



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

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

In Re: 20754998

Date: MAY 27, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an artist, 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 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 miniatures artist specializing in [redacted] folk art and [redacted] miniatures who has displayed his work at numerous exhibitions, showcases and trade fairs around the world. He states that he intends to continue his work as a miniatures artist in the United States.

### 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 four of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to published material, judging, authorship of scholarly articles, and artistic display, and we agree with that determination. However, the Director concluded that the Petitioner did not show that he garnered sustained national or international acclaim and that his achievements have been recognized in the field of expertise, demonstrating that he is one of that small percentage who has risen to the very top of the field.

On appeal, the Petitioner argues that the Director's determination that he has not earned sustained national or international acclaim was erroneous, and further asserts that the Director erred in determining that he did not meet two additional initial evidentiary criteria relating to lesser awards and original contributions of major significance. We note, however, that once the Petitioner satisfies at least three of the regulatory criteria, the focus shifts to whether the evidence establishes that he has the necessary status and acclaim in the field. As the Director found that the Petitioner meets four criteria, any items that might relate to other criteria are better considered in the context of the final merits analysis.<sup>1</sup> For the reasons discussed below, we conclude that the record is not indicative of the necessary level of acclaim and status in the field.

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<sup>1</sup> *See 6 USCIS Policy Manual* F.2, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

## 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).

Regarding published material, the Petitioner offered one article about him published in 2016. This single article, however, does not demonstrate that such minimal 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 Petitioner also submitted evidence demonstrating that his biography appeared in the 2018-2019 volume of *Who’s Who in Visual Art*, published by Art Domain Whois Publisher, Germany. According to the documentation submitted, the Petitioner’s one-paragraph biography appeared along with 100 other brief biographies of artisans, craftspeople and designers in this volume. Appearing in a volume with a large number of other individuals is not indicative of national acclaim or status among the small percentage at the top of the field.

The Petitioner did not show how his overall media coverage is indicative of a level of success with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Thus, the Petitioner did not establish that the limited media reporting on him and his activities reflects a career of acclaimed work in the field. or a very high standard to present more extensive documentation than that required. *See* H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

Relating to the Petitioner’s service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22.<sup>2</sup> The record reflects that the Petitioner participated as a judge/juror for exhibitions including [redacted] in 2010 and the [redacted] Music Festival and Art Show in 2016. However, while the evidence submitted confirms his participation and shows that he has achieved some level of recognition for his work in the field, it does not establish that these exhibitions are prestigious or that selection as a judge for these events is reserved for those artists at the top of the field. The Petitioner did not show, for example, how his judging experience compares to others at the very top of the field, and he has not established that these instances place him among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). 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.

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<sup>2</sup> *See id.* (stating that an individual’s participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

Likewise, authorship and publication do not automatically place one at the top of the field.<sup>3</sup> The record reflects that the Petitioner authored one magazine and one newspaper article in 2016. However, the Petitioner did not demonstrate that his publication record of two documents in a one-year period is consistent with having a career of acclaimed work and sustaining national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. Here, the Petitioner did not establish that his authorships reflect being among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). For instance, the Petitioner did not show the significance of his authorships or how his publications compare to others who are viewed to be at the very top of the field.

Regarding the public display of his artwork, the evidence shows that the Petitioner's work has been displayed at craft shows, fairs, and showcases, primarily in [redacted] as well as at international artistic exhibitions. The record, however, does not include evidence which demonstrates that any of the named craft shows and fairs attracted anything other than local interest or garnered acclaim for the Petitioner and his work. Similarly, although the record reflects that the display of the Petitioner's work at various artistic exhibitions in cities such as [redacted] might suggest broader acclaim for the Petitioner, the record contains insufficient evidence of the attention garnered by such exhibitions.

Beyond the four criteria determined by the Director that the Petitioner satisfied, discussed above, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility as an individual of extraordinary ability. Here, for the reasons discussed below, we find that the evidence does not establish that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of his field.

The Petitioner submitted evidence of his receipt of the [redacted] Special Achievement Medal in the [redacted] category of [redacted] an International Fine Arts Competition presented by [redacted] in 2016. While the Petitioner's receipt of this award demonstrates some level of recognition, the record does not include evidence of recognition beyond the event and its organizers, nor is there evidence that this competition is prestigious or well-known such that this award was nationally or internationally recognized and brought acclaim of that scope to the Petitioner. In addition, the record does not include information about this competition, its categories, and the number and type of medals and other awards issued. The Petitioner did not demonstrate that his receipt of this single award is indicative of the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Nor does the record as a whole reflect such acclaim or include extensive documentation demonstrating that his achievements have been recognized in the field. *Id.*

The Petitioner submitted a certificate and a letter from [redacted] the Association of Folk Artists, Craftsmen and Artists of [redacted] in which the Chairman of the [redacted] Department stated that the Petitioner was accepted as a member in 2006 and that he is a current and full member of the association. The Petitioner also submitted copies of letters from other artists who recommended him for membership based upon his achievements and skill in [redacted] miniatures. These letters, however, do not reflect that membership requires outstanding achievements in the field as judged by recognized experts in that field.<sup>4</sup> For example, while the letter from

<sup>3</sup> *See id.* (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

<sup>4</sup> 8 C.F.R. § 204.5(h)(3)(ii); *see also* 6 USCIS Policy Manual, *supra*, at F.2.

[redacted] indicates that admission “is granted on the recommendation of Art Experts Council composed solely of nationally or internationally recognized experts in the respective fields of folk art and based on the applicant’s artistic achievements and potential for future development in the field,” the Petitioner has not provided documentary evidence, such as the organization’s bylaws or information on the composition of the Art Experts Council to corroborate these claims. The Petitioner has not provided sufficient evidence demonstrating that this association limits its membership to individuals with renowned endeavors nor has he otherwise demonstrated the significance of this membership such that it contributes to a finding that the Petitioner has sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

The Petitioner also claims that he invented a new and unique method for painting miniatures [redacted] and submits reference letters from artists and others in the art world who provide their thoughts on this technique as well as his other contributions to the field.<sup>5</sup> This testimonial evidence indicates that the Petitioner’s artistic skills as a miniaturist are highly regarded by his peers. However, the letters do not identify with specificity how he has remarkably impacted or influenced the field and that he has received sustained and widespread acclaim for his unique contributions.

For example, [redacted] Director of the [redacted] indicates that his museum has acquired and is honored to display the Petitioner’s work, and notes that the Petitioner’s perfection of the special process [redacted] makes his works “utterly unique.” [redacted] Fine Arts Chair for [redacted] Fine Art, generally praises the Petitioner’s art and states that his many accomplishments in the field “unquestionably illustrate” his extraordinary talent and ability. [redacted] artist and board member of [redacted] Fine Art, states that he had not seen the Petitioner’s technique of painting [redacted] prior to the [redacted] Exhibition in 2018, but after seeing it he “is positive that the Petitioner has made a contribution of major significance to the development of [redacted] miniature art.” [redacted] a [redacted] artist, generally compliments the Petitioner’s work and describes his techniques as “very picturesque and illustrative.”

While the writers compliment the Petitioner’s work, none of the writers explain how his technique of painting [redacted] represents an “original contribution,” nor do they address the impact of this technique or any of his other innovations on the field. Neither the letters nor the evidence as a whole indicates that the Petitioner has been recognized for making an original contribution of major significance based on his work. Also, although the statements in these letters describe his work as innovative, they do not indicate that others in the field have adopted elements of or have been inspired by the Petitioner’s work in creating their own art. While these letters suggest that the Petitioner’s [redacted] technique, and body of work generally, have directly impacted the letter writers in their artistic approaches, their statements are not indicative of original contributions in the field with a wider impact consistent with “major significance,” nor do their statements support a finding that the Petitioner has received national or international acclaim as a result of his [redacted] technique or general body of work with miniatures.

The record as a whole, including the evidence discussed above, does not establish the Petitioner’s eligibility for the benefit sought. The record does not contain sufficient evidence distinguishing the Petitioner from others in the field and does not demonstrate that his achievements are at a level that

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<sup>5</sup> All of the reference letters have been reviewed, including those not specifically mentioned in this decision.

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 at 59; *see also* section 203(b)(1)(A) of the Act.

### 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. U.S. Citizenship and Immigration Services 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 miniature art, 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.