



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

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

In Re: 20339501

Date: JUN. 09, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a filmmaker, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for this immigrant visa classification through evidence meeting at least three of the criteria under 8 C.F.R. 204.5(h)(3) or showing that he received a major, internationally-recognized award. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes 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 their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten 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 is a filmmaker who has written, directed, and edited short and feature films, and served as a video producer and editor for educational, corporate, and promotional videos. The Petitioner has a bachelor of fine arts in film and video design from [redacted] Institute of Design in India and received his master of fine arts in film directing from the [redacted] University in [redacted] in 2017. The record reflects that the Petitioner was in the United States in O-1 nonimmigrant status at the time of filing.¹

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to meet five of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published materials in major trade or professional publications or other major media;
- (v), Original contributions of major significance;
- (vii), Display of work at artistic exhibitions or showcases; and
- (viii), Leading or critical role for organizations that have a distinguished reputation.

The Director determined that the Petitioner satisfied two of the six claimed criteria, specifically 8 C.F.R. § 204.5(h)(3)(vii) and (viii). We agree that the screening of the Petitioner’s films at

¹ We acknowledge that the O-1 classification is intended for nonimmigrants with extraordinary ability. Nevertheless, the record of proceeding for the approved nonimmigrant petition is not before us, and we cannot determine whether the facts in that case were the same as those in the present proceeding. Also, the nonimmigrant and immigrant categories have different criteria, definitions and standards for persons working in the arts. “Extraordinary ability in the field of arts” in the nonimmigrant O-1 category means distinction. 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, “extraordinary ability” reflects that the individual is among the small percentage at the very top of the field.

independent film festivals satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(vii), which requires evidence of the display of an individual's work at artistic exhibitions or showcases.

However, we disagree with the Director's conclusion that the Petitioner provided evidence establishing that he has served in leading or critical roles for organizations or establishments that have a distinguished reputation, as required by 8 C.F.R. § 204.5(h)(3)(viii). We will discuss this criterion along with the remaining three criteria below. After reviewing all the evidence in the record, we conclude that the Petitioner has satisfied only one of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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

To satisfy this criterion, a petitioner must demonstrate that they received prizes or awards, and that the awards are nationally or internationally recognized for excellence in the field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the 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.²

The Petitioner documented his receipt of the following awards for his short and feature-length films:

- Winner, [redacted] Screenplay for [redacted] at the 2020 [redacted] Film Festival
- Winner, Bronze [redacted] Award [redacted] for [redacted] at the 2018 [redacted] International Film Festival
- Winner [redacted] for [redacted] 2020 [redacted] Screenplay Awards.

With respect to these three awards, the record lacks sufficient evidence to demonstrate that the awards the Petitioner received are nationally or internationally recognized prizes or awards for excellence.

With respect to his Bronze [redacted] Award, the Petitioner submitted a copy of his award certificate, a congratulatory letter from the directors of the [redacted] International Film Festival, information regarding the history of the festival from its website, and a list of notable filmmakers who have received [redacted] Awards in the past. The record reflects that the festival has over 200 sub-categories, with approximately 15-20% of all entries receiving awards across many categories. Awards are based on scoring by a jury with a score cutoff for each level of award, which include the [redacted] as well as platinum, gold, silver, and bronze awards. The description of the festival indicate that it is international in scope and that several well-known filmmakers received their very first awards at [redacted]

While the evidence reflects that the [redacted] festival is well-established in the independent film industry, it bestows hundreds of awards annually. The record does not contain sufficient evidence to demonstrate that every level of [redacted] Award in every category is a nationally or internationally recognized prize or award. The issue here is not the national or international scope of the competition, or the

² See 6 USCIS Policy Manual F(2) appendix, <https://www.uscis.gov/policy-manual> (providing guidance on the evaluation of evidence submitted in support of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)).

reputation of the issuing body, but rather whether the Petitioner's specific award is a nationally or internationally recognized prize or award for excellence in the field. The record does not contain evidence of the nature or type of recognition the Petitioner received based on his award, such as media coverage of the 2018 festival in which he participated. Nor does it contain evidence of the nature and type of independent recognition that [redacted] Award winners receive in general, outside of the festival itself.

With respect to the [redacted] Film Festival, the Petitioner provided the 2020 festival's list of winners in 90 categories from its website. This list includes the "[redacted] Screenplay" award the Petitioner received for his film [redacted]. The only other evidence related to this festival is a brief history of the event from its website, indicating that it was created by two filmmakers in 2012 and intended to be a "world class independent film festival for independent filmmakers." Finally, with respect to his [redacted] award from [redacted]'s monthly screenplay awards, the Petitioner submitted a certificate and a congratulatory email addressed to him from the "Festival Team." Simply submitting evidence of the Petitioner's receipt of a prize or award is not sufficient to meet this criterion unless the Petitioner submits evidence establishing that the prizes and awards are nationally or internationally recognized for excellence in the field. With respect to these two awards, the Petitioner did not sufficient documentary evidence, such as the selection criteria for award winners or evidence of the national or international recognition associated with his awards, to demonstrate that they meet all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner emphasizes that his awards from [redacted] and the [redacted] Film Festival appear on his Internet Movie Database (IMDb) page and asserts that this serves as evidence that they are nationally or internationally recognized awards. He submitted a copy of "Event Eligibility Criteria" published by IMDb which states that award events eligible for listing on the site should meet certain criteria. According to these criteria, eligible festival awards are those that have been established for more than five years, have an official website, have a well-established jury or method of selecting winners, and have received "regular international or national press coverage (wide or trade)." The information from IMDb states that events with "a nationally recognized broadcast awards ceremony or a festival award winner announced in recognized trade or other media publications would be eligible for listing." Notably, the information the Petitioner submitted from IMDb also states that "there are many Events listed on IMDb that do not meet [these] eligibility criteria." Based on this disclaimer, we cannot conclude that every award that IMDb accepts for submission to its site meets IMDb's own criteria, much less the specific requirements set forth at 8 C.F.R. § 204.5(h)(3)(i).

For example, the record establishes that [redacted] has been established for more than five years, has an official website, and has a well-established method for selecting winners, but the record does not include evidence that the festival receives "regular international or national press coverage" or that festival award winners are announced in recognized trade other media publications. As noted, the Petitioner submitted a copy of his Bronze [redacted] award but did not provide any evidence related to the announcement of the award in support of his claim that it should be deemed a nationally or internationally recognized award for excellence in his field. His reliance on information from IMDb regarding its criteria for listing awards, for the reasons discussed, is not persuasive.

The Petitioner also provided evidence that other film festivals have recognized his work by nominating his films or screenplays for awards, or by naming his films as festival "official selections." These festivals

include [redacted] Film Awards, [redacted] International Film Festival, [redacted] Film Festival, [redacted] Film Festival, [redacted] Film Festival, [redacted] International Film Festival, among others. However, neither an award nomination nor recognition as an “official selection” satisfies the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), which requires evidence of a petitioner’s receipt of an award or prize.

Finally, the Petitioner submits for the first time on appeal evidence indicating his receipt of three additional prizes or awards at the [redacted] Festival and [redacted] Festival, held in India in 2010. However, prior to the denial of the petition, the Director issued a request for evidence (RFE) allowing the Petitioner the opportunity to supplement the record with additional documentation related to this criterion. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

For the reasons discussed, the Petitioner has not established that he satisfies this criterion. Although we acknowledge that the Petitioner is the recipient of awards in his field which recognize the quality of his work, the evidence he submitted does not demonstrate that the awards are nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

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

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. The Petitioner must submit evidence satisfying all these elements to meet the plain language requirements of this criterion. Upon review of the record, we agree with the Director’s determination that the Petitioner did not meet this criterion.

The Director acknowledged that the Petitioner submitted published articles that are about him and relating to his work as a filmmaker. However, the Director determined that some of the articles did not include the author of the material as required by the plain language of the criterion. Moreover, the Director concluded that none of the articles were accompanied by evidence regarding the intended audience of the publication or circulation statistics to demonstrate that they were published in major trade or professional publications or other major media. On appeal, the Petitioner resubmits the five articles he provided previously, but does not address or specifically contest the Director’s reasons for concluding that the previously submitted evidence was insufficient to establish that he meets this criterion.

The submitted articles appeared in the online publications *Medium* (medium.com), *Front Line Views* (frontlineviews.com), *International Film Review* (internationalfilmreview.net), *Tinsel Town News*

Now (tinseltownnewsnow.net) and *Entertainment LA* (entertainmentla.weebly.com). Only two of the articles (from *Medium* and *Front Line Views*) identify the name of the author. Articles that do not identify an author do not satisfy the plain language of this criterion.

Further, the record supports the Director's determination that none of the articles were accompanied by evidence of their publication in major trade or professional publications or other major media. We note that evidence of published material in major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics.³ In order to establish that a publication is a professional or trade publication in a given field, the record should include evidence regarding the intended audience of the publication. Here, the Petitioner did not submit supporting evidence regarding the circulation or intended audience of the online publications in which the articles appeared.

On appeal, the Petitioner submits two additional articles, but, as with the previously submitted evidence, these articles are not accompanied by evidence that the published materials meet all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(iii). One of the articles appeared in the "Student Spotlight" section of a newsletter published by [redacted] University in March 2017, and the other appeared on the website *Gaysi Family* (gaysifamily.com) in 2016. While both articles are about the Petitioner and relating to his work in the field, neither is accompanied by evidence to demonstrate that the articles were published by major trade or professional publications or other major media.

We have reviewed all the evidence of published materials about the Petitioner and conclude that the record does not demonstrate that he satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

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

To satisfy 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. For example, a petitioner may show that their 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.⁴ The Petitioner submitted several reference letters from colleagues and former professors who work in the film industry and maintains that the statements from these experts are sufficient to establish that he meets this criterion, particularly, when considered with evidence of the display of his work at film festivals, his awards and nominations, and his media coverage.

Regarding the Petitioner's reference letters, although he provided evidence reflecting the originality of his work through recommendation letters praising him for his films and for his talents as a writer, editor and director, the authors do not provide specific examples of contributions that are indicative of major significance.⁵ In general, the letters recount the Petitioner's achievements but do not demonstrate that his contributions to filmmaking have made the required impact in the field.

³ See 6 USCIS Policy Manual, *supra*, at F(2) appendix.

⁴ *Id.*

⁵ Although we do not address every letter individually, we have reviewed and considered each one in evaluating whether the Petitioner satisfied this criterion.

For example, a letter from producer/director [redacted] states that the Petitioner is “doubtlessly one of the most accomplished directors, writers and editors among his fellow filmmakers in the field” and indicates that the Petitioner “has more drive, tenacity and skill than all but a few of the scores of students in my numerous classes.” [redacted] further describes the Petitioner as “intelligent, inquisitive, clever and wise,” and states that “his skills and work ethic rival those of many professionals” that he has encountered during his career. While the letter offers praise for the Petitioner’s abilities as a filmmaker, [redacted] does not attribute to the Petitioner a specific original contribution that has impacted or influenced the field of filmmaking.

A letter from filmmaker [redacted] similarly praises the Petitioner’s talents and highlights his work as the director, writer and editor for the short film [redacted] noting that he successfully handled a sensitive subject in a way that was impactful with audiences. [redacted] emphasizes that [redacted] achieved a high standing among peers, audiences and critics, as evidenced by its nominations for several film festival awards. While the selection of [redacted] and other films for viewing at film festivals is evidence that the Petitioner has made contributions to his field, the Petitioner must also demonstrate 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 artists and similar works of art. *Visinscaia v. Beers*, 4 F. Supp. 3d 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 abilities and asserts that the recognition that [redacted] received from film festivals is a significant 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 recite his professional achievements and discuss his career as a filmmaker. However, the authors do not provide a description of how the Petitioner’s films, individually or as a whole, have made an impact in his field in accordance with the regulation. The letters, solicited from the Petitioner’s colleagues and former teachers, primarily contain broad attestations of the Petitioner’s talents and the significance of his work without providing specific examples of original contributions that rise to a level consistent with major significance. For example, [redacted] praises the Petitioner’s “intelligence, dedication and insight,” indicates that he has a “unique viewpoint . . . from growing up in India” and indicates that he is “very successful.” Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value. On the other hand, letters that lack specifics do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.⁶ 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 additional detail explaining his accomplishments and their influence on the field, the letters submitted do not establish that the Petitioner’s work in filmmaking has had a demonstrable impact in his field commensurate with a contribution of major significance.⁷

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter*

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

⁷ Although we discuss a sampling of the letters submitted, we have carefully reviewed and considered each one.

of *Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. *Id.*

Further, the Petitioner's appeal brief does not address this criterion or explain how his work as a filmmaker has significantly impacted the field. While we acknowledge that the Petitioner's work has been displayed at independent film festivals and received some awards, the record does not contain evidence to establish such festivals specifically recognize only those films that have influenced the field as opposed to recognizing independent films for their artistic merit. Here, while the Petitioner has provided evidence that his work has garnered some recognition within the field, he has not demonstrated that his films have influenced others in the field or that he has otherwise made contributions that are of major significance.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he meets this criterion.

Evidence that the individual 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 satisfy this criterion, the Petitioner must satisfy three elements: that his role was (1) leading or critical; (2) that such role was for an organization or establishment; and (3) that the organization or establishment has a distinguished reputation. A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. For a critical role, the evidence should establish 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.⁸

The Petitioner asserted that that he meets this criterion because he "performed the leading and critical role of writer and editor in the creation of several acclaimed film productions," including the short films [redacted] [redacted] [redacted] and a documentary that he wrote, directed, and edited for researchers at [redacted] University and [redacted] in India. The Petitioner indicated that the reference letters discussed above, the published materials, and the inclusion of his films in independent film festivals demonstrate that he satisfies all requirements set forth at 8 C.F.R. § 204.5(h)(3)(viii). The Director determined, without discussing the submitted evidence, that the Petitioner had satisfied this criterion. We disagree and will withdraw the Director's determination.

While the record demonstrates that the Petitioner held a leading or critical role in the creation of the short films that he wrote, directed, and edited, the regulation requires a Petitioner's role to be leading or critical "for organizations or establishments," and the Petitioner has not demonstrated how his independent films qualify as organizations or establishments. Therefore, even if we determined that he

⁸ See 6 USCIS Policy Manual, *supra*, at F(2) appendix. (citing to *Merriam-Webster's Dictionary* definition of "distinguished" as "marked by eminence, distinction, or excellence").

held a leading or critical role for a distinguished production, additional evidence would be required to meet the requirements of this criterion.

Further, the record demonstrates that the Petitioner's films have received recognition based on their inclusion in independent film festivals but does not contain sufficient evidence to demonstrate that any of his individual film productions has achieved a "distinguished reputation" within the film industry. Although the Petitioner emphasizes that his films have received awards and nominations and have been mentioned in published articles, as discussed above, the record does not establish, for example, that his films have received or been nominated for nationally recognized awards or has been featured in major trade or professional publications or other major media.

For the reasons discussed, the Petitioner has not established that he has performed in a leading or critical role for organizations or establishments with a distinguished reputation.

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.