



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

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

In Re: 29046472

Date: DEC. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a comics creator and illustrator, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Noncitizens may obtain U.S. permanent residence in this category if they demonstrate “sustained national or international acclaim” and provide “extensive documentation” of recognition they received for achievements in their fields. *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner met only one of 10 initial evidentiary criteria, two less than required for U.S. Citizenship and Immigration Services (USCIS) to conduct a final merits determination for eligibility under the requested immigrant visa category. On appeal, the Petitioner contends that the Director misapplied law in finding insufficient evidence of: his receipt of nationally or internationally recognized awards; published materials about himself; and his performance in a leading or critical role for organizations with distinguished reputations.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that, while the Petitioner has submitted qualifying evidence of his receipt of a nationally recognized award for excellence in his field, he has not demonstrated his satisfaction of a third evidentiary requirement. We will therefore dismiss the appeal.

## I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term “extraordinary ability” means a level of expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Evidence of extraordinary ability must demonstrate a noncitizen’s receipt of either “a major, international recognized award” or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3)(i-x).<sup>1</sup>

If a petitioner meets either of the initial evidentiary requirements discussed above, USCIS then determines whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements placing the noncitizen among the small percentage at the very top of their field. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (requiring a two-part analysis of extraordinary ability).

## II. ANALYSIS

The record shows that the Petitioner, a Venezuelan national and citizen, began creating and illustrating comics in his home country in the 1970s. Specializing in action heroes, he co-founded an artistic merchandising company where, from 2006 to 2020, he served as president and lead illustrator and artist.

Since 2020, the Petitioner has been working at a comic book development company in the United States as a comics creator and illustrator. He seeks to continue designing comics in this country.

The record does not demonstrate - nor does the Petitioner claim - his receipt of a major, international award. He must therefore satisfy at least three of the 10 evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i-x).

The record supports the Director’s finding that the Petitioner submitted evidence of the display of his comics work at artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(vii). We will next consider his claims that he: received lesser nationally or internationally recognized prizes; was the subject of published materials; and performed in a leading or critical role for distinguished organizations. *See* 8 C.F.R. § 204.5(h)(3)(i), (iii), (viii).

### A. Receipt of Nationally or Internationally Recognized Prizes

This evidentiary standard requires “[d]ocumentation 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). USCIS first determines if a noncitizen - as opposed to their employer, for example - received prizes or awards. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1), [www.uscis.gov/policy-manual](http://www.uscis.gov/policy-manual). If so, the Agency then determines whether an award was nationally or internationally recognized and given for excellence in the field of endeavor. *Id.* Relevant considerations include: the

---

<sup>1</sup> If the ten standards do not readily apply to a petitioner’s occupation, the noncitizen may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(h)(4).

criteria used to grant the awards; their national or international significance; the number of recipients; and any limitations on competitors. *Id.*

The Petitioner submitted evidence that he won a 2022 [redacted] award in Venezuela in the category of [redacted]. According to letters from the award foundation's president, the organization issues prizes annually to 60 to 100 honorees in a variety of fields, including: art; entertainment; media; business; and science. The foundation president stated that groups of experts in specific fields evaluate candidates based on their professional careers.

The Director found that the Petitioner's award "appear[s] to be local or regional in nature." The Director also stated that "it has not been established that the prizes or awards were given for excellence in the petitioner's field of endeavor, or that the primary purpose of the prizes or awards was to recognize excellence in the petitioner's field." Citing the award's website, the Director concluded that the Petitioner did not receive his prize for excellence in his field, but rather "for the years of experience."

A preponderance of the evidence, however, demonstrates the Petitioner's satisfaction of the regulation's criterion. Documentation establishes his receipt of the [redacted] award and its national recognition in Venezuela. *See Buletini v. INS*, 860 F. Supp. 1222, 1230-31 (E.D. Mich. 1994) (holding that, to meet 8 C.F.R. § 204.5(h)(3)(i), an award "need not have significance outside of one country"). The award foundation's president stated that "[award] candidates are chosen nationally and from all parts of the world" and that the awards' issuances are televised in Venezuela. She said that, because the foundation has given the awards for more than 60 years, their "prestige and credibility" make them "the number one [awards] in Venezuela." An online article about the prizes describes them as "[t]he award for excellence in Venezuela." The article also quotes the foundation's former president as saying: "In the world there are many important prizes, but in Venezuela the best thing is to have a [redacted]." The evidence therefore sufficiently establishes the Petitioner's award as nationally recognized.

The Petitioner has also demonstrated that he received his [redacted] award for excellence in his field. A copy of the award describes its issuance in the category of [redacted]. [redacted] The award foundation's president stated that a group of experts in the field of "plastic arts" evaluated the Petitioner and chose him ahead of four others in the field.<sup>2</sup> Although the foundation gives awards only to those with at least 10 years of experience in their fields, the president indicated that the organization does not base the prizes solely on number of years of experience. Rather, she stated that the awards seek "to exalt and dignify the talent of the best, with a recognition to brilliant men and women, who have excelled through their artistic, cultural, religious, business, scientific, educational, historical and entrepreneurial skills." A preponderance of the evidence therefore establishes the Petitioner's receipt of the award for excellence in his field.

Consistent with 8 C.F.R. § 204.5(h)(3)(i), the Petitioner has demonstrated his receipt of a nationally recognized award for excellence in his field. We will therefore withdraw the Director's contrary finding.

---

<sup>2</sup> In Latin America, the term "plastic arts" encompasses "painting, architecture, sculpture, textile art and all human expression that transforms materials into images and objects with artistic meaning." LatAm Arte, "What Are Plastic Arts?" [www.latamarte.com/en/articles/5MbA/](http://www.latamarte.com/en/articles/5MbA/)

## B. Published Material About the Petitioner

This criterion requires “[p]ublished 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.” 8 C.F.R. § 204.5(h)(3)(iii). The evidence must include the title, date, and author of the material, and any necessary translations. *Id.*

USCIS first considers whether published materials relate to a petitioner and their specific work in their field. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). The Agency then determines whether the materials’ sources qualify as professional or major trade publications, or other major media. *Id.*

In evaluating whether a submitted publication is a professional publication, major trade publication, or major medi[um], relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).

*Id.*

The Petitioner submitted copies of four online articles about himself and his comics work. The articles bear the following publication dates: August 2014; May 2022; July 2022; and September 2022.

In response to the Director’s request for additional evidence, the Petitioner submitted website analyses categorizing all four publication sources in the “news and media” industry. As the websites did not specifically target artists as audiences, the record does not establish the sources as professional or major trade publications. *See* 6 *USCIS Policy Manual* F.(2)(B)(1) (listing the intended audience as a relevant factor “for professional and major trade publications”).

Thus, we must determine whether any of the publication sources qualify as “other major media.” *See* 8 C.F.R. § 204.5(h)(3)(iii). “[C]ourts generally agree that the phrase can mean a publication with significant reach and recognition. It follows that the AAO may reasonably require evidence of circulation or the like.” *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 185 (D.N.J. 2021) (citations omitted).

The website analyses provided by the Petitioner include readership statistics. The analyses state the following as of January 2023:

- The source of the August 2014 publication generated 199,656 monthly visits. 6,437th in Venezuela and 28,246th in the news and media industry;
- The source of the May 2022 publication generated 275,590 monthly visits, 1,150th in Venezuela and 12,894th in the news and media industry;
- The source of the July 2022 publication generated 132,279 monthly visits, 272,043rd in the United States and 24,827th in the news and media industry; and
- The source of the September 2022 publication generated 1.545 million monthly visits, 135th in Venezuela and 4,021st in the news and media industry.

Based on the number of monthly visits and rankings, we do not consider the sources of the August 2014, May 2022, or July 2022 publications to constitute major media. But whether the source of the September 30, 2022 publication is a major medium is a much closer call. The adjective “major” ordinarily means “greater in dignity, rank, importance, or interest.” Merriam-Webster Dictionary, “major,” [www.merriam-webster.com/dictionary/major](http://www.merriam-webster.com/dictionary/major). The September 2022 source’s generation of more than 1.5 million visits a month is substantial. But, based on the source’s rankings as the 135th most visited website in Venezuela and 4,021st in the news and media industry, the record does not demonstrate that the source constitutes a major medium. The record also lacks evidence of the source’s level of dignity, importance, or interest.

On appeal, the Petitioner urges us to “compare[] the [sources’] circulation or readership figures to those newspapers or magazines with similar intended audiences to determine if these figures raise it to the level of being considered major in nature.” But we cannot make such comparisons because the Petitioner did not provide evidence of the readership statistics of other publication sources. The appeal includes a copy of an online article, “Top 30 Venezuela Newspapers Online,” ranking the source of the September 2022 publication about the Petitioner 10th. But the Director’s RFE notified him of the need for additional evidence and gave him a reasonable opportunity to provide it. We therefore decline to accept the evidence on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). Also, even if we considered the article, it does not state readership statistics or the basis of its rankings.

For the foregoing reasons, the Petitioner has not submitted published materials in professional or major trade publications or other major media, relating to his work in the comics field. We will therefore affirm the Director’s negative finding regarding the evidentiary requirement at 8 C.F.R. § 204.5(h)(3)(iii).

### C. Performance in a Leading or Critical Role

This standard requires “[e]vidence 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). USCIS first determines whether a noncitizen has performed in a leading or critical role for an organization, establishment, or its division or department. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). Evidence of a leading role must demonstrate that the noncitizen is (or was) a leader within the organization, establishment, division, or department. *Id.* In contrast, evidence of a critical role must establish that a noncitizen contributed in a significant way to the outcome of the activities of an organization, establishment, division, or department. *Id.*

If a noncitizen establishes their performance in a leading or critical role, USCIS then determines whether the organization, establishment, department, or division that benefited has a distinguished reputation. *Id.* The Agency considers the relative size or longevity of an organization or establishment along with other relevant factors, such as the scale of its customer base or relevant media coverage. *Id.*

The Petitioner demonstrated that he has performed in leading or critical roles for the company he co-founded in Venezuela and the U.S. business for which he now works. The Director, however, found insufficient evidence that these businesses have or had distinguished reputations. The Director stated: “The evidence only provides general information and does not contain information about any awards,

recognition, or achievements garnered by the organizations or establishments, or otherwise demonstrate that [they] have distinguished reputations.”

On appeal, the Petitioner maintains that the Director overlooked evidence. As proof that his Venezuelan employer had a distinguished reputation, the Petitioner submitted materials showing his development of the company’s most successful product: an action figure of a Venezuelan military hero and revolutionary. The company’s president, who is also the Petitioner’s daughter, stated that major media, including one of Venezuela’s most widely read newspapers, published articles about the action figure. A letter from a distributor states that, from 2009 to 2012, it sold more than 2,000 of the eight-inch-tall action figures.

The Petitioner submitted copies of additional articles about the action figure, confirming its design by the Petitioner and its manufacture by his former employer. But the evidence does not establish that the company’s manufacture of the figure or the media recognition the business received for making it earned the company a distinguished reputation. The Petitioner has not shown that the company was large, conducted business for a long time, or enjoyed a wide customer base.

As evidence that the Petitioner’s current U.S. employer has a distinguished reputation, he submitted materials showing the company’s publication of a comic book he created about a lifeguard/superhero and the employer’s participation in major comic book conventions in the United States. The record, however, does not establish that the company’s publication of the comic book or its participation in large comics conventions provide it with a distinguished reputation. The evidence does not indicate whether the comic book is popular or profitable, or whether the conventions limited the number or type of companies that could participate.

For the foregoing reasons, the Petitioner has not established that the organizations for which he has performed leading or critical roles have or had distinguished reputations. We will therefore also affirm the Director’s finding regarding the evidentiary requirement at 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner has not demonstrated his satisfaction of at least three of the 10 initial evidentiary requirements for the requested immigrant visa category. Thus, we need not make a final merits determination as to his eligibility as a noncitizen with extraordinary ability in his field and hereby reserve his appellate arguments in that regard. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make “purely advisory findings” on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant does not otherwise qualify for relief).

### III. CONCLUSION

The Petitioner met a second initial evidentiary requirement by demonstrating his receipt of a nationally recognized award for excellence in his field. But he did not establish his satisfaction of a third evidentiary criterion as required for the requested immigrant visa category. We will therefore affirm the petition’s denial.

**ORDER:** The appeal is dismissed.