



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

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

In Re: 25051384

Date: FEB. 7, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as an alien 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the Petitioner did not establish that he was the recipient of a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner attained several degrees from his studies spanning from 2004 to 2014, and he has operated in the network communications and the “internet of things” realm. 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). Before the Director, the Petitioner claimed he met eight of the regulatory criteria. The Director decided that the Petitioner satisfied two of the criteria relating to authorship of scholarly articles and performing in a leading or critical role, but that he had not satisfied the criteria associated with:

- Prizes or awards;
- Membership;
- Published material;
- Judging;
- Original contributions; or
- Commercial success.

On appeal, the Petitioner maintains that he meets the evidentiary criteria relating to published material, original contributions, and commercial success. As the Petitioner does not contest the following criteria, he has abandoned those claims within these proceedings: prizes or awards, membership, and judging. *See Matter of Zhang*, 27 I&N Dec. 569, 569 n.2 (BIA 2019) (finding that an issue not appealed is deemed as abandoned).

A. Translation Certifications

We begin noting a deficiency in the appellate evidence relating to documents that originate in a foreign language. The regulation at 8 C.F.R. § 103.2(b)(3)) states “[a]ny document containing foreign language submitted to U.S. Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” *See also Matter of Nevarez*, 15 I&N Dec. 550, 551 (BIA 1976).

The language utilized within the regulation implicitly precludes a single certification that validates several translated forms of evidence unless the certification specifically lists the translated documents. Without a single translator's certification for each foreign language form of evidence, or a translator's certification specifically listing the documents it is validating, the certification cannot be regarded to be certifying any specific form of evidence. The final determination of whether evidence meets the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding the appropriate entity to determine eligibility is USCIS).

Reviewing the certifying documents relating to the Petitioner's evidence on appeal, those instruments appear to be a single certification document that was photocopied for each form of evidence originating in a foreign language, and they do not identify what document they are translating. Each certification is identical in appearance to include the certifier's unique signature as well as the handwritten date.¹ A photocopied blanket certification that does not identify the translations it is certifying—or name the Petitioner—is not probative evidence that the certification relates to all or any of the translations in this record of proceeding. Such a deficiency in the certification results in the evidence accompanied by these translations to possess diminished value and are insufficient to demonstrate the validity of the foreign language materials.

Because the Director did not raise this specific issue, we will not apply this determination to the two criteria the Director granted unless the Petitioner demonstrates he satisfies one additional criterion, which would result in a remand to the Director. We also note the translator's signature on the documents before the Director appears markedly different than the signature for this same individual on appeal.

B. Evidentiary Criteria

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 Director determined the Petitioner's evidence did not meet the requirements of this criterion because it was not about him. The Petitioner initially claimed eligibility under this criterion and submitted supporting evidence. The Director found the Petitioner did not satisfy the regulatory requirements and issued a request for evidence (RFE), but the Petitioner's response to that request did not contain claims relating to this criterion. The regulation states a petitioner shall submit additional evidence as a director, in his or her discretion, may deem necessary. The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8), (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

¹ In making this determination, we do not propose to be handwriting experts. But we can identify identical appearing documents, especially when they contain letters, words, and numbers that are indistinguishable in their slant or angle, writing instrument lifts at identical portions of various letters, symmetry of the letters, etc.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept new claims or evidence offered for the first time on appeal. *See Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533, 537 (BIA 1988). If the Petitioner had wanted the submitted claims and evidence to be considered, he should have submitted the documents in response to the Director's RFE. *Id.* Under the circumstances, we are not obligated to consider the sufficiency of these specific claims or evidence submitted on appeal.

Setting that issue aside, the Petitioner provided several documents that appear to either be articles or in-person interviews. Even though the material appears to reflect the title, date, and author, it lacks the source in which each form of evidence appeared. Furthermore, the translations of this material are accompanied by the deficient certifications that significantly diminishes the evidentiary value of this material. Although the appeal brief indicates the Petitioner is mentioned in each form of evidence, he does not establish the Director committed an error in evaluating the material under this criterion's requirements.

Based on these numerous shortcomings, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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).

The primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence).

Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all these elements to meet the plain language requirements of this criterion.

The Petitioner claimed his eligibility under this criterion based on his participation on committees that produced standards for various practices in his field, as well as his role in receiving patents. The Director determined the Petitioner did not meet the requirements of this criterion.

As it relates to the Petitioner's role on committees, the Director noted he did not offer evidence about the committees, the specific work that resulted from each committee, or the actual impact of each committee's work in the broader field. On appeal, the Petitioner restates he was one of the main drafters in the preparation of national standards and he identifies several exhibits and their corresponding exhibit number that corroborate his claims. However, a review of the Petitioner's appellate materials—consisting of more than 250 pages—reveals that he did not organize the evidence

using exhibit numbers as he claims. Due to the nature of the material appearing in a foreign language, it is also not clear how the documents are organized. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

We noted above why foreign documents without sufficient certified translations will not adequately aid the Petitioner in demonstrating eligibility within these proceedings. Even setting that deficiency aside, the appellate material that we can discern as addressing the various committees and their work does not establish how that work had a significant effect in the Petitioner's broader field. Simply claiming a group effort to create standards without evidence showing how those standards impacted the field are insufficient under this criterion. Additionally, when a petitioner advances similar claims on appeal that they presented to the Director, but without explaining how the Director's decision contained any errors, this may generally be viewed as an inadequate basis to claim eligibility under this criterion on appeal.

Because the Petitioner submits foreign material with deficient translations, he offers significant amounts of evidence without devising a method to identify what documents he is referencing, and he does not explain how the Director might have erred in their decision, he has not overcome the adverse determination relating to this criterion on appeal.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x).

The Petitioner provided information related to patents. The Director determined that the Petitioner did not meet the requirements of this criterion because the regulation limits this provision to those in the performing arts. Although the Petitioner contests the Director's ultimate determination under this criterion, he does not address the Director's actual reasoning for not granting the criterion. As the Petitioner has not addressed the Director's findings nor adequately explained how his claims or evidence situate him within the performing arts, he has not met the plain language requirements of this criterion.

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 do not need to 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 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 that goal. 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 their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their 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.