



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

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

In Re: 22278354

Date: SEPT. 19, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a tattoo artist and painter, 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. 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 sustain 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

The Petitioner entered the United States as a B-2 nonimmigrant tourist in 2013, and has remained in the United States since that time. She works as a tattoo artist at [redacted] in [redacted] California.

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed 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;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met three of the criteria, relating to published material, judging the work of others, and display of her work. On appeal, the Petitioner asserts that she also meets three other criteria, relating to memberships, contributions, and leading or critical roles.

We agree with the Director's determination that the Petitioner has met at least three of the initial criteria at 8 C.F.R. § 204.5(h)(3). Therefore, rather than further discuss those threshold criteria, we will proceed directly to the final merits determination, in which we consider whether the record as a whole establishes that the Petitioner has achieved sustained national or international acclaim, is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.¹ In this matter, we determine that the Petitioner has established eligibility.

The Director concluded that, although the Petitioner had satisfied the letter of three regulatory criteria at 8 C.F.R. § 204.5(h)(3), the record documents "bursts of professional popularity and success" rather than

¹ *See also 6 USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

sustained national or international acclaim. These “bursts” include appearing as a contestant on [redacted], a reality competition show [redacted] and a wave of publicity that accompanied a mural the Petitioner painted in early 2020 [redacted]. The Petitioner’s recognition as a muralist appears to rest on that one painting, but the bulk of the record concerns her work as a tattoo artist. In the latter field, we conclude that the Petitioner has met her burden of proof to establish, by a preponderance of the evidence, that she has achieved sustained national or international acclaim.

The amount of media exposure that the Petitioner has received does not appear to be commonplace in her field. She has featured in several online articles listing the best tattoo artists. By themselves, such lists might not reflect recognition beyond a small number of bloggers. But the record shows that the Petitioner’s Instagram account has a substantial audience of over 250,000 followers. From the available evidence in the record, this appears to be a significantly high number in her field of endeavor, and a relatively direct measurement of popular acclaim.² The Petitioner may have gained many of these followers during one of her “bursts of professional popularity,” but she has retained them even after she was eliminated from [redacted] and the publicity from her mural subsided.

The Petitioner’s documented participation as a judge at the [redacted] Tattoo Arts Convention in [redacted] 2021 takes on added weight from evidence in the record that the convention was a major national event within the field. Furthermore, the judging was not in a small event independently held by an exhibitor; the invitation to serve as a judge came from the organizer of the convention.

While some materials in the record are more persuasive and have more weight than others, the record as a whole is sufficient to demonstrate that the Petitioner is a popular and widely respected artist. The record shows, by a preponderance of the evidence, that the Petitioner has achieved a level of recognition in her field consistent with sustained national or international acclaim. Therefore, we will sustain the appeal.

ORDER: The appeal is sustained.

² The number of social media followers in this case should not be construed as a universally applicable standard. The significance of this number of social media followers will vary from one field to another. A motion picture actor, for instance, could reasonably be expected to have substantially more followers than a research chemist.