



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

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

In Re: 9895142

Date: SEPT. 24, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, an actor, 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 Director of the Texas Service Center denied the petition, concluding that although the Petitioner satisfied 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. In addition, the Director determined that the Petitioner did not establish that he would substantially benefit prospectively the United States.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. 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 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).

## II. ANALYSIS

The Petitioner has performed as an actor on various television shows. 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).

In denying the petition, the Director determined that the Petitioner fulfilled the following three criteria: awards at 8 C.F.R. § 204.5(h)(3)(i), published material at 8 C.F.R. § 204.5(h)(3)(iii), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). Although the record shows that the Petitioner meets the published material criterion, for the reasons discussed below, we do not concur with the Director’s decision relating to the awards and leading or critical role criteria.

### A. Evidentiary Criteria

*Documentation 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)

The Director concluded that the Petitioner satisfied this criterion. In order to fulfill this criterion, a petitioner must demonstrate that he received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

<sup>2</sup> *Id.*

The Petitioner claimed eligibility for this criterion based on the following three awards: 1) 2013 [redacted] Award for "Original Song [redacted]" 2) 2008 [redacted] Award for "Best [redacted] Performance," and 3) 2013 [redacted] for [redacted] Actor of the Year." Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(i), we will withdraw the Director's determination for this criterion.

As indicated above, the Petitioner claimed eligibility for this criterion based on a 2013 [redacted] Award for "Original Song [redacted]" The regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the alien to receive nationally or internationally recognized prizes or awards for excellence "in the field of endeavor."<sup>3</sup> Here, the Petitioner seeks classification as an alien of extraordinary ability as an actor. However, the Petitioner did not demonstrate that an award for an "original song" represents an award in his field of endeavor, acting. *See Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (upholding a finding that competitive athletics and coaching are not within the same area of expertise because it is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field). As such, the Petitioner did not establish that his 2013 Inter Award qualifies for this criterion.

Regarding the 2008 [redacted] Award for "Best [redacted] Performance," the record contains screenshots from a rumberos.net article that reported on the 2009 award ceremony.<sup>4</sup> However, the Petitioner did not demonstrate how a single article constitutes a level of media coverage consistent with a nationally or internationally recognized award for excellence in the field. In fact, the article mainly reports on [redacted] Internacional receiving the most awards and references the ceremony as "the fourth edition of the award" and "[t]he results of this award are the result of the popular vote, made through the site www [redacted] com, from 10 December 2008 until 20 January this year" without any indication of the field's view for any of these recently established, popular vote awards, let alone the Petitioner's specific [redacted] award.<sup>5</sup> Here, the Petitioner did not show that his "Best [redacted] Performance" award represents a nationally or internationally recognized award for excellence consistent with this regulatory criterion.

As it pertains to his 2013 [redacted] for [redacted] Actor of the Year," the Petitioner submitted a photograph of a plaque. In addition, the Petitioner provided screenshots from a [redacted] article entitled, "Know the difference between the Gold, Silver and Platinum [redacted]" Specifically, the article states:

This prize is [redacted], which represents the birds of the city [redacted] and in the tail, [redacted] as an icon inherited from the first prize that was previously awarded at the festival [redacted]. The basis of these is wood.

....

<sup>3</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.

<sup>4</sup> The record also contains nearly identical recommendation letters from [redacted] and [redacted] who confirmed the Petitioner's receipt of the award but did not provide any further information establishing the national or international significance of the award in the field.

<sup>5</sup> The photograph of the trophy indicates that the Petitioner received 1,362 popular votes.

At the [ ] Festival, the Silver [ ] represents one of the most outstanding awards granted by the public of the [ ] to an artist.

....

The Golden [ ] means one of the most important prizes of the [ ] Festival and takes its name for the mineral with which it is bathed, so it is a prize of greater hierarchy with respect to the Silver [ ]

The Platinum [ ] is the maximum prize awarded in [ ] as it is manufactured and delivered exclusively to artists who have an outstanding musical career.

In the case here, the Petitioner did not demonstrate that he received a Golden [ ] figurine with a wooden base as outlined in the article; rather he received a plaque. Furthermore, the [ ] article makes no mention of the Petitioner's plaque, nor does it show the significance of a [ ] [ ] Actor of the Year" award in the field. In addition, while the article discusses the relationship of the [ ] awards to the festival, the Petitioner did not establish that his [ ] [ ] Actor of the Year" [ ] represents a nationally or internationally recognized prize or award for excellence in the field beyond the festival.

For the reasons discussed above, the Petitioner did not demonstrate that he meets this criterion, and we withdraw the Director's decision for this criterion.

*Evidence 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).*

As indicated earlier, the Director determined that the Petitioner established eligibility for this criterion. Relating to a leading role, the evidence must establish that the alien is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.<sup>6</sup> Regarding a critical role, the evidence must demonstrate that an alien contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.<sup>7</sup> For the reasons outlined below, the record does not reflect that the Petitioner provided sufficient documentary evidence showing that he fulfills this criterion; therefore, the Director's determination for this criterion will be withdrawn.

The Director concluded that "[t]he letters from [ ] [ ] and [ ] [ ] all indicate that the petitioner is considered critical to their organizations and as holding a leading role for [ ] The record reflects that the Petitioner submitted a letter from [ ] [ ] president and executive producer [ ], who stated that the Petitioner "was part of the main cast of the [ ] Serie[s] [ ], in which [ ] was the production company." Moreover, [ ] indicated that the Petitioner "has a leading role in

<sup>6</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

<sup>7</sup> *Id.*

[redacted] and is critical to the success of the show,” and “we are counting on [the Petitioner] to be available for future season’s with [redacted]” Furthermore, the Petitioner provided a letter from [redacted] supervising producer for [redacted] who discussed that the Petitioner “has been playing a critical role of our productions [redacted] for [redacted]” and the Petitioner “was selected to play to role of [redacted]. . . the writers and producers of the show decided that [the Petitioner] should also play [redacted] an antagonistic character in the story.”

In addition, the record includes other recommendation letters pointing out his role with [redacted] For instance, [redacted] who stated that she “worked with [the Petitioner] on what was the realization of the most recent [redacted] series, [redacted], in which [she] worked as an acting coach.” Moreover, [redacted] indicated that the Petitioner “has contributed to the growth and success of the show [redacted]”

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the alien to perform in a leading or critical role for “organizations or establishments.” Here, the letters reference the Petitioner’s roles with [redacted] a television show, rather demonstrating how he performed in a leading or critical role for an organization or establishment. Moreover, the Petitioner did not establish how a television show qualifies as an organization or establishment consistent with this regulatory criterion. Furthermore, the recommendation letters do not further elaborate and explain how the Petitioner’s roles on [redacted] [redacted] evidenced into a leading or critical role for [redacted] or [redacted].<sup>8</sup> The letters, for instance, do not show that the Petitioner held a leadership position with the companies, nor do they articulate how he was responsible for their successes or standings.

Similarly, the Petitioner argues on appeal that he “also performed in significant roles for the television show [redacted]” and “his performances as a leading character . . . are extremely significant, given the fact that this television show is aired on the top [redacted] television network, [redacted]” Although he presents evidence signifying his character role on the television show, the Petitioner did not demonstrate how this role demonstrates that he performed in a leading or critical for an organization or establishment, including [redacted] The Petitioner, for example, did not show the leading nature of his television role to the network or that he was essential in contributing to the successes of [redacted]

As it relates to [redacted] the Petitioner does not mention his relationship or role with the talent agency on appeal. Nevertheless, the record contains a letter from [redacted] president, who claimed that the Petitioner “has played a critical role for our organization and has established himself as one of the few actors that are internationally recognized for his talent and extraordinary ability.” While [redacted] listed several productions that [redacted] contracted with the Petitioner, she did not provide specific, detailed information explaining how the Petitioner performed in a leading or critical role for [redacted] Repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d

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<sup>8</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner’s leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). In addition, the Petitioner did not establish that [ ] enjoys a distinguished reputation.<sup>9</sup>

Because the Petitioner did not establish that he satisfied this criterion, we withdraw the Director's decision for this criterion.

#### B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd.* 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

### 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 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. 953, 954 (Assoc. Comm'r 1994). 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). Although the Petitioner has performed as an actor, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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<sup>9</sup> *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10-11 (defining *Merriam-Webster's Dictionary* definition of “distinguished” as marked by eminence, distinction, or excellence).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.<sup>10</sup> 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.

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<sup>10</sup> As the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether his entrance will substantially benefit prospectively the United States under section 203(b)(1)(A)(iii) of the Act, and we reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is 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).