



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

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

In Re: 20899882

Date: SEPT. 15, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a wedding photographer, 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 had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to individuals with 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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

After operating his own photographic studio in South Africa for over a decade, the Petitioner entered the United States in 2018 as an O-1B nonimmigrant of extraordinary ability in the arts.¹ Since 2018, he has served as creative director of photography for [redacted] in New York, which photographs corporate events. He also continues to operate his own wedding photography business.

Because the Petitioner has not indicated or shown that he 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 have satisfied seven of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met two of the criteria, pertaining to judging the work of others and display of his work. On appeal, the Petitioner maintains that he meets the other five claimed criteria. Upon review of the record, we agree with the Director that the Petitioner has satisfied only two of the claimed criteria. We will discuss the other claimed criteria below.

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

The Petitioner has documented his receipt of various awards. On appeal, he limits his arguments to what he calls his “most important award,” the 2017 Wedding Photographer of the Year Award from [redacted].² The prize included a trophy and several thousand dollars’ worth of [redacted].

¹ We acknowledge that O-1B nonimmigrant status relates to extraordinary ability, but 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, or whether the nonimmigrant petition was approved in error. Also, the nonimmigrant and immigrant categories have different definitions and standards for persons of the arts. “Extraordinary ability in the field of arts” in the nonimmigrant O-1B 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.

² Because the Petitioner does not contest the Director’s conclusions regarding his other claimed awards, he has waived appeal on those issues. *See Matter of R-A-M*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails

photographic equipment. The executive director of [redacted] stated: “The [redacted] Awards aims to recognize great work and provide an accolade for the best work in the industry. . . . The [redacted] awards receive 5,000 photographic entries from each annual contest from over 1000 photographers . . . in Africa.”

In a request for evidence (RFE), the Director requested evidence of “the national or international significance of the awards or prizes.” In response, the Petitioner stated: [redacted] is considered the most prestigious photography/cinematography competition in Africa.” The passive voice of this sentence does not establish *who* holds that opinion. Letters from within the [redacted] unsupported by additional evidence, do not necessarily reflect a national or international consensus in the field.

The Petitioner added: “to show the significance of the awards we provide several articles and website coverage of past winners of this national competition.” Most of the accompanying materials are from [redacted] own website. The Petitioner also submitted a printout from a blog on another photographer’s personal website, in which she listed her [redacted] award as one of her “favorite achievements.” Printouts from other websites, some of them unidentified, appear to be promotional in nature, including materials about a trade convention organized by the same individuals behind the [redacted]

In denying the petition, the Director concluded that the Petitioner did not “submit major trade publications or other major media conveying that the awards are nationally or internationally recognized for excellence in the field of endeavor beyond the awarding entities.” On appeal, the Petitioner asserts that the Director impermissibly imposed a new requirement beyond the wording of the regulations.

Evidence of an award’s recognition need not take the form of “major media,” but the Director is correct that recognition of the award should extend “beyond the awarding entities” to effectively demonstrate its national or international significance. The burden is on the Petitioner to establish the national or international significance of the prizes and awards. If a prize does not receive media attention when awarded, then there must be some other means to show the recognition afforded to it. Assertions by the [redacted] about its own reputation and recognition do not suffice in this regard. The Petitioner has not submitted sufficient evidence to establish national or international recognition of [redacted] awards outside the [redacted] itself.

We note the submitted evidence about the value of the prize, but the Petitioner submitted no basis to compare the prize to others in the field. Likewise, the Petitioner has shown that a number of companies in the industry sponsor the competition and related trade exposition, but the Petitioner offers no support for the assertion that “[I]arge multinational companies such as these do not sponsor small, unimportant competitions.” The Petitioner, who bears the burden of proof, did not submit any corroborating evidence, such as statements from the sponsoring companies, or cite any source for this claim. As such, it appears to be an unsupported assumption rather than a statement of demonstrable fact.

The Petitioner has not satisfied the requirements of this criterion.

to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on an appeal to the AAO).

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner initially claimed several memberships, but limits his arguments on appeal to his membership in the International Society of Professional Wedding Photographers (ISPWP). A printout from the ISPWP's website lists five requirements for membership:

Experience	Applicants must have photographed a minimum of 50 weddings as the primary in-charge photographer. . . .
Talent	Applicants must submit their website and wedding galleries for review and evaluation. The online galleries must demonstrate artistic and technical ability. . . .
Integrity	Applicants must have no outstanding complaints with consumer protection organizations such as the Better Business Bureau.
Professionalism	Applicants must agree to operate in accordance with the ISPWP Code of Conduct. . . .
References	Applicants must be sponsored by an existing ISPWP member, or they must submit two client references and two wedding photographer references. This provides evidence as to their professionalism, reputation, and experience.

The website further indicates that applicants "have to be voted in by current members."

In the RFE, the Director stated that the Petitioner had not established that the ISPWP requires outstanding achievements of its members, as judged by recognized national or international experts. In response, the executive director of the ISPWP stated that membership is "limited to the best wedding photographers in the world." The official repeated essentially the same membership requirements quoted above.

In the denial notice, the Director stated that the listed membership requirements are not outstanding achievements, and the Petitioner did not establish that recognized national or international experts judge the achievements of applicants for membership in the ISPWP.

On appeal, the Petitioner contends: "There are a plethora of hoops to jump through in order to be accepted into this organization," such that "it becomes obvious to the reader that the criterion for membership is absolutely tantamount to requiring 'outstanding achievements of its members.'" The Petitioner does not address the requirement that the achievements must be judged by recognized national or international experts.

The Petitioner also notes that the *USCIS Policy Manual* names the National Academy of Sciences (NAS) as an example of an association with qualifying membership requirements. The Petitioner asserts that the NAS "requires candidates to be nominated by an academy member," which "is the EXACT situation with regards to Beneficiary's ISPWP membership" (emphasis in the original). But the record does not establish a strong similarity. Materials in the record show that an applicant for ISPWP membership *may* have a member sponsor, but can substitute two letters of reference from clients or other photographers

(who need not be ISPWP members themselves) instead of member sponsorship. The Petitioner does not establish that the NAS solicits applications for membership, as the ISPWP does, or that the NAS's membership requirements are comparable to experience and adherence to a code of ethics.

We agree with the Director that the Petitioner has not shown the ISPWP's membership requirements rise to the level of outstanding achievements as contemplated by 8 C.F.R. § 204.5(h)(3)(ii). The Petitioner has not satisfied the requirements of this criterion.

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

The published material submitted under this criterion should be about the person, relating to the person's work in the field. Marketing materials created for the purpose of selling the person's products or promoting the person's services are not generally considered to be published material about the beneficiary. The person and the person's work need not be the only subject of the material; published material that covers a broader topic but includes a substantial discussion of the person's work in the field and mentions the person in connection to the work may be considered material "about" the person relating to the person's work. 6 USCIS Policy Manual F.2 (appendix), <https://www.uscis.gov/policymanual>.

Under this criterion, the Petitioner submitted copies of pages from [redacted] [redacted] using the Petitioner's photographs as examples of proper posing and angles. The Petitioner is one of about 60 credited contributors to the book. The Petitioner also submitted printouts of several social media and blog posts using his photographs. While the Petitioner received credit for his photographs, the book and posts are not about him. He is not the principal subject of the materials, nor do those materials include a substantial discussion of his work.

The Petitioner also photographed the wedding of a media personality. Social media posts and screen captures in the record indicate that the wedding was at least partially televised, and the Petitioner was credited as the photographer, but the wedding itself was clearly the subject of the coverage, and there is no indication that the coverage included substantial discussion of the Petitioner and his work as a photographer.

The Petitioner features heavily in online videos and podcast interviews. These videos are on channels operated by [redacted] which is a retailer of photographic equipment; [redacted] which engaged the Petitioner as a brand ambassador, or [redacted] and the Petitioner himself. The Petitioner has not submitted transcripts from these videos, but given their sources, they appear to be promotional in nature. A letter from [redacted] sales manager for the [redacted] indicates that brand ambassadors "represent the brand of [redacted] and their products," and that the Petitioner worked with the sales manager "to bring awareness of the [redacted] within the province." Marketing materials created for the purpose of selling the person's products or promoting the person's services are not generally considered to be published material about the beneficiary. 6 USCIS Policy Manual, *supra*, at F.2 appendix. The situation here appears to be comparable, in that the Petitioner received this coverage not because of his own work as a photographer, but because of a promotional arrangement with [redacted] [redacted] regional sales manager confirmed that the purpose of these appearances was "to promote [redacted]"

The Petitioner also appeared on podcasts and in video interviews on various social media sites, but the record does not include transcripts to show the actual content of these materials. The regulation requires the submission of the published material itself, rather than screenshots to show that an interview took place. The Petitioner provides figures regarding some of these materials, for instance indicating that 948 viewers watched an interview on the ISPWP's Facebook page, but the Petitioner did not provide a basis for comparison to show that these figures are consistent with major trade publications or other major media. The Petitioner appeared on a [redacted] podcast, and he established that an associated Instagram page has nearly 34,000 followers, but he did not establish that these followers correlate to the number of podcast listeners.

On appeal, the Petitioner states that the Director did not take into consideration that the nature of published media has evolved, and now includes a great deal of online content. But the Director did not state that the submitted materials do not qualify as "published materials" simply because they appeared online. The Director concluded that the Petitioner had not shown that the submitted materials meet the regulatory requirements, and that the inclusion of the Petitioner's photographs in published materials about individual weddings does not make those materials about the Petitioner. Nothing submitted on appeal overcomes the identified deficiencies.

The Petitioner has not satisfied the requirements of this criterion.

Evidence that the alien 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).

For a critical role, we look at whether the evidence establishes 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. 6 USCIS Policy Manual, supra, at F.2 appendix.

Initially, the Petitioner asserted that he performed in critical roles as a brand ambassador for [redacted] and for [redacted] a manufacturer of camera straps. On appeal, he does not pursue the claim regarding [redacted]

[redacted] sales manager stated that the company's brand ambassadors, called [redacted] "represent the brand of [redacted] and their products . . . on a national and international and international platform. . . . [redacted] then gets feedback on their products and services." The sales manager indicated that the Petitioner represented the brand at various trade shows and reviewed and demonstrated its products on social media. The sales manager stated that the Petitioner's work "helped to boost the sales of [certain] Photographic Equipment in South Africa," but he did not provide specific information about the Petitioner's effect on those sales. A printout from [redacted] website identifies the Petitioner as one of nine [redacted] of South Africa."

The sales manager's letter describes the Petitioner's promotional work but does not explain how the Petitioner's role was of significant importance to the outcome of the activities of [redacted] or a division or department thereof.

In response to the Director's RFE, the Petitioner submitted a letter from the managing director of [redacted] [redacted] who stated that the Petitioner "undeniably played a critical role for our company" with his product reviews. The official asserts: "Each time we released a video or article with [the Petitioner's] reviews, we saw sales of the products endorsed by [the Petitioner] rapidly rise." This vague statement does not provide enough information to show a reliable correlation between the Petitioner's reviews and increases in sales. The information in the record indicates that the Petitioner reviewed new products, which would not have had a significant sales history before the release of the reviews. The Petitioner sometimes reviewed products before their general release, as shown by commentary in one printout, indicating that retailers were "still awaiting . . . local pricing and availability information." Also, the record does not indicate that the Petitioner's reviews were more influential than those of other reviewers, including those who reviewed the products independently rather than at [redacted] invitation.

The Petitioner has also asserted that "his photography studio [in South Africa] undeniably has a distinguished reputation," because he has photographed celebrity weddings and his work has appeared in prominent publications. In the United States, the Petitioner has photographed various events on behalf of [redacted]. The record indicates that these companies have secured lucrative and sometimes high-profile work, and the Petitioner contends that prominent clients "can choose any photography studio," and therefore their selection of the Petitioner's studio and [redacted] demonstrates that those entities have a distinguished reputation. But the record does not establish how and why those clients chose the companies, and therefore does not satisfy the Petitioner's burden of proof to establish this element.

The Petitioner has not satisfied the requirements of this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

After the Director determined that the Petitioner had not satisfied this criterion, the Petitioner asserts on appeal that the Director's conclusion rested in part on a misreading of the evidence, and in part on inconsequential technicalities. We need not explore these finer points, because review of the evidence shows that the Petitioner has not actually documented his salary.

Copies of invoices and promotional materials show the rates that the Petitioner's studios billed clients in South Africa and the United States. In South Africa, he offered packages for 10-12 hours of photography for R25,000 to R50,000. Invoices from the Petitioner's more recent work in the United States show fees between \$1250 and \$6000 for "12 hours of coverage." These fees, however, cover a number of expenses apart from the Beneficiary's own salary. The R50,000 package, for example, included a second photographer, for whom the Petitioner's studio would charge R4000 if hired separately; a 30 x 40 album, which would cost R9000 separately; 50 "Jumbo Prints," worth R1500; and two "Parent Albums" which would cost R2500, along with other expenses separate from the Petitioner's salary. Clearly, the Petitioner would have personally received only a fraction of the total fee, and he did not document how much of his fee he personally received as salary.

Salary survey documents in the record have little evidentiary weight because the Petitioner has not established his actual salary, and therefore the Petitioner has not provided a suitable basis for comparison.

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 lesser 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 conclusion 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. 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). Here, the Petitioner has not shown that the recognition of his work is indicative of the required sustained national or international acclaim or demonstrates 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 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). The record shows that the Petitioner is a successful photographer, who has attracted some prominent clients and achieved a degree of visibility as a brand ambassador for [REDACTED]. The evidence submitted, however, does not rise to the level of satisfying at least three of the threshold criteria at 8 C.F.R. § 204.5(h)(3), and it does not show that he has earned sustained national or international acclaim that places him at the top of his field.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.