



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 20617300

Date: JULY 18, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an actor, 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 Petitioner satisfied at least three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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

Section 203(b)(1)(A) 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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. at 376.

II. ANALYSIS

A. Evidentiary Criteria

The Petitioner indicates he is and intends to continue working as an actor. While we do not discuss each piece of evidence, we have reviewed and considered each one.

Before the Director, the Petitioner claimed to have received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3), and to have met the following eight alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x):

- Lesser prizes or awards;
- Published material about him and his work;
- Participation as a judge of others’ work;
- Original contribution of major significance;
- Display of work at artistic showcases or exhibitions;
- Leading or critical role;
- High salary in relation to others; and
- Commercial successes in performing arts.

The Director found that the Petitioner did not establish he received a major, internationally recognized award, but that he satisfied four of the alternate regulatory criteria, lesser prizes or awards; published material about him and his work; participation as a judge of others’ work; and display of work at artistic showcases or exhibitions. See 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv) and (vii). We agree with the

Director's determination the Petitioner meets three of the regulatory criteria; however, we do not agree the evidence demonstrates the Petitioner met the criterion for published material about him and his work. We reserve consideration of the evidence submitted for published material in our review of the totality of the material in the final merits determination set out in Kazarian.

After determining that the Petitioner satisfied three of the regulatory criteria, the Director proceeded to a final merits determination. Based on an evaluation of the totality of the evidence, the Director concluded that the record did not show the Petitioner's sustained national or international acclaim and did not demonstrate that he is at the very top of his field of endeavor.

On appeal, the Petitioner argues that he has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3), and that he satisfies additional criteria relating to original contribution of major significance at 8 C.F.R. § 204.5(h)(3)(v) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). Because the Petitioner has already shown that he satisfies the minimum requirement of at least three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.¹

B. Final Merits Determination

As the requisite initial evidence has been submitted, we will evaluate whether the record demonstrates, by a preponderance of the evidence, that 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 the Petitioner's 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 the petitioner's successes are sufficient to demonstrate he has extraordinary ability in the field of endeavor. In this petition, we agree with the Director that the Petitioner has not established eligibility as a person of extraordinary ability.

The Director concluded the evidence was insufficient to establish that he enjoyed sustained national or international acclaim and is one of the small percentage at the top of his field. The Director considered the totality of the evidence, including the Petitioner's acting roles in award winning films, [redacted]; the awards and scholarships for his music therapy practice; his lead acting role in the production, [redacted] Children's Hospital; his work with other well-known organizations for advertising campaigns; his song [redacted] being voted number one at the top 100 Indie Dance/Disco chart on [redacted] in 2015; his judging activities at the 2018, 2019, and 2020 International Festivals [redacted] held in [redacted] published articles about the Petitioner; and his skills and work described in letters of recommendation from his colleagues.

On appeal, the Petitioner argues that the Director abused its discretion in its final merits determination, and that his "resume and track record of success has proven that he has sustained the level of extraordinary international and national acclaim." The Petitioner emphasizes the Jury Prize for best film at the 2017 International Festival [redacted] for which he was recognized for his acting; his

¹ See generally 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policy-manual> (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).

being selected from over four thousand applicants for a lead acting role for an [redacted] advertising campaign; his lead acting role with the [redacted] commercials for the video game developer, [redacted] and articles discussing his work.

The Petitioner is described as an Iranian born Swedish actor, singer, songwriter, and music therapist for individuals with disabilities and special needs. The record shows he attained a bachelor's degree in music therapy from [redacted] University at [redacted] in 2014, earning scholarships for his academic work in music therapy. As a distraction to his pain from a car accident and anxiety, the Petitioner explains taking acting lessons and later earning acting roles for commercials and films.

The Petitioner performed a lead acting role as a visually impaired person in the short film, [redacted] [redacted] and attributes earning the role because of his music background and his connection with the disability community having worked with clients who had visual impairments. The film was awarded the Jury Prize for best film at the 2017 International Festival [redacted] held in [redacted] and was nominated for best film at the 2017 [redacted] Festival in India. The Petitioner was recognized as an actor on the Jury Prize for best film and was offered a judge role for subsequent International Festivals [redacted] for 2018, 2019, and 2020.

The record shows that the Petitioner has acted in additional roles for the following: the public service announcement production, [redacted] which helped raised more than eight million dollars for children's visual health at [redacted] Children's Hospital; the film, [redacted] which earned a cinematography award in 2017; the short film, [redacted] which was shown at film festivals in India, Italy, and Egypt; the role of [redacted] video game commercials; and commercials for well-known companies, such as [redacted]. The Petitioner has also been recognized in a few publications for his acting roles. The Petitioner emphasizes his career as a singer and songwriter, including his winning second place for singing at a Swedish talent competition, [redacted] at the age of 17, and his song [redacted] being voted number one at the top 100 Indie Dance/Disco chart on [redacted] in 2015.

The record, however, does not demonstrate that the Petitioner's personal and professional achievements rise to a level of a "career of acclaimed work in the field" as contemplated by Congress.²

As mentioned above, the Petitioner received an award, the Jury Prize for best film at the 2017 International Festival [redacted] held in [redacted]. The Jury Prize for best film certificate lists the Petitioner as one of three actors in the film, and a letter from [redacted] program director of International Festival [redacted] Festival, states the Petitioner won the Jury Prize "for his acting performance in [redacted], including best scenario, best film and direction." Details about the festival awards were submitted with [redacted] letter indicating the festival received "700 films of 90 different nationalities."

The record indicates the International Festival [redacted] recognizes films with a specific focus, raising awareness for individuals with disabilities. An article in Kayhan Life International describes the film festival, [redacted]

[redacted] The record includes media

² H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

publications showing the Petitioner was recognized for his role in the film and his receipt of the award. However, the publications in which some of these articles appear relate to raising disability awareness rather than to the Petitioner's field of acting. Other articles appear in publications for which the record lacks evidence of circulation and readership. While indicative of some degree of recognition, the record lacks sufficient evidence to establish these articles demonstrate the requisite level of acclaim within the Petitioner's field.

The record also includes letters of recommendation from colleagues recognizing the Petitioner acting in the film and his receipt of the award. However, the letters only make a brief mention of the film and its award, and most of the individuals writing the letters do not indicate whether they were associated with the films or how they have knowledge of the Petitioner's acting in the films.³ For instance, a letter from [redacted] a film producer, states, "I came across [the Petitioner's] extraordinary acting talent in the short film [redacted]. . . . As a producer, I have worked with several Academy Award-winning [sic] actors and I must say that [the Petitioner's] extraordinary talent promises a bright future, resulting in many more awards in the acting field." While acknowledging the Petitioner's receipt of the award and his abilities as an actor, these letters do not attest to the significance of the award within the field of acting. Further, [redacted] characterization of the Petitioner having "a bright future" with "many more awards" does not indicate the Petitioner is currently at the top of his field. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). The record does not show that based on his acting in [redacted] and his receipt of the Jury Prize award at the 2017 International Festival [redacted] that he is one of the small percentage at the very top of the acting field. See 8 C.F.R. § 204.5(h)(2).

The Petitioner claims he played lead acting roles in other films that have either received, or been nominated for, awards. The Petitioner's letter explains that the film [redacted] earned a European Cinematography award and that the film, [redacted] was shown at film festivals in India, Italy, and Egypt and was nominated for awards. To corroborate his claims, the record includes the films' advertising materials indicating his leading role, as well as letters of recommendation briefly mentioning his acting in the films. However, the advertising material and letters do not demonstrate the Petitioner's acclaim at the national or international level based on his role in these films. The record does not show that the Petitioner having a leading acting role in these films demonstrated his receiving significant attention and as a result, has not demonstrated he is at the top of his field.

The Petitioner also emphasizes his career as a singer and songwriter, including his winning second place for singing at a Swedish talent competition, [redacted] at the age of 17. While the Petitioner provided a description of his winning second place, the record does not include independent, objective evidence supporting his claims. Letters of recommendation indicate the Petitioner having placed second at the competition, however, the letters are from people who do not appear to have direct knowledge of, or had any association with, the competition. The Petitioner also claims his song [redacted] was voted number one at the top 100 Indie Dance/Disco chart on [redacted] [redacted] in 2015. However, the record does not include independent, objective evidence to support the Petitioner's claims or to provide details of this award. Moreover, the Petitioner does not explain how

³ All letters submitted by the Petitioner were reviewed and considered, even if not every letter is discussed herein.

recognition for his singing and songwriting abilities demonstrates acclaim in acting, his field of endeavor.

As such, the evidence for the Petitioner's awards, and for the awards received by films he acted in, do not sufficiently establish that the Petitioner received an award commensurate with those among the top of his field of acting.

Regarding media coverage, the Petitioner submitted four articles related to his work as an actor. Two of the articles do not include an author, [redacted] published in Voyage Los Angeles and [redacted] published in Persian Heritage. Without an author, it is uncertain whether the articles are marketing material or independent, objective published articles about the Petitioner. The article entitled, [redacted] published in Kayhan Life International is about the Petitioner in his field of acting, however, the record lacks evidence demonstrating the prestige and scope of the publication. As such, the record is insufficient to establish that the Petitioner has enjoyed national or international acclaim based on these publications.

The record also includes an article published in Abilities.com, [redacted] [redacted], which indicates the author as [redacted]. However, the article is written in the first person and does not reference the Petitioner by name. Since the article does not include the Petitioner's name, we are unable to determine that it is about the Petitioner or that it demonstrates his recognition within the field. A letter from the Petitioner's counsel explains that Abilities.com is a United States on-line newspaper founded in 2005 with a daily circulation of 239,000, and highlights literature, film, adaptive arts, dance, and inclusive recreation in the disability community. However, the Petitioner did not submit independent, objective evidence to support these claims. Assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence. With the article, the Petitioner submitted a printout summary of the 2018 Ability Expo, explaining it as a multi-city event dedicated to educating and improving the lives of Americans with disabilities. However, the connection of this summary to Abilities.com is not clear, as it does not mention the website or explain their relation.

Although the media submitted recognizes the Petitioner's work as an actor, many of the submitted articles were not supported by independent evidence establishing the publications' prestige, circulation, or other factors indicative of national or international acclaim..

For the Petitioner's participation as a judge of the work of others in the field of acting, the record shows he was a U.S. selection judge and a panel judge for the 2018 International Festival [redacted] [redacted]. The record does not explain what level of candidates the Petitioner judged other than the film festival's program director stating that the Petitioner would "be part of the judge panel with the duties of watching and judging films" that participate in the festival. The Petitioner's judging experience is a relevant consideration as to whether the evidence is indicative of his national or international acclaim. See Kazarian, 596 F.3d at 1122. Although the record shows that he was also asked to be part of the judge panels for the 2019 and 2020 International Festivals [redacted] the record does not include evidence that the Petitioner participated as judge for those film festivals.

While the Petitioner's selection and participation on the panel of judges for International Festivals [redacted] is commendable, the record shows the Petitioner's participation as a judge of the work of others is limited to the one judging instance. Also, the record does not demonstrate how his judging experience compares to others at the top of the field, that the judge panel included nationally acclaimed actors, or that the judges received significant recognition in the field as a result of their participation. The Petitioner has not shown that his judging experience places him among that small percentage at the top of his field. See 8 C.F.R. § 204.5(h)(2).

The record shows that the Petitioner's work was displayed at art exhibitions, including his acting in [redacted] being shown at the 2017 International Festival [redacted] in [redacted] the 2017 [redacted] in India, and the 2017 [redacted] Film Festival in Belgium. We acknowledge that the film was awarded the Jury Prize, and the award recognized the Petitioner for his acting in the film; however, the record does not show that this festival, or the other festivals where the film was shown, were considered prestigious or garnered attention in the field of acting in a manner consistent with national or international acclaim. The record also includes advertising material for other films, specifically [redacted] was shown at the 2017 [redacted] Film Festival and at the 2018 [redacted] Film Festival, and the film, [redacted] was shown at film festivals in India, Italy, and Egypt and nominated for awards. Besides the Petitioner's assertions, the record does not include independent, objective evidence describing the films, the Petitioner's role in the films, details of the film festivals, or the award nominations. The Petitioner did not demonstrate his acting performances in films shown at the film festivals garnered him with national or international acclaim. For instance, the Petitioner did not submit evidence demonstrating his acting brought praise from critics in his field, drew notable crowds, raised attendance, or that his acting in the films showed that he "is one of that small percentage who [has] risen to the top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

Regarding original contributions of major significance in the field and for leading or critical role for organizations or establishments, we will address the evidence for these together. The Petitioner claims his acting played a critical role for the [redacted] commercials and contributed to the success of the video game. The Petitioner also asserts that his acting role for an [redacted] commercial campaign played a critical role in the economic and business success of the talent agency that represents him, [redacted]. The record includes letters of recommendation from his talent agency and other individuals in the acting industry who worked with the Petitioner on commercials, advertising campaigns, and films. However, the record does not include evidence showing the Petitioner's acting in the [redacted] advertising campaign, the [redacted] commercials, or other commercials and advertising campaigns earned him national or international acclaim for his field.

Regarding the [redacted] commercials, the Petitioner submitted two letters from persons who worked on the commercials. [redacted] a film and commercial producer, and [redacted] a cinematographer and director, both acknowledge that the Petitioner's acting in the commercials helped with nominations for three awards, winning one award, and success with online views and product sales. The letter from the producer of the [redacted] commercials states, "I produced [redacted] commercials for [redacted] and was casting for top of the field and extraordinary talents to fill the role of lead and critical rose of [redacted]. . . Thanks to [the Petitioner's] extraordinary [sic] acting performance, [redacted] commercial was nominated for [three] awards and came away with a win. [redacted] was so pleased with [the Petitioner's] extraordinary acting skills and the outcome of the commercial and its results in sales and millions of views that they decided

to hire [the Petitioner] and film [eight] additional commercials.” Although both letters speak generally to the success of the commercials, they do not show to what extent that the Petitioner’s acting in the commercials earned him national or international acclaim. For instance, the letters and other evidence in the record do not provide further explanation of the award, the award nominations, the Petitioner’s recognition for the award and nominations, details of the online viewership, or the videos’ product sales. Without further evidence showing that the Petitioner’s acting contributed to the commercials’ successes of viewership, product sales, and awards, the record does not demonstrate that the Petitioner’s acting in the commercials brought him national or international acclaim in his field.

We note that the letters similarly express the Petitioner’s “extraordinary ability” in acting and “amazing skills by showcasing characters and speaking [seven] languages.” Both letters use identical language describing the Petitioner’s acting record, “[The Petitioner] . . . has won the Jury Prize in [redacted] has acted in major commercials for brands such as: [redacted] to name a few. He has also guest-starred on the [redacted] on NVC and [redacted] proving that he is on the top of his field.” The use of identical language and phrasing across the letters suggest that the language in the letters is not the authors’ own. Cf. *Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). Because the letters appear to have been drafted by someone other than the purported authors, the letters possess little credibility or probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. See *Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner offers other letters of recommendation generally referencing his acting in the [redacted] online commercial videos, and those letters also use the identical language or phrasing described above. Therefore, the similarly worded letters offer little credibility or probative value.

A letter from [redacted] CEO and founder of [redacted] emphasizes that the Petitioner’s multi-lingual skills and multi-cultural appearance helped him earn his acting role for an [redacted] advertising campaign, as well as many other acting roles for major brands, including [redacted] [redacted] The record also includes photographs depicting the Petitioner in advertising campaigns for companies such as [redacted] [redacted] The letter states that the Petitioner helped the agency “gain economically and have a [sic] strong reputation with billion-dollar companies like [redacted]. . . . [the Petitioner] was chosen as the actor . . . performing the lead and critical role in the advertisement, proving that he is an actor in the [sic] top-of-his field.” Although the letter states the Petitioner is at the top of his field, it does not explain how his acting in the [redacted] and other advertising campaigns shows his national or international acclaim. While his acting helped his talent agency gain financial and reputation benefits, the record does not show that his acting in the campaigns demonstrate him being at the top of his field.

Another letter from [redacted] CEO and founder of video production company, [redacted] similarly explains hiring the Petitioner to act in a pharmaceutical company’s commercial because of his “unique talent of speaking several languages” and his ability to help the company produce videos in seven languages “that can reach out to all minority groups and patients in the United States.” Also, a letter from [redacted] a casting director and owner of [redacted] explains hiring the

Petitioner for the pharmaceutical campaign because of his “international look that made him the perfect actor to fill the role of the [d]octor.” A letter from [redacted] a cinematographer and founder of [redacted] Entertainment, details hiring the Petitioner for a lead acting role for Children’s Hospital [redacted] fundraising campaign because of his “extraordinary acting talents and unique skills . . . to portray so many diverse characters with different language skills”. And a letter from [redacted] [redacted] a film producer, explains hiring the Petitioner for a lead acting role for the film [redacted] uses wording similar to the other recommendation letters that the Petitioner has “extraordinary talents, diverse creativity and diverse cultural language skills” who “can act and portray . . . many different characters from different countries and cultures.” As previously explained, although the Petitioner’s language skills and appearance have helped him earn acting roles, the letters do not elaborate on the Petitioner’s acting and to what extent his unique acting skills have earned him national or international acclaim in his field or show that he is at the top of his field.

The record contains evidence related to the Petitioner’s compensation for his work as an actor. For example, a letter describing future projects notes that the Petitioner would be paid above SAG-AFTRA acting performance rates, as well as pay statements and checks from various commercials. However, the Petitioner does not explain how the evidence demonstrates acclaim within the field or recognition within the field.

The record as a whole, including the evidence discussed above, does not establish the Petitioner’s eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of her field. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

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. In visa petition proceedings, it is a petitioner’s burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

ORDER: The appeal is dismissed.