



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

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

In Re: 23372953

Date: MAY 2, 2023

Appeal of Texas 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 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 Texas Service Center denied the petition, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three. In addition, the Director determined that the Petitioner had not established his intent to continue work in his area expertise in the United States. 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 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 claims to have performed as an actor in theater and television in Argentina.

A. Evidentiary Criteria

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). The Petitioner claims to meet six of these ten criteria, summarized below:

- (iii), Published materials in professional publications or major media;
- (iv), Judging the work of others
- (vii), Display of his work at artistic exhibitions or showcases;
- (viii), Leading or critical roles for organizations with a distinguished reputation;
- (ix), High salary or other significantly high remuneration; and
- (x), Commercial successes in the performing arts.

The Director concluded that the Petitioner met only one of these six, relating to published materials in professional publications or major media, and we agree with that determination.

On appeal, the Petitioner contends that the Director’s decision contains multiple errors and oversights and asserts that he meets five additional criteria, which we will discuss below. After reviewing all the evidence in the record, we conclude that the Petitioner has met a second criterion, relating to the display of his work at artistic exhibitions or showcases. However, he has not established, as required, that he satisfies at least three of the ten evidentiary criteria for this classification.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

This regulatory criterion requires an individual to show that he has acted as a judge of the work of others in the same or an allied field of specialization.¹ The Petitioner did not initially claim eligibility for this criterion. In response to the Director's request for evidence (RFE), the Petitioner claimed eligibility under this criterion based on his service as a talent advisor for fashion designer [REDACTED] [REDACTED] where he helped select runway models to participate in its 2019 Fall-Winter fashion show.

The Petitioner submitted a letter from the show's producer who indicates his involvement in the event's model casting held at a hotel ballroom in Argentina on [REDACTED] 2019, noting that the Petitioner and the rest of the jury "were in charge of the organization, planning, and selection of talents." The producer further stated that the Petitioner "was in charge of analyzing and weigh[ing] up the talents of each and every model based on their scenic attitudes artistic development and runway abilities, since the show had a futuristic theme." The Petitioner's evidence also included several articles commenting generally on the fashion show, which was held in [REDACTED] 2019. The articles do not reference the Petitioner or his role in the show's model casting.

The Director determined that the Petitioner did not meet the requirements of this criterion and concluded the evidence indicated he judged persons in an unrelated field instead of in his or an allied field. Specifically, the Director determined that the Petitioner's participation in the selection and casting of models for a fashion show was insufficient to show that he has acted as a judge of the work of others in the field of acting, his claimed field of specialization.

On appeal, the Petitioner challenges the Director's determination, noting that "his knowledge as an actor and his vast experience across different platforms make him an ideal individual to judge the artistic talent of each model and their potential within the entertainment industry." He further argues that the Director conflated "profession" with "field," and asserts that modeling and acting fall within the same field of arts and entertainment.

Here, the Petitioner has not sufficiently shown that he participated as a judge of the work of others consistent with this regulatory criterion. Regardless of the field, the judging activities must be clearly described and well-documented in the record, and the evidence should demonstrate with specificity whose work and what type of work the individual judged.

The Petitioner did not establish how participating in a talent casting to select runway models for a fashion show is tantamount to participating as a judge of the work of others. Although the show's producer stated in his letter that jurors were tasked with selecting talents through a model casting, he did not mention that the jury panel was responsible for scoring contestants or otherwise selecting winners. The record lacks official guidelines or rules for the event indicating the specific responsibilities for a juror, and there is no evidence demonstrating that the Petitioner actually judged the work of individuals in the same or an allied field. For example, while the producer indicates that

¹ See generally 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policymanual>.

the Petitioner served as a jury member and was a “key evaluator” in the ultimate selection of 33 models to participate in the show, it is unclear if the Petitioner’s role as an evaluator actually required the Petitioner to judge the work of individuals, such as assigning points or determining winners, rather than merely moderating or engaging in discussions with other jury panel members regarding the selection of models. As constituted, the record does not establish the nature of the Petitioner’s participation in the event, the names of the individuals whose work he judged, the competitive divisions or categories, if any, to which he was assigned, or the selection criteria. Merely submitting a letter stating he was a jury member, without evidence demonstrating who he judged or the nature of the event, is insufficient to establish eligibility for this regulatory criterion. Without further information or corroborating documentation, the Petitioner did not demonstrate that the letter is sufficient to establish that he judged the work of others consistent with this regulatory criterion.

Moreover, although the record contains press articles about the producer’s fashion show held in [] 2019, there is no discussion of the model casting held one month prior to the show in which the Petitioner participated. The Petitioner did not provide copies of published press releases or any other supporting documentation regarding the [] 2019 model casting, his judging activities or the nature of the event he claims to have judged. Therefore, although we have considered the testimonial evidence discussed above, the record lacks specificity and corroborating evidence of the Petitioner’s role in the model casting and is insufficient to establish that his activities involved judging the work of others as contemplated by 8 C.F.R. § 204.5(h)(3)(iv).

As such, the Petitioner did not show that he fulfills this criterion.

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

While the Director concluded otherwise, the record contains sufficient documents demonstrating that the Petitioner meets this criterion, which requires a showing that his work was artistic in nature and was on display at artistic exhibitions or showcases.²

In the RFE, the Director emphasized that this criterion is “limited to the visual arts.” In response to the RFE and again on appeal, the Petitioner asserts that the Director’s interpretation that the plain language of the regulation renders this criterion applicable only to visual artists was erroneous, and we agree with the Petitioner’s assertions. The regulation requires only that the work displayed be a given petitioner’s own work product and that the venues at which the individual’s work was displayed be artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(vii). As such, certain exhibitions or showcases featuring the work of performing artists may meet the plain language of this regulation.

Here, the record reflects that the Petitioner performed as an actor in numerous theater productions in Argentina, and submitted evidence demonstrating that the venues where his performances were rendered are artistic in nature. In light of the above, the Petitioner has met this criterion.

² *See id.* (stating that officers should use the common dictionary definitions of “exhibition” and “showcase” in evaluating this criterion).

Evidence that the individual 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)

For the purposes of this criterion, a leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

The Petitioner asserts that he performed in a leading or critical role for various theater "establishments" such as [REDACTED] where he played the lead role of [REDACTED]. He also noted that the accompanying press articles confirmed his leading and critical roles in both [REDACTED] [REDACTED]. The Petitioner asserts that the press articles, accompanied by the recommendation letter from [REDACTED], demonstrate that he meets this criterion.

The Director acknowledged that the Petitioner claimed eligibility under this criterion based on his theatrical performances and discussed the recommendation letter he provided. However, the Director determined that the evidence did not establish the Petitioner's leading role or demonstrate that his performances contributed in a way that was of significant importance to the theaters in which he performed.

The regulation requires a Petitioner's role to be leading or critical "for organizations or establishments." Here, while the Petitioner has had lead roles in the above-referenced projects, he did not demonstrate how the plays in which he has appeared qualify as organizations or establishments consistent with this regulatory criterion. Therefore, the Petitioner's acting credits and articles that mention these roles are not sufficient to meet this criterion.

We have also reviewed testimonial evidence in evaluating whether the Petitioner meets this criterion, specifically the letter from [REDACTED] writer and director of [REDACTED] who confirms that the Petitioner held a lead roles in this play. Although his letter praises the Petitioner's talent, noting that he is a "good artist with an innovative approach to acting," his statement does not offer detailed and probative information that specifically addresses how the Petitioner's role for this production was leading or critical. Therefore, even if we determined that he held a leading or critical role for a distinguished production, additional evidence would be required to meet the requirements of this criterion.

Finally, we note that the Petitioner submitted evidence demonstrating that the theaters in which he performed his roles have distinguished reputations. However, the record contains insufficient evidence to establish that the Petitioner held a leading position or essential role for the theaters. For instance, the record does not contain evidence describing the hierarchy of the theaters or explaining where the Petitioner's claimed position fit in the overall structure of the theaters. Moreover, the evidence of record did not demonstrate how his performances in the plays contributed to the successes or standings of the theaters. While the evidence of record confirms the Petitioner's performances in plays, the record is not

supported by detailed, probative information demonstrating the leading or critical role he performed for the theaters.

For the reasons discussed, the Petitioner has not established that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

To satisfy the requirements of this criterion, the Petitioner must establish that he has received a high salary, or other significantly high remuneration, based on a comparison with others in his field in similar positions and geographic locations.³

The Petitioner provided copies of contracts for work in individual television and film projects along with a summary of each project and its remuneration. His claim that he has commanded a high salary is primarily based on the daily wage or flat rate payments he has received for his work on certain projects. The record does not contain evidence of his overall salary and other remuneration from all sources for any given year, nor is it clear based on the evidence submitted how frequently he is engaged to work on a project-by-project basis. Several of the projects documented in the record through contracts, as summarized in the document entitled “sampling of contracts,” required a short commitment of one day, with numerous other “campaigns” lasting approximately 12 months.

As noted by the Director, although the Petitioner submitted a summary of the contracts in English, which identified the project, duration, and wage paid, the Petitioner did not submit certified translations for each of the contracts submitted. Despite being informed of this evidentiary deficiency in the RFE, the Petitioner declined to provide the requested translations. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of each contract, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner’s claims.

The Petitioner also provided comparative salary data from the Bureau of Labor Statistics (BLS), which shows that actors in the United States earned a mean hourly wage of \$39.84 in 2016, with the 75th percentile earning at least \$44.36 per hour.⁴ In determining that the Petitioner did not meet this criterion, the Director determined that the Petitioner had not established that he has commanded a high salary compared to other television and theater actors based on the evidence of payments he received for individual projects. As noted, while the Petitioner submitted various forms of evidence in support of this criterion, the record does not clearly show his total salary or total remuneration for his work as an actor in any given year. Further, the record contains no evidence regarding salaries of actors in

³ See *id.* (noting that it is the petitioner’s burden to provide geographical and position-appropriate evidence to establish that a salary is relatively high).

⁴ On appeal, the Petitioner also submits 2021 salary data for actors/performers from the BLS.

Argentina that could serve as a basis for comparison had the Petitioner offered evidence of his annual salary, or that his compensation, in total, is high compared to others in the field.

Thus, the record does not contain sufficient evidence to meet the requirements of this criterion.

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)

This criterion focuses on volume of sales and box office receipts as a measure of a petitioner's commercial success in the performing arts. The evidence must show that the volume of sales and box office receipts reflect the individual's commercial success relative to others involved in similar pursuits in the performing arts.⁵ Fulfilling the criterion is not simply a matter of demonstrating credited involvement in a commercially successful film or show.

Here, the Petitioner claims to satisfy this criterion based on evidence demonstrating high attendance at his play [REDACTED]. In support of this assertion, the Petitioner submitted a press article stating that "[m]ore than 5000 people have already seen them!" The Petitioner also claims high viewership for a television project [REDACTED] in which he engaged, and submitted articles regarding the rating points and total views of this production.

The regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of the Petitioner's commercial success, "as shown by box office receipts or record, cassette, compact disk or video sales." While the Petitioner has appeared in plays and television programming, he has not shown that the success of those productions was attributable to his specific work as an actor. The record contains no evidence of sales in the form of box office receipts or record, cassette, compact disk or video sales.

Furthermore, the Petitioner has not demonstrated that his theatrical or televised performances have attracted substantial audiences. In order to meet this criterion, the evidence must show that the volume of sales and box office receipts reflect a petitioner's commercial successes relative to others involved in similar pursuits in the performing arts.⁶ Here, the record does not include evidence identifying the Petitioner as having commercial successes relative to other performing artists. Nor is the evidence sufficient to demonstrate that the commercial successes of the aforementioned plays or television programs in which he appeared were mainly because of the Petitioner's work.⁷

The Petitioner also failed to provide evidence of his commercial successes in the performing arts, rather than the successes of performances in which he took part. The record contains no evidence that demonstrated how the successes of these performances could predominantly be attributed to him. As a result, the Petitioner has not provided qualifying evidence under this criterion, and consequently has not established that he meets the plain language requirements of this criterion.

⁵ See *id.*.

⁶ See *id.*

⁷ For example, with respect to the program [REDACTED] in which he acted, the Petitioner has not shown that its television ratings or viewing audience increased significantly once he joined their acting cast.

B. Intent to Continue to Work in the Area of Extraordinary Ability

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his intent to continue working in his claimed area of expertise.⁸ 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).

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 at 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.

⁸ Section 203(b)(1)(A)(ii) of the Act requires "the alien to enter the United States to continue work in the area of extraordinary ability." In addition, the regulation at 8 C.F.R. § 204.5(h)(5) states that "the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise." See also 6 *USCIS Policy Manual*, *supra*, at F.2(A)(2) (providing that to qualify as a person of extraordinary ability, the beneficiary must intend to continue work in the area of his or her expertise).