



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

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

In Re: 19646197

Date: MAY 19, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a writer and 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 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 is a writer and filmmaker whose credits include novels, short and medium stories, and documentary projects, many of which focus on [redacted] political and social issues. He states that he intends to continue to create documentaries and other written works, including his autobiography, in the United States.

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). The Director determined that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to lesser nationally or internationally recognized awards and published material, and the record supports the Director’s determination that the Petitioner satisfies these two criteria. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to judging the work of others, original contributions, and artistic display under 8 C.F.R. §§ 204.5(h)(3)(iv), (v), and (vii), respectively. He further argues that he has demonstrated his sustained national or international acclaim, and that he is among the small percentage at the very top of the field of endeavor.

For the reasons discussed below, we concur with the Director’s determination that the Petitioner does not meet at least three of the criteria.

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The plain language of this criterion requires evidence of participation as a judge of the work of others in the same or an allied field of specialization, whether as an individual or as a member of a panel. In support of these requirements, the Petitioner claimed that he “was invited to be a jury member at the [redacted] Film Festival. In support of this assertion, the Petitioner submitted an undated letter from [redacted] the artistic director of [redacted] Film Festival. [redacted] states that the Petitioner “was a member of the jury of [redacted] during the [redacted] edition of the Festival,” which took place in [redacted] from [redacted] 2009, to [redacted] 2009.

The Director issued a request for evidence (RFE), noting that the submitted letter was insufficient to demonstrate that the Petitioner satisfied this criterion. In response, the Petitioner submitted a second letter from [redacted] dated February 8, 2021, who stated that he was “confirming the presence of [the Petitioner] as a special guest” at the [redacted] editions of the [redacted] Film Festival in 2008 and 2010, respectively. Although the letter indicated that the Petitioner “was a jury member in the debate on the new [redacted] in 2008, it also stated that he “participated in the prestigious section [redacted]” In conclusion, [redacted] stated “We are still very grateful to [the Petitioner] for take part of our Festival [*sic*], not only as a talented and brave writer, but also for having implemented, in particular, independent documentary filmmaking, not only [redacted]” The Petitioner also submitted a screenshot from www.filmfestivals.com which provided a summary of the [redacted] Film Festival, as well as a copy of an article published on [redacted] in which [redacted] is interviewed about the festival.

In denying the petition, the Director determined that the evidence submitted was insufficient to demonstrate that the Petitioner had in fact judged the work of others in his field as contemplated by this criterion. The Director noted the requirement of “extensive documentation,” as well as the very high standard set for individuals of extraordinary ability noted in the comments to the implementing regulations,¹ and found that the Petitioner had not submitted substantive evidence of his participation as a judge of the work of others in his field or an allied field which is “consistent with sustained national or international acclaim.”

On appeal, the Petitioner argues that the Director “wrongly heightened the evidentiary threshold by requiring extra substantive evidence of ‘documentation that will be able to assist us in whether you served as a judge and at what level,’ such as ‘judging slips event programs identifying the beneficiary as a judge, or a judge’s credential from the events.’” He further argues that his activities are consistent with *Kazarian v. USCIS*, 596 F.3d 1115; *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994); and *Rijal v. USCIS*, 772 F. Supp. 2d 1339.

Preliminarily, we note that the issue of whether a petitioner’s achievements have resulted in the sustained national and international acclaim required for this classification is an evaluation to be made in the final merits determination in cases where the individual has satisfied the initial evidence requirements at 8 C.F.R. § 204.5(h)(3); this standard should not be applied to individual evidentiary criteria. We acknowledge the Director’s erroneous reference to this language; however, the decision otherwise references and discusses the plain language of this criterion as the basis for the denial and, accordingly, we view this error as harmless. Moreover, we exercise *de novo* review of all issues of fact, law, policy, and discretion. See *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). This means that we look at the record anew and are not required to defer to findings made in the initial decision.

In contrast to aforementioned legal decisions relied upon by the Petitioner, the Director’s determination under the judging criterion in this matter was not based on the Petitioner’s inability to demonstrate that his participation was the result of his having extraordinary ability or indicative of national or international acclaim. Rather, the Director determined that the documentation submitted by the Petitioner in support of his eligibility under this criterion lacked sufficient details regarding his judging activities.

¹ The Director cited to 56 Fed. Reg. 30703, 30704 (July 5, 1991) in support of this statement.

In the RFE, the Director acknowledged the initial letter submitted from [redacted] but sought further evidence to show that in his claimed role as “member of the jury of [redacted] in 2009, the Petitioner judged the work of others in his field or an allied field. In response, the Petitioner asserted submitted a second letter from [redacted] stating that the Petitioner was a special guest at the [redacted] editions of the festival in 2008 and 2010, respectively, and that he served as a jury member “in the debate on the new [redacted] for the [redacted] section in 2008. The Director concluded that this statement, along with [redacted] prior statement regarding the Petitioner’s claimed jury service in 2009, was insufficient to satisfy this criterion.²

Upon review, we concur with the Director’s determination. There is no documentary evidence in the record showing the specific material judged by the Petitioner at [redacted] in 2008 or 2009. Although the letters indicate that he judged [redacted] and “served as a jury member in the debate on the new [redacted] the record is devoid of additional evidence regarding these events. Merely submitting statements asserting that the Petitioner has served as a judge the work of others without evidence showing who he judged and their field of specification is insufficient to establish eligibility for this criterion.

For example, rather than submitting contemporaneous documentary evidence of the Petitioner’s participation as a jury member for [redacted] and “the debate on the new [redacted] the Petitioner instead submitted letters from [redacted] attesting to the Petitioner’s involvement. Aside from [redacted] claim that the Petitioner was a jury member for each of these events, there is no documentary evidence showing the Petitioner’s specific duties, assessments, and the names of the individuals whose work he evaluated. For these reasons, we find [redacted] letters alone insufficient to verify the Petitioner’s participation as a jury member, and he has not established that he meets this criterion.

Additionally, the record lacks official competition rules for the preceding events indicating the specific responsibilities for a juror, and there is no evidence demonstrating that the Petitioner actually judged the work of individuals in the same or an allied field. For example, [redacted] indicates that the Petitioner served as a jury member “in the ‘debate’ on the new [redacted] as he participated in the [redacted] section “dedicated to promoting dialogue between the [redacted] through cultural events and quality works.” Absent additional documentation, it is unclear if the “debate” referenced here actually required the Petitioner to judge the work of individuals, such as assigning points or determining winners, rather than merely moderating or engaging in discussions with others in his field. Moreover [redacted] provides no additional detail regarding the Petitioner’s participation in the [redacted] portion of [redacted] As constituted, the record does not establish the nature of his participation in the preceding events, the names of the individuals whose work he judged, the competitive divisions or categories to which he was assigned, or the selection criteria for awards. Merely submitting letters stating he was a jury member, without evidence demonstrating who he judged or the nature of the events, is insufficient to establish eligibility for this regulatory criterion.

In light of the above, the Petitioner has not established that he meets this regulatory criterion.

² No further information regarding the Petitioner’s claimed service as a jury member for [redacted] in 2009 was submitted.

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

In order to satisfy the 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.³ 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 primarily that his authorship of various literary works, and several reference letters commenting on such works, demonstrate his eligibility for this criterion.

Regarding the reference letters, although the Petitioner provided evidence reflecting the originality of his literary works through recommendation letters praising him for his contributions, the authors do not provide specific examples of contributions that are indicative of major significance. In general, the letters recount the Petitioner's literary achievements but do not demonstrate that his contributions in the literary field have made the required impact in the field. On appeal, the Petitioner asserts that the Director discounted and misconstrued the expert opinion letters as they pertain to this criterion, and asserts that the Director's conclusion regarding whether his work was of major significance was erroneous.

The Petitioner submitted letters from, and background information about, several professors who specialize in the fields of [redacted] studies and [redacted] literature. For example, the Petitioner submitted a letter from [redacted] Chancellor Chair for Teaching Across Disciplines at the University of [redacted] and Professor *Emeritus* of [redacted] Studies at [redacted] University. [redacted] comments on the Petitioner's novel, [redacted]⁴ stating that this work "stunned [redacted] literary scene" and introduced an iconoclastic literary style. [redacted] Professor of [redacted] Literature and Transcultural Studies at [redacted] University, states that the Petitioner is a prominent [redacted] writer, scholar and documentary filmmaker whose works "have consistently engaged with national and international issues of politics, power, and moral responsibility." She further notes that the Petitioner's works provide an alternative history and understanding of [redacted] culture. While the Petitioner has earned the admiration of these references, there is no evidence demonstrating that he has made original artistic contributions of major significance in the field. Although these references recognize the Petitioner's unique literary style, they do not provide the nexus between his literary style and the manner in which he has made original contributions of major significance in his field.

[redacted], Department Head for the Collection Development and Technical Services and faculty librarian at [redacted] University, quotes various commentaries on the Petitioner's work in his letter, noting that the commentators praised the modernist themes and new developments reflected in the Petitioner's work. That the Petitioner has produced original work that others in the field have favorably reviewed is not, by itself, indicative of a contribution of major significance. [redacted]

³ 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)) (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field).

⁴ We note that [redacted] erroneously refers to the Petitioner's novel as [redacted]

also comments on the world-wide availability of the Petitioner's novels, noting that they are housed in a large number of U.S. libraries. However, [redacted] does not explain how the Petitioner's works being represented in U.S. libraries is having a discernable impact in his field. While any literature with exposure such as the Petitioner's can be viewed as contributing to the field, he must also demonstrate that his contributions are of major significance. [redacted] indicates that the Petitioner's work is available outside of [redacted] but does not provide specific examples of how the Petitioner's work has substantially impacted the literary field, has influenced the work of other writers, or otherwise equates to an original contribution of major significance in the field. An individual must have demonstrably impacted his field in order to meet this regulatory criterion.

The Petitioner also claims that his documentary films are original contributions of major significance, but there is insufficient evidence demonstrating that the Petitioner's films have been widely viewed by critics or audiences as an original contribution of major significance in the field. [redacted] states that the Petitioner's films, like his literary works, have also been housed in leading U.S. academic libraries and have received positive reviews. In addition, [redacted] states that several of the Petitioner's documentaries "are well known and respected." Here, however, the quoted letters demonstrate that some experts in the field are familiar with the Petitioner's films. But this familiarity does not establish that the Petitioner's contributions have been of major significance. Recognition does not necessarily equate to major significance in the field.

[redacted], Chair Professor Emeritus for [redacted] Studies at the University of [redacted] also comments on the Petitioner's films, noting that they "greatly enriched our understanding of [redacted] and which are archives preserving the memory of events which otherwise would fall into oblivion once this generation will have passed away." Here, although [redacted] [redacted] praises the Petitioner's work, she simultaneously notes that his films will be beneficial to future generations "even if these documentaries are only known to a very limited number of people in the [redacted] today." Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also* *Visinscaia*, 4 F. Supp. 3d at 135-36. The record as constituted is insufficient to show that the Petitioner's documentary films have already significantly impacted the field or otherwise equate to original contributions of major significance in the field.

The Petitioner also relies on a 2001 news article where [redacted] writer [redacted] refers to the Petitioner as a "modernist" writer and notes that his introduction of irony, sarcasm, and black humor into fiction "opened [her] eyes." While we acknowledge that the Petitioner's work may have impacted this particular author, the Petitioner has not submitted evidence to demonstrate that a good number of authors or filmmakers have been sufficiently influenced by his work such that it rises to the level of major significance in the field. This article does not describe how any of the Petitioner's original contributions in his field have resulted in a significant impact in his field as a whole, rather than personally on the writer being interviewed.

Similarly, the Petitioner submits a letter from [redacted] Director of Research Area on Politics, Society and Media at the [redacted] who indicates that she is performing research focusing on political, economic, social, and technological developments in [redacted] and their global impacts. [redacted] refers to the Petitioner as an "internationally renowned writer" and a "public intellectual," and states that "his eagerness and ability to inspire and moderate

discussions on contemporary societal and political issues in regard to [redacted] but also on a more global scale, is of key value to me.” Her praise of his work and her acknowledgement that his work is valuable to her falls short of demonstrating how any of the Petitioner’s original contributions in his field have resulted in a significant impact in his field as a whole, rather than personally on [redacted]

The documentation discussed above does not provide a description of how the Petitioner’s authored works or documentary films, individually or as a whole, have made an impact in his field in accordance with the regulation. The letters primarily contain broad attestations of the significance of the Petitioner’s work without providing specific examples of original contributions that rise to a level consistent with major significance. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value.⁵ On the other hand, letters that lack specifics and use hyperbolic language 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).

Simply stating that the Petitioner’s work has gained him national and international recognition or that it has majorly impacted the field of [redacted] contemporary literature or filmmaking is not sufficient. Without additional detail explaining his accomplishments, the documentation submitted does not establish that the Petitioner’s works have had a demonstrable impact in his field commensurate with a contribution of major significance.

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

The Petitioner first asserted eligibility under this criterion in response to the RFE, where he claimed that his documentary film [redacted] was displayed at the [redacted] Film Festival in [redacted] 2010. In support of this assertion, the Petitioner relied on [redacted] second letter stating that he presented his documentary at the festival, as a well as a copy of a page from the festival’s program brochure which provides an overview of the Petitioner’s film.

In determining that the Petitioner’s evidence did not meet the requirements of this criterion, the Director found that the Petitioner’s work did not fall into the “visual arts” such as painting, sculpting and photography, and further determined that the integrity of the Petitioner’s evidence was questionable. On appeal, the Petitioner asserts that the Director’s determinations were erroneous, and states that he has satisfied this criterion by providing evidence that his work has been displayed at numerous film festivals.

Preliminarily, we disagree with the Director’s interpretation that the plain language of the regulation renders this criterion applicable only to visual artists. The regulation requires only that the work displayed be a given petitioner’s own work product and that the venues at which the individual’s work

⁵ See 6 USCIS Policy Manual, *supra* at F.2 appendix.

⁶ See *id.*; see also *Kazarian*, 580 F.3d at 1036, *aff’d in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

was displayed be artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(vii). Upon *de novo* review, however, we concur with the Director’s ultimate conclusion that the Petitioner has not provided sufficient evidence to meet this criterion.

Here, the Petitioner asserts that his documentary film [redacted] was displayed at the [redacted] Film Festival in [redacted] 2010. In support of this assertion, he relies on a letter from [redacted] who states that “In the [redacted], 2010, of our [redacted] Film Festival, [the Petitioner] returned to honor us with his extraordinary documentary. . . .” The Petitioner provided what appear to be excerpts from the festival’s program, including a cover page, pages six through eight, and page 80. Only page 80 makes reference to the Petitioner. This page lists the title of the Petitioner’s film, along with additional details such as the film’s format, running time, year of production, and brief plot synopsis. While this document provides details pertaining to the Petitioner’s documentary, it is insufficient to establish that this film was actually screened or displayed at artistic venues or showcases as contemplated by the plain language of this criterion.

On appeal, the Petitioner argues that the excerpt from the [redacted] Film Festival’s program is a self-authenticating periodical under Federal Rules of Evidence (FRE) 902(6), and the Director’s decision to not afford evidentiary weight to this submission was erroneous. The Petitioner, however, has submitted only 4 pages of what appears to be a document of at least 80 pages, and the probative value of this incomplete document as evidence is therefore substantially diminished. Here, pages six through eight make no mention of the Petitioner or his film, and page 80 merely provides a brief overview of the Petitioner’s film without providing any details regarding when and how this film was displayed, if at all. The Petitioner had additional time on appeal to submit more complete and persuasive evidence, but neglected to do so.

Moreover, the Petitioner asserts for the first time on appeal that the display of his independent documentary [redacted] at the [redacted] Art Museum in 2013 and the [redacted] Art Festival in 2014 satisfies this criterion. However, we will not consider this claim for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose” and that “we will adjudicate the appeal based on the record of proceedings” before the Chief); *see also Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). Notwithstanding, the Petitioner did not submit evidence showing that he actually displayed his work at these events, nor did he provide evidence to demonstrate that these events constitute artistic exhibitions or showcases as required by this criterion. Similar to his claims regarding the display of his documentary film at the [redacted] Film Festival in 2010, the record does not contain detailed, probative information to establish that he displayed these works in the field at artistic exhibitions or showcases consistent with this regulatory criterion.

For the reasons outlined above, the Petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

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.