



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

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

In Re: 28694367

Date: NOV. 02, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a visual artist, seeks classification as an individual of extraordinary ability in the arts. *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 satisfied the initial evidence requirements for this classification by demonstrating his receipt of a major, internationally recognized award or by submitting evidence to satisfy at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). 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.¹

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,

¹ Appeals filed by representatives must contain a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. 8 C.F.R. § 292.4(a). At the time of filing the appeal, the Petitioner provided a copy of a prior Form G-28 for [redacted] pre-dating the appeal. We sent a notice advising the Petitioner that since the appeal did not contain a new Form G-28, we must treat the appeal as self-represented. The record does not contain a response from the Petitioner to our notice. Because this appeal does not contain a new Form G-28, we consider it to be self-represented.

- (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 sustained acclaim and the 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 categories 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, 1343 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a visual artist. Because he 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). The Director found in his decision that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).² On appeal, the Petitioner asserts that he meets seven of the evidentiary criteria. After reviewing all of the evidence in the record, we find that he does not meet the requisite three criteria, and thus does not meet the initial evidentiary requirements for the requested classification.

In addition to his brief and evidence previously submitted into the record, the Petitioner also submits new evidence in support of his claimed criteria. Further, the Petitioner makes an additional eligibility claim that was never argued or presented before the Director in this proceeding. Specifically, for the first time on appeal, the Petitioner contends that he fulfills the criterion relating to high salary under 8 C.F.R. § 204.5(h)(3)(ix).³ Accordingly, we will not consider new eligibility claims or evidence in

² The Director indicated in his request for evidence that the Petitioner met the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(vii), relating to the display of his work at artistic exhibitions or showcases, but did not mention this criterion in his decision.

³ Prior to the denial of the petition, the Petitioner provided copies of invoices and proposals for murals he painted for a member of the Qatari royal family, as evidence of the acclaim his work has received for having been "exhibited throughout

our adjudication of this appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose” and that “we will adjudicate the appeal based on the record of proceedings” before the Chief).

Documentation of the individual'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)

In order to fulfill this criterion, the Petitioner must demonstrate his receipt of lesser nationally or internationally recognized prizes or awards for excellence in his field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.⁴

The Petitioner maintains that he meets this criterion based on the following:

- 5th prize, [redacted] Award (Drawing, Calligraphy, Printmaking category) – 12th [redacted] (2019);
- 2nd place – [redacted] Foundation, [redacted] Horse Painting Competition, [redacted] International Arabian Horse Festival (2022);
- 3rd place – [redacted] Foundation, [redacted] Painting Competition, [redacted] Festival (2017)⁵

As noted, the Petitioner claims eligibility based on his 5th prize, “[redacted] Award at the 12th [redacted] held in 2019. However, the record lacks sufficient objective evidence regarding the [redacted] Award to establish that it is a nationally or internationally recognized prize or award for excellence in the visual arts. A letter from the exhibition’s director indicates the exhibition is sponsored by the Italian Ministry of Culture and is “the major contemporary art and design exhibition in [redacted]” and “an outstanding showcase of the international contemporary art and design production.” The letter provides that the Petitioner was awarded the prize for his [redacted] art project.

Additional information from the 2019 [redacted] website provides the exhibition has “over 500 artists from more than 70 countries,” but does not indicate the criteria used to grant the prizes or awards or the number of awardees or prize recipients. Further, the only background information

the world” and in “numerous private collections.” However, he did not previously articulate a claim that he can satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence that the individual has commanded a high salary, or other significantly high remuneration, in relation to others in the same field.

⁴ See generally 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual> (providing guidance for the evaluation of evidence submitted under 8 C.F.R. § 204.5(h)(3)(i)-(x)).

⁵ The Petitioner does not pursue his previous claim that his receipt of 3rd place at [redacted] 1.0 (2017), 2nd place at the [redacted] and 2nd place at the [redacted] (2015) are qualifying awards under 8 C.F.R. § 204.5(h)(3)(i).

provided was about the exhibition (not the award), was sourced from the organizer, and does not establish that the winners receive recognition that extends beyond the awarding organization. It is the recognition that the award receives in the field on a broader level, beyond the issuing organization or event, that determines whether it satisfies that element of this criterion. For the above reasons, the submitted documentation does not establish that the [redacted] Award in this exhibition is a nationally or internationally recognized award for excellence in the field.

Regarding the awards the Petitioner received from the [redacted] Foundation, he provided an article dated 2018 from Cnn.com about the [redacted] complex of “galleries, theaters and concert halls which hosts a year-round program of exhibitions, performances, and festivals.” He did not provide any documentary evidence related to the exhibitions or competitions at which he received these awards in support of his claim that the awards are nationally or internationally recognized. The Director concluded, and we agree, that simply providing evidence of his receipt of an award certificate is insufficient to demonstrate the award’s national or international recognition for excellence in the field.

Finally, the Petitioner provided a certificate of appreciation for his “valuable contribution” to Qatar Sustainability Week 2021, and certificates of participation in the Qatar Fine Arts Association “Realistic Art Workshop and Competition” held in 2018 and “the drawing activities” of National Day 2017. The evidence does not establish, however, that a certificate of appreciation or participation is an “award or prize for excellence” in the field.

For the reasons discussed, the Petitioner did not establish that his prizes and awards are nationally or internationally recognized for excellence in the field. Accordingly, we conclude that he did not demonstrate that he meets this criterion.

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)

To satisfy this criterion, a petitioner must provide evidence of their membership in an association and demonstrate that such membership is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.⁶ The Petitioner claimed that he meets this criterion based on his membership in the Qatar Fine Arts Association (QFAA). As explained below, we agree with the Director's conclusion that the Petitioner has not shown that the association has sufficiently restrictive membership requirements.

In support of his claim that membership in QFAA satisfies the regulatory requirements of this criterion, the Petitioner provided a letter from QFAA chairman Y-K-A-S- that states that the Petitioner “has been exhibited in QFAA since 2015.” He explains that “only Qatari artists are official members” and the Petitioner, as a non-Qatari artist, “is an honorary member entitled to participate in annual art activities of the QFAA.” He provides that the basis for membership in the QFAA is “creative activity and individual creativity of professional creative workers, the result of which is work or its

⁶ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

interpretation that has cultural and artistic value, works that have independent creative significance and have gained public recognition, participation of artists in the city and international exhibitions.” Further, the letter states that the selection committee “in its majority consists of all the visual arts team members based on the [redacted] Foundation, [redacted] Affairs Department.” On appeal, the Petitioner provides that “the administration of [QFAA] did not respond to our inquiry. Nevertheless, the fact of membership in a prestigious national organization can be confirmed by publications, catalogs, and awards.”

While we have considered the letter from Y-K-A-S-, we agree with the Director that his statements are not sufficiently detailed to establish that the QFAA requires prospective members to demonstrate “outstanding achievements” as a condition of admission. First, we note that the letter is unsigned and has limited probative value. In addition, the Petitioner did not demonstrate how artistic work “that has cultural and artistic value, independent creative significance, and gained public recognition” or artists who have participated in city and international exhibitions reflects outstanding achievements consistent with this regulatory criterion.

The letter’s statements are broad and are not accompanied by any supporting evidence regarding the QFAA or its membership requirements, such as information from its website regarding membership and the application process, or its constitution or bylaws, which may contain information regarding the selection criteria and process for becoming an “honorary member.” Furthermore, the letter does not indicate whether recognized national or international experts judge the outstanding achievements for membership, as required by the regulation.⁷ For all the reasons discussed, the record does not establish that the Petitioner satisfies 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)

In order to satisfy this criterion, the Petitioner must demonstrate published material about him and relating to his work in professional or major trade publications or other major media, as well as the title, date, and author of the material. The record reflects that the Petitioner has submitted several articles and in-depth interviews that are about him and relating to his work, and which also include the required author, title, and date of publication.⁸ Those items were published in *Gulf Times*, *Gulf-times.com*, *The Peninsula*, *S.thepeninsula.qa*, and *Travel To Art*. Therefore, the remaining issue is whether the Petitioner established that any of the referenced articles or interviews were published in professional or major trade publications or other major media.⁹

⁷ *Id.*

⁸ Other articles, published in *LandEscape Contemporary Art Review*, *Landescapeart.yolasite.com*, *Boomer*, *Boryspil Magazine*, *s.thepeninsula.qa*, and *gulf-times.com* do not include a date and author, and therefore do not satisfy the criterion. In addition, an article from *Gulf Times* dated [redacted] 2016, about a group exhibition of Ukrainian artists that includes the petitioner at the [redacted], is about the exhibition and is not about the Petitioner. Articles that are not about the Petitioner do not meet this regulatory criterion. See, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

⁹ See generally 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (instructing that in evaluating whether a submitted publication

In the request for evidence, the Director advised the Petitioner that each article submitted to satisfy this criterion should include: the title, date and author of the published material; the circulation (online and/or in print) of the publication in which it appeared; and comparative circulation data for major publications. Within his response, the Petitioner submitted online printouts from Thepeninsulaqatar.com, which indicate that the website has “over 65 million pageviews in 2020” and “is the top news website – in both English and Arabic – in Qatar.” The information provided from the preceding website is not sufficient to demonstrate that the online version of the publication qualifies as major media. USCIS need not rely on self-serving assertions.¹⁰ The Petitioner did not submit sufficient comparative circulation, readership, or viewership data to support his claim that he and his work have been featured in major media or major trade publications.

The Petitioner also provided online printouts from Gulf-times.com that do not indicate the publication’s circulation (on-line or in print); only that *The Gulf Times* “comprises several sections: editorial, analysis, news, economy, sports, library and archives, technical and local reporters.” In light of the above, the Petitioner has not established that he meets 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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only have they made original contributions, but also that the contributions have been of major significance in the field. For example, a Petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. See *Visinscaia*, 4 F. Supp. 3d at 134-35.

The Petitioner, citing to his [redacted] art project (also referred to in the record as [redacted]), indicates that the influence of his work beyond his “employers, clients or customers is reflected in the involvement of numerous individuals from different countries, diverse social groups, and interests, including artists, musicians, politicians, students, and many others participating in the project.” The record reflects that since 2016 the Petitioner through his [redacted] project has [redacted] with which he then creates art. In addition to other evidence related to his artistic projects, the Petitioner has provided letters from colleagues who praise his abilities as a visual artist.¹¹ However, the submitted letters do not contain sufficient information to establish how he has made an original contribution that has remarkably influenced or impacted the field.

is a professional publication, major trade publication, or major media, 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).

¹⁰ See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

¹¹ Although we do not discuss every letter submitted, we have reviewed and considered each one in determining whether the submitted evidence satisfies this criterion.

For instance, A-S-, an art consultant, indicates she met the Petitioner in Qatar in 2011 while organizing art auctions and exhibitions of international and regional art. She provides that the Petitioner was invited to paint a portrait of members of the Qatari ruling family and to decorate their residences with frescoes. She claims the [redacted] project “started a wide social art movement – [redacted] in which “[m]any notable contemporaries including the royal family members, politicians, businessmen, ambassadors, scientist[s], athletes, artists, and musicians visited [the Petitioner’s] studio to leave their [redacted]’s art project.” She asserts that “[a]ll the collected messages have been incorporated into the impressive artwork currently in the private collection of the [redacted].”

K-W-, a museum director and entrepreneur, states that the Petitioner’s “project, [redacted] has received significant recognition and praise from notable figures, including the royal family of Qatar . . . who have visited his exhibitions and were very enthusiastic.” He claims that the Petitioner “has contributed significantly to the contemporary art scene in the Arab world and beyond” and his “innovative techniques and exceptional skill have made him a recognized figure in the art world.”

The letters of A-S- and K-W- indicate the originality of the Petitioner’s [redacted] project, but the actual impact of his project on the wider field, or even within the Qatari artistic community, has not been established. In addition, while offering very high praise, K-W- does not explain how the Petitioner contributed to the art scene at an international level or indicate how his innovative artistic techniques or exceptional skill have impacted other artists.

V-S-, the president of the [redacted] Academy of Arts, confirms that the Petitioner presented an exhibition of his [redacted] art project in 2018 at the [redacted] of the Arts, and asserts that the Petitioner “belongs to the circle of persons capable of introducing new ideas into the professional sphere.”

T-K, a candidate of art history, and A-V- who has worked with several art galleries, indicate they have known the Petitioner since 2017 and praise his [redacted] project. T-K states that “[b]uilding upon the [redacted] the participants transform them into a symbol of achieving significant personal and social goals.” A-V- indicates that the project “brings together a diverse group of people from different communities, each unique in their mode of thought, [redacted] [redacted] uniting a collective force in a manifestation of art’s mission for humanity and peace around the world.” But they do not provide sufficient, specific information that would support a finding that the Petitioner made an original contribution of major significance in his field. Further, we note that the letter from A-V- is unsigned and has limited probative value.

Submitted letters should specifically describe the Petitioner’s contribution and its significance to the field. Here, the Petitioner’s letters do not contain specific, detailed information explaining the unusual influence or high impact his work has had on the overall field. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The record reflects that the Petitioner is regarded by his colleagues as a talented artist and demonstrates that he has achieved some recognition by participating in gallery exhibitions and through his original [redacted] project. However, the record does not establish that he has already influenced or impacted the field at a level consistent with original contributions of major significance. For the reasons

discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

The Petitioner submitted evidence that his work has been displayed at artistic exhibitions or showcases. He has therefore established that he meets this criterion.

III. CONCLUSION

We find that although the Petitioner satisfies the display criterion, he does not meet any additional criteria on appeal regarding awards, membership, published material, and original contributions. While he claims eligibility for one additional criterion on appeal, relating to judging at 8 C.F.R. § 204.5(h)(3)(iv), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.¹² Accordingly, 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 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 the top. 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. at 954. Here, the Petitioner has not shown that the significance of his 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) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he 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).

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

¹² *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).