuals.

The Petitioner also claims he published a scholarly article in [redacted] [redacted] 2017. The article, titled [redacted] is a three-page history of the development of wood working and historical methods of wood working. While the article includes a bibliography citing two books dealing with ancient cultures of the Near East, the article does not appear to report on original research, experimentation, or philosophical discourse. The record also does not contain any evidence that indicates this article was written for learned persons in the field rather than a history lesson for the general public or amateur wood carvers.

Finally, the Petitioner has not provided any information demonstrating the publishers of his articles and book are professional or major trade publications or other major media. The Petitioner did not provide any additional information on the *Bukhoro Mavjlari* magazine, his book publisher, or the [redacted] that would indicate they are professional or major trade publications or other major media.

For the reasons discussed above, the Petitioner has not shown that he has authored scholarly articles in the field and the publication qualifies as a professional publication, major trade publication, or other major media.

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

In order to satisfy the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vii), a petitioner must establish that the display work is his work product and the venues where the individuals work was displayed were artistic exhibitions or showcases.¹³ Upon review of the record, we concur with the Director's determination that the Petitioner did not meet this criterion.

The Petitioner indicates he displayed his wood carvings at the following venues:

- Central Asia Crafts Art Fair, [redacted] 2013;
- Tashabbus-2015, [redacted] 2015;
- [redacted] regional stage of Tashabbus-2015, [redacted] 2015;
- Country Folks Crafts Show, [redacted] 2017;
- [redacted] Folk Art Market, [redacted] 2017;
- Renegade Craft, [redacted] 2018;
- Cultural Survival Bazaar, [redacted] 2017; and

¹³ See 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing guidance on the review of evidence submitted to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)).

- [redacted] Souvenir and Resort Gift Show, [redacted] 2019.

First, we note that the [redacted] Souvenir and Resort Gift Show took place from [redacted] 2019, after the Petitioner filed his Form I-140 on March 11, 2019. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). Since this gift show took place after the time of filing, it cannot serve to establish eligibility under this criterion.

The Petitioner has not demonstrated that he displayed his work at artistic exhibitions or showcases as he has not submitted evidence that his work was actually displayed or that the displayed work was his work product. As proof of the display of his work, the Petitioner offers various diplomas and certificates. However, these diplomas and certificates provide limited probative value in showing his work was displayed. For example, the diploma for the [redacted] simply states it is a “certificate” but does not indicate the certificate was presented for the Petitioner’s display of his work at an artistic exhibition. Similarly, the diplomas from Tashabbus-2015 indicate the Petitioner was entered into a talent contest but does not otherwise indicate the Petitioner displayed his work at an artistic exhibition. The Petitioner also received a certificate of appreciation from the [redacted] Folk Art Market, a certificate of attendance at the Renegade Craft, and a certificate of participation at the Cultural Survival Bazaar. However, the record does not include any evidence that indicates that these certificates show the Petitioner displayed his work at an artistic exhibition or showcase.

The Petitioner provided a letter from [redacted] owner and president of the [redacted] Craft Shows indicated the Petitioner, along with [redacted] participated in the craft show. The letter stated the Petitioner displayed and presented his products in an attractive and professional manner and his presence at the show “enabled show attendees to communicate directly with him about [redacted]’s beautiful hand made [redacted] folk art creations.” While this letter provides details indicating the Petitioner participated in the craft show and displayed products, it does not show that the Petitioner displayed his own work product. The letter does not describe the Petitioner’s relationship to [redacted] or whether he was displaying [redacted]’s products or his own.

For the reasons discussed above, the Petitioner has not shown that the display work is his work product and the venues where the individuals work was displayed were artistic exhibitions or showcases.

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 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. 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.