



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

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

In Re: 19609635

Date: MAR. 5, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a photographer, 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 Texas Service Center denied the petition, concluding that although the record demonstrated that the Petitioner met the initial evidentiary requirements for this classification, it did not establish the Petitioner's eligibility as an individual of extraordinary ability.

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 is a photographer who has displayed his work at exhibits in Venezuela, France, and the United States. He states that he wishes to continue to work as a photographer in the United States, and intends to operate a photo consulting business in Florida.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his receipt of lesser nationally or internationally recognized awards, the display of his work at artistic exhibitions, and his service as a judge of the work of other photographers. However, the Director then concluded that the totality of the evidence did not establish that the Petitioner is one of the small percentage of photographers at the top of the field, and thus was not eligible as an individual of extraordinary ability.

On appeal, the Petitioner asserts that the Director did not consider the totality of the evidence in the record in making his determination. After reviewing the record, we agree with the Director's conclusion regarding the Petitioner's satisfaction of three of the evidentiary criteria, and will therefore turn to the final merits determination below.

B. Final Merits Determination

In a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. The record, however, does not demonstrate that his achievements rise to a level of a "career of acclaimed work in the field" as contemplated by Congress. *See H.R. Rep. No. 101-723*, 59 (Sept. 19, 1990).

As noted above, the Petitioner submitted evidence that his photographs have been displayed at several artistic exhibitions. The record shows that his work has been shown at several solo and group exhibitions in Venezuela, including the [redacted] Exhibition at the [redacted] Gallery in [redacted] in 2014. His work has continued to be displayed in the United States at several exhibitions in [redacted] Florida, such as [redacted]'s [redacted] show in 2015 and the American Society of Media Photographers (ASMP) juried exhibition in 2016. The record also demonstrates that his work has been displayed by the French Alliance Foundation in Paris.

On appeal, the Petitioner argues that several of these exhibitions included photographs from only the top artists in the field, which he asserts places him among that group. For instance, he states that the [redacted] exhibition, which has displayed his work on multiple occasions, "is arguably the most important art show in the United States." The Petitioner contends that the exhibiting galleries at the exhibition are among the world's most respected art dealers, and thus his inclusion at this event evidences his stature as a leading photographer and his sustained acclaim. He also highlights the showcasing of his work at the ASMP's juried exhibition in 2016. According to the Petitioner, ASMP is "is a premier trade association for the world's most respected photographers." However, we note that the record does not include information about these exhibitions and organizations from independent sources, and thus lacks evidence to show that they are considered to be prestigious by the international photography community. This is also the case with the French Alliance Foundation and some of the other U.S. and Venezuelan exhibitions in which the Petitioner participated. We further note that the record does not include evidence of media attention or discussion of his work beyond that which has already been discussed. As constituted, the record lacks sufficient evidence to establish that the inclusion of his work in these exhibitions over several years is indicative of him being among the small percentage of photographers at the very top of the field.

The Petitioner also received several awards for his work. At the 2013 [redacted] international photo competition, the Petitioner was the winner in the [redacted] subdivision, and this accolade permitted him to participate in the international competition held in [redacted] where he was one of 19 finalists selected from artists representing more than 100 cities worldwide. While we acknowledge that the Petitioner won the [redacted] subdivision of the competition, the number of awards given at the final event and the fact that the award received by the Petitioner is not the top award at the event indicates that he is not one of the small percentage of photographers at the top of his field on a national or international scale.¹ Although the Petitioner's receipt of the local [redacted] award demonstrates some level of recognition, he did not receive the highest award at this event, and the record does not include evidence of recognition beyond the event and its organizers.

The Petitioner also submitted evidence that he was one of the [redacted] contestants" in a 2013 photography contest held by the Metropolitan Mayor's Office [redacted] entitled [redacted] [redacted]. According to an article published in *El Universal*, the competition was intended to provide photographers with an opportunity to show their view of the city from their camera's point of view. Although the article indicated that the winners were invited to organize a photo content for the [redacted] anniversary of [redacted] there is little to no information regarding the details of the contest, such as the number of participants in the contest, whether it was open to both professional and amateur

¹ The record reflect that the "top winner" was awarded a one-week stay in [redacted] with a solo exhibition at the [redacted] Gallery, and the top five photographers, including the "top winner," received a one-year magazine subscription.

photographers, or the criteria used in selecting the winners. It is unclear whether the winners were chosen based upon an independent evaluation of the quality or artistic value of the candidate's work, or simply for participating. We cannot conclude that being one of 12 winners of this local contest would automatically earn a professional photographer sustained national acclaim and a place among the small percentage at the top of the field.

Regarding media coverage, the Petitioner offered material from several organizations relating to him and his work. Although two notable articles covered him and discussed his work, the Petitioner did not demonstrate that such press coverage is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act.

The record also demonstrates that the Petitioner served as a judge for various photo exhibitions and contests. After his success in the [redacted] competition, the Petitioner was selected to serve as a juror for the 2013 [redacted] competition hosted by the French Alliance Foundation in [redacted]. According to a letter from the organization's general director, the Petitioner was selected as a juror for this event based on his receipt of the [redacted] subdivision award the previous year. The Petitioner also submitted documentation demonstrating that he served as a juror for the [redacted] Show, hosted by Curator's Voice Art Projects (CVAP) in [redacted] in [redacted] 2017. The Petitioner submitted two letters from the organization's director thanking the Petitioner for his service and expertise, as well as an excerpt from CVAP's website which provided a brief overview of the organization. This evidence shows that the Petitioner has achieved some level of recognition from the French Alliance Foundation and CVAP. However, it does not establish that these exhibitions are prestigious or that selection as a juror for these exhibitions is reserved for those photographers at the top of the field. Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of reviewing or judging recognized, acclaimed individuals in his field, the Petitioner has not shown that his judging experience places him among that small percentage who has risen to the very top of the field of endeavor.

As noted above, in order to establish eligibility as an individual of extraordinary ability, the Petitioner must show that he has been the subject of sustained national or international acclaim, that he is one of that small percentage who has risen to the top of his field, and that his achievements have been recognized in the field through extensive documentation. The Petitioner received an award for his photographs in the [redacted] subdivision of [redacted] in 2012 and was a finalist in the international portion of that competition shortly thereafter. The record also demonstrates that he was [redacted] winners in a local [redacted] competition the following year. However, while these awards indicate he was receiving acclaim for this work at a national level, it does not show that these awards were considered to be prestigious, or that his receipt of them placed him among top photographers. The Petitioner's participation as a judge of other photographer's work at three exhibitions between 2013 and 2017 demonstrates that his expertise as a photographer had begun to be recognized. Thereafter, the attention given to his artistic displays, and in particular to the display of the Petitioner's collections at the [redacted] exhibitions, illustrates a growing level of appreciation and notice of his work in the field of photography, and the inclusion of his work at these exhibitions is a significant achievement and reflects his success in his field. However, the evidence does not establish, for example, that the many photographs exhibited at each exhibition are the work of nationally or internationally acclaimed artists at the top of their field, or that all artists whose work is included garner such acclaim. The record does not contain sufficient evidence distinguishing him from others

in the field and does not demonstrate that his achievements are at a level that places him among the small percentage at the top of the field. Nor does the evidence establish that he has enjoyed *sustained* acclaim at the national or international level, 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.

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

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). In this case, although the evidence shows that the Petitioner has raised his standing among his peers in the field of photography, it does not establish that he is yet one of that small percentage at the top of the field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.