U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37190286

Date: APR. 10, 2025

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner had not established that he met the initial evidence requirement for this classification through evidence of either a one-time achievement or that he meets three of the alternative evidentiary criteria under 8 C.F.R. § 204.5(h)(3). The Director also determined that the Petitioner had not shown his entry will substantially benefit prospectively the United States. The matter is now before us on appeal pursuant to 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 sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or 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 (W.D. Wash. 2011).

II. ANALYSIS

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 only one of the initial evidentiary criteria, artistic display at 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains that he also meets six additional evidentiary criteria, which will be discussed below.[1]

A. Evidentiary Criteria

1. Awards

The regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor."

The Petitioner presented an award he received in 2010 from the [redacted] expressing gratitude "to you for being part of our successful story. Your friends from the [redacted] on its Silver Anniversary." He also provided information about the [redacted] from its website as well as photographs and promotional material relating to its 25th and 30th anniversary events, but the submitted information does not show that the basis for granting his award was excellence in the field

[1] In his appeal brief, the Petitioner does not contest the Director's findings that he did not meet the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) and therefore he has not overcome the Director's determination on this issue. We consider the Petitioner's prior eligibility claims not raised or contested on appeal to be abandoned. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

or indicate the level of recognition his award received beyond the presentation organization. In addition, the Petitioner submitted a letter from L-F-, director and general manager of the [redacted] theatrical company, discussing the award and its selection criteria. In his letter, L-F- asserted that the [redacted] Award was a "one-time award" "created to commemorate the 25th anniversary" of the comedy venue in Bolivia and which was given in "recognition of comedic excellence." L-F- also stated that the award was conferred to the Petitioner and two other individuals in recognition of their "exceptional comedic talent," but the Petitioner has not demonstrated the significance of his [redacted] Award in the field of endeavor or that it has received media coverage or other attention that rises to the level of national or international recognition.

In response to the Director's request for evidence (RFE), the Petitioner claimed his "individual receipt of the [redacted] Award" for [redacted] but the record does not support his assertion.[2] His RFE response included a letter of support from L-A-V-, president of the [redacted] who asserted that the Petitioner was "stand-up comedian in several television productions . . . which have received . . . the coveted [redacted] Award."[3] The language of this criterion, however, requires "the alien's receipt" of the prizes or awards.[4] *See Hristov v. Roark*, 2011 WL 4711885 (E.D.N.Y. 2011) (finding that a producer and star actor was not the recipient of awards for Best Short Film and Best Cinematography since he was not named on either award). We agree with the Director's determination that "the record is absent of documentary evidence of a [redacted] Award which was specifically issued to the Petitioner." In his letter, L-A-V- discussed the reputation of the [redacted] Award and asserted that "winners are chosen based on their artistic excellence, creativity, and the positive impact they have had on Argentine society." L-A-V- also stated that selection for the award involves a process where "105 members of our organization vote and are duly supervised by [redacted] The Petitioner, however, did not submit corroborating evidence to show his receipt of a [redacted] Award for excellence in the field of endeavor and that his specific award was nationally or internationally recognized in his field. For instance, the record lacks evidence such as official award selection criteria published by [redacted] or media coverage of the Petitioner's receipt of an award.

Additionally, the Petitioner provided a letter of support from C-A-V-, who indicated that he is the former executive producer of [redacted] and [redacted] In his letter, C-A-V- stated that the Petitioner contributed comedy sketches to [redacted] and that the TV program has received [redacted] Awards. The Petitioner also submitted an undated article, entitled [redacted] This article includes a list of "All the winners of the night" (including individual recipients such as [redacted] and many others), but the Petitioner is not identified in this list as a winner or recipient. For example, [redacted] was recognized in the category of "Comedy/humorous work" for his portrayal of [redacted] Without evidence showing

[2] The Director noted that the Petitioner did not claim to have received this award in the original filing.

[3] L-A-V- identified the television productions as [redacted]

[4] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (stating that the description of this type of evidence in the regulation indicates that the focus should be on the person's receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes).

his receipt of a [redacted] Award and that it and his [redacted] Award are nationally or internationally recognized awards for excellence in the field, the Petitioner has not established he meets this regulatory criterion.

2. Published Material

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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."

The Petitioner offered articles about him in [redacted] and [redacted] but the material did not identify an author as required by this criterion. *See Javakhadze v. Mayorkas*, No. 3:21-CV-00617-E, 2023 WL 8037730, at *6 (N.D. Tex. Nov. 20, 2023) (upholding articles did not contain the required authors). Other articles he submitted about him did identify an author such as those in [redacted] and [redacted] but the Petitioner did not demonstrate that these publications rise to the level of major media. The record included screenshots from SimilarWeb regarding website traffic for several of the aforementioned publications' websites. For example, the SimilarWeb "Traffic & Engagement" information for [redacted] listed "Total Visits" from August 2023 - October 2023 at "5.060M," a "Global rank" of "49,670," a "Country rank" of "676," and an "Industry rank" of "3,984."[5] The Petitioner, however, did not establish the significance of these statistics, showing that the aforementioned publications represent major trade publications or other major media.[6] *See Branski v. Seng*, No. 24-CV-360, 2024 WL 4678939, at *5 (E.D. Wis. Nov. 4, 2024) (indicating that the failure to provide context to circulation figures makes it difficult to assess their significance).

In addition, the Petitioner presented articles in [redacted] and [redacted] as well as a group photograph of dozens of individuals in [redacted] that included him, but he did not establish that this material was about him. The language of this criterion, however, requires "[p]ublished material about the alien." *See, e.g., Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *3 (D. Nev. Sept. 9, 2008) (upholding a finding that articles regarding a show are not about the actor). Regardless, the Petitioner has not shown that these publications are major media.

The Petitioner also submitted an article posted on [redacted] website, entitled [redacted] that included a compilation of 13 video clips from the show, but the article is not about the Petitioner and its author was not identified. He also provided screenshots of videos posted on YouTube, but he did not provide supporting evidence to establish the significance of the Petitioner's appearance in the YouTube videos (such as providing transcripts of the videos and letters from individuals such as the videos' producers or directors with details on the significance of each video and the Petitioner's appearance in it). *See Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *6 (S.D. Cal. May 31, 2019) (upholding that not all

[5] The Petitioner also provided a letter from R-M-, General Manager of the [redacted] listing average net circulation figures for [redacted] and [redacted]

[6] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

material found on internet sites, such as a blog, "may be equivalent to material with stringent vetting and high standards for publication").

The record also included letters of support from C-R-, R-L-V-, and A-T- discussing the Petitioner's involvement in radio programs, but the Petitioner did not provide transcripts from the broadcasts indicating coverage about Petitioner or evidence showing that the radio stations qualify as major media.

Given the above, the Petitioner has not established that he meets this criterion.

3. Original Contributions

The regulations at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field."

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field.[7] As evidence under this criterion, the Petitioner initially submitted his book, entitled [redacted] and information indicating that it is available for purchase at [redacted].com.[8] He also provided promotional material relating to [redacted] comedy show he performed in 2020 at the [redacted] Theater. The Petitioner, however, has not shown that his book and 2020 comedy show have provoked widespread commentary on their importance from others working in the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. In addition, the Petitioner provided letters of support from colleagues in the entertainment field discussing his work. The Director considered the submitted documentation, but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field. For the reasons discussed below, we agree with that determination.

In his appeal brief, the Petitioner asserts that he "provided letters from industry experts" discussing "his contributions to the field of comedy and the cultural impact of his character [redacted] These references discussed the Petitioner's entertainment projects and comedic performances, but their statements do not demonstrate the originality of his work and its major significance in the field. As discussed below, the reference letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to show the nature of specific "original contributions" that the Petitioner has made to the field that have been considered to be of major significance.[9]

For example, D-V-A-, a manager and producer, asserted that the Petitioner "has made all the families in Argentina laugh out loud with his incredible style to address audiences whom he has conquered from his TV and radio shows, and then in countless plays to which I also attended applauding his brilliant comedy." Regarding the [redacted] comedy show, D-V-A- stated that he hired the Petitioner, "who, without a doubt, brought prestige to our artistic work with his incredible talent; of course, attracting the interest of the general public and the press." While D-V-A- describes the

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

[8] The Petitioner did not offer sales figures for his book or reviews from book critics, for example, to show its significance in the field.

[9] While we discuss a sampling of these letters, we have reviewed and considered each one.

Petitioner as "legendary and famous," he does not offer specific examples of how the Petitioner's [redacted] comedy show and other performances have influenced the entertainment industry to the extent that they are of major significance in the field.

In addition, J-C-A-, director at [redacted] indicated that he and the Petitioner "have done countless artistic activities together, to date, to name just a few, we share television and radio programs, plays like '[J-C-A-] and [redacted] (1997) [redacted] and [J-C-A-] give you of the scoop' (2005) at [redacted] and [J-C-A-] [redacted] (2016) [redacted] 1st [redacted] (2013) [redacted] (2016/2017) [redacted] and presentations in shows and private events that we have shared throughout the country." While J-C-A- also asserted that the Petitioner "took comedy in Argentina to new heights by introducing the habit of written sketches, iconic characters and meticulously elaborated scripts in comedy," the Petitioner has not shown that this thorough approach in developing comedic performances is unusual in the entertainment industry and signifies that he has made original contributions of major significance in the field. J-C-A- further stated that the Petitioner "is the creator and scriptwriter of many characters that gained popularity and became part of Argentine cultural heritage, such as [redacted]" but the record does not include sufficient information or supporting evidence demonstrating that the Petitioner's part in the shows and programs has affected his industry in a substantial way or otherwise constitutes original contributions of major significance in the field.

As previously discussed, C-A-V- indicated that the Petitioner contributed comedy sketches to [redacted] and that the TV program has received [redacted] Awards.[10] C-A-V- stated that the Petitioner "brought his comic talent to the show, but also created unforgettable characters such as [redacted] and the classic [redacted] He generated and wrote the scripts for his own creations." In addition, C-A-V- noted that [redacted] "was an undisputed success on [redacted] and for 10 years became the leading comedy show in Argentina" and that "[i]ts ratings measurements, in the years that [the Petitioner] participated, beat audience records being the most watched," but he does not specify how many episodes in which the Petitioner appeared during the show's broadcast history or the amount of time his sketches aired on each program. Nor does the record contain published television rankings or other statistical ratings measurements to corroborate C-A-V- statements regarding the Petitioner's specific effect. Without further corroborating evidence, the Petitioner has not demonstrated the level of influence of his [redacted] comedy sketches on his industry or that they otherwise rise to the level of original contributions of major significance in the field.

Likewise, J-C-A-, a journalist, stated that one of the Petitioner's "most notable achievements was his interpretation of the character [redacted] in the Argentinian TV show [redacted] J-C-A- further indicated that the Petitioner was included in [redacted] (1997) in its "People of the Year" photograph. The Petitioner provided a photograph appearing in [redacted] that includes him and dozens of others, but there is no accompanying article in the magazine identifying him or discussing his specific original contributions in the field.

[10] C-A-V- asserted that [redacted] received [redacted] Awards for "Best Comedy Program," "Best Overall Production," and "Best Male Host/Entertainer" [redacted]

While the record indicates that the Petitioner has achieved some level of popularity in the entertainment industry and earned the respect of his colleagues, he has not demonstrated that his original work rises to the level of artistic or business-related contributions of major significance in the field. Without sufficient information and evidence demonstrating that his work constitutes original contributions of major significance in the field, the Petitioner has not established that he meets this criterion.

4. Role

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation."

To qualify under this criterion, a petitioner must show that they played a leading or critical role for an organization or establishment, and that that organization or establishment has a distinguished reputation. For a leading role, we look at whether the evidence establishes that the person is (or was) a leader within the organization or establishment or a division or department thereof.[11] A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading.[12] For a critical role, we look at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment.[13]

The Petitioner initially submitted a letter from D-C-, an actor, stating: "With [the Petitioner], we were partners in a famous TV show called [redacted] and later in another show called [redacted] both very successful. [The Petitioner] stood out in those programs with countless vital characters still recognized today." D-C- does not specify the number of episodes in which the Petitioner appeared during these shows' broadcast history, identify his characters and their importance to the shows, or indicate the amount of airtime his characters received. Without further information and corroborating evidence, the Petitioner has not shown that he performed in a leading or critical role for [redacted] and [redacted]

In addition, the Petitioner provided a letter from G-R-, a journalist and sports specialist, asserting that the Petitioner's "characters have made Argentines laugh for more than 30 years. . . . I was just a fan of his work on [redacted] among other TV shows in which he stood out." Likewise, in his [redacted] 2023 letter, G-H-P-, producer and creator of [redacted] stated that the Petitioner "was a fundamental piece in the success of the show" and listed several [redacted] awards the show received." Similarly, a letter from G-J-P-, president of [redacted] indicated that the Petitioner "was part of the cast of successful TV shows on multiple TV channels in Argentina, including two iconic programs broadcasted on our TV channel: [redacted] in the early 2000s and [redacted] (2013-2015 and from 2017 to 2018)." Additionally, as previously mentioned, C-A-V-'s letter discussed the Petitioner's work for [redacted] and noted that he "was an essential part" of the show's "transformation and played a key role in the program's turnaround."

[11] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[12] *Id.*
[13] *Id.*

The aforementioned letters, however, do not provide specific, detailed information demonstrating the nature of the Petitioner's leading or critical roles for [redacted] or [redacted] For example, the references do not specify how many episodes in which the Petitioner appeared during the shows' broadcast history or the amount of his airtime. Further, the Petitioner has not demonstrated that his role in these television shows was leading or critical relative to their other performers. Nor does the record contain published television rankings or other statistical ratings to corroborate C-A-V- statements regarding the importance of the Petitioner's role to the success of [redacted] Without additional supporting evidence, the Petitioner has not demonstrated that his performances reflected a leading role for [redacted] or [redacted] or that his roles resulted in critical or essential outcomes for the shows.

The Petitioner maintains on appeal that he has performed in a leading or critical role for the television programs [redacted] and [redacted] Even if we were to conclude that the Petitioner has performed in a leading or critical role for these shows, which we do not, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires an individual to perform in a leading or critical role for "organizations or establishments" and the Petitioner has not shown that his television shows meet this requirement. *See Sarin v. United States*, No. 2:22-CV-07498-SVW-JS, 2023 WL 5667531, at *11 (C.D. Cal. July 27, 2023) (upholding a television series is not an organization or establishment). Merriam-Webster's online dictionary defines "organization" as an "association, society" or "an administrative and functional structure (such as a business or a political party)." It defines "establishment" as "something established" (such as a "church, a permanent civil or military organization, a place of business or residence with its furnishings and staff, a public or private institution"). *See* Merriam-Webster Dictionary's definition of both "organization" and "establishment." We consider the terms "organization" and "establishment" using their ordinary, common meaning. *See, e.g., Perrin v. United States*, 444 U.S. 37, 42 (1979) ("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning . . . ."). Here, the Petitioner has not established that a television show constitutes an organization or establishment.

For the above reasons, the Petitioner did not establish that he meets this criterion.

5. Salary

The regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The Petitioner initially submitted a May 2023 "Declaration of Assets" listing his available cash, bank account, real estate, and vehicle assets, but this document did not show his "salary" or "remuneration" in Argentina or the United States. While he also presented salary data for U.S. comedians from Comparably and Glassdoor, the Petitioner did not provide evidence of his earnings from performing comedy in the United States and therefore these data sources do not represent a proper basis for comparison. Persons working outside of the United States should be evaluated under this criterion based on the wage statistics or comparable evidence relevant to the applicable work location, rather

than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States.[14]

In response to the Director's RFE, the Petitioner submitted a letter from L-R-L-, General Secretary of the [redacted] stating that "between 2010 and 2023 [the Petitioner] received annual income amounting to $603,998,384.73 pesos."[15] In the section of his letter entitled "Average Income for Comedians in Argentina," L-R-L- indicated that professional comedians in his country "with a career of more than 10 years" report an "annual variable income of 50,000,000 (fifty million pesos)." Regarding using an "average income" comparison, this criterion requires the Petitioner to offer evidence showing that he has commanded a "high salary or other significantly high remuneration" relative to others in the field and not just a salary that is above average in his field.

To meet this criterion, the Petitioner must present evidence showing that he has earned a high salary or other significantly high remuneration in comparison with those performing similar services in the field. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner has not established that he has commanded a high salary or other significantly high remuneration for services in relation to others in the field. Accordingly, he has not established that he fulfills this criterion.

6. Commercial Successes

The regulation at 8 C.F.R. § 204.5(h)(3)(x) requires "[e]vidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales."

This criterion focuses on volume of sales and box office receipts as a measure of the individual's commercial success in the performing arts. Therefore, the mere fact that an individual has performed in theatrical, motion picture, or television productions would be insufficient, in and of itself, to meet this criterion. 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.[16]

The Petitioner presented promotional material relating to his performances; various photographs of him appearing on television, on radio programs, or at public events; posts on YouTube and Instagram; and an article in *Pronto* depicting his [redacted] candy creation. The Petitioner, however, has not presented evidence to establish that the volume of sales, box office receipts (relating to his stage performances), or television revenue demonstrate his commercial successes relative to others involved

[14] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[15] During this 14-year period, the Petitioner's earnings averaged $43,142,741 pesos annually.
[16] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

in similar pursuits in the performing arts. Accordingly, he has not established that he satisfies this criterion.

In this case, the Petitioner has not demonstrated that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

B. Substantial Prospective Benefit

The statute requires that the alien's entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(iii). Because the Petitioner has not demonstrated eligibility under section 203(b)(1)(A)(i) of the Act, we need not render a determination regarding whether his entry into the United States will substantially benefit prospectively our nation. *See Job v. Jaddou*, No. 4:22-CV-03017, 2024 WL 2963795, at *4 (S.D. Tex. June 12, 2024) (upholding a determination of whether the plaintiff would substantially benefit prospectively the United States was not needed because the plaintiff did not establish sustained national or international acclaim).

C. O-1 Nonimmigrant Status

The record reflects that in August 2022 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, this 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 nonimmigrant petitions. *See, e.g., Sunlift Int'l, Inc. v. Mayorkas*, No. 20-CV-08869-JCS, 2021 WL 3111627, at *11 (N.D. Cal. July 22, 2021); *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. v. Sava*, 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, e.g., La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam). Nor are we required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Constr. & Design Co. v. Bureau of Citizenship & Immigr. Servs.*, 2008 WL 2074097 *5 (N.D. Ill. May 14, 2008) (describing as "prudent" that the AAO "assess each application on its own, rather than rubber stamping applications merely because of prior approvals"), *aff'd sub nom. Constr. & Design Co. v. U.S. Citizenship & Immigr. Servs.*, 563 F.3d 593 (7th Cir. 2009).

III. CONCLUSION

The Petitioner meets the artistic display criterion, but he has not established he satisfies the criteria relating to awards, memberships, published material, original contributions, leading or critical role, high salary, and commercial successes. Because the Petitioner's inability to fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3) is dispositive of his appeal, we

need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. We therefore reserve this issue.[17]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion 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 those progressing toward the top. *Matter of Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or 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 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 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.

[17] *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).