U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37420094

Date: APR. 11, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial photographer, 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 for abandonment, and reopened the matter because that decision was in error. The Director then denied the petition on the merits, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an alien in the small percentage at the very top of the field. The matter is now before us on appeal under 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 immigrant visas available to aliens with 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. A petitioner must establish that these aliens seek to enter the United States to continue work in the area of extraordinary ability, and that their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those aliens in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of an alien's achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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. If those standards do not readily apply to the alien's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the alien 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 began working as a photographer in Brazil in 1985, establishing his own studio there in 2000 and working in freelance photojournalism since 2014. The Petitioner has spent much of his time in the United States since 2017, in I nonimmigrant status as a representative of the foreign press, operating a photography studio in Florida. His most recent arrival was in May 2020. He operates a Florida business that offers commercial photography, video production, and related services.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that he 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 have satisfied six of these criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (x), Commercial success in the performing arts.

The Director concluded that the Petitioner met three of the criteria, pertaining to memberships, published material, and display. On appeal, the Petitioner asserts that he also meets the three other claimed criteria.

As discussed below, we disagree with the Director's conclusions regarding memberships, published material, and display. We will also explain why we conclude that the Petitioner has not satisfied other claimed eligibility criteria.

1. Membership

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) calls for 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.

The Director concluded that the Petitioner had satisfied this criterion. We disagree.

The Petitioner submitted copies of membership cards from the [redacted] and the [redacted], affiliated with the [redacted] and a press credential from the [redacted].

The Director requested evidence to show that these organizations have membership requirements that conform to 8 C.F.R. § 204.5(h)(3)(ii).

In response, the Petitioner quoted and cited various materials indicating that [redacted] is a trade union that requires "a minimum of 10 to 15 photos, published within . . . one year, with credit, in a publication with a journalistic nature." [redacted] requires "technical and artistic competence," demonstrated through passing subject matter examinations, "portfolio review," "written recommendation," or "a combination of education and experience." [redacted] is "made up members in good standing." The Petitioner did not establish that any of these factors amount to outstanding achievements for a commercial photographer, rather than attributes or activities commonly seen in that occupation.

The Petitioner has not established that his claimed memberships meet the regulatory requirements.

2. Published Material

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) calls for 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. The evidence must include the title, date, and author of the material, and any necessary translation.

The Director concluded that the Petitioner had satisfied this criterion. We disagree.

The Petitioner initially submitted the following materials:

- A list of exhibitors from the program of a two-day trade show in Brazil, including two sentences about the Petitioner, along with his contact information;
- An online article from [redacted], featuring comments about the Petitioner and several other photographers who attended an event sponsored by the publication; and
- The Petitioner's list of [redacted] published on the website of the Vermont Small Business Development Center.

The Petitioner did not submit any evidence to show that any of these materials appeared in professional or major trade publications or other major media.

In response to the Director's request for evidence, the Petitioner stated that [redacted] "is available to all readers through free access on exclusive digital platforms." The Petitioner then provided online readership statistics for those platforms, such as [redacted]. But these statistics are not circulation figures for [redacted], and therefore they do not establish that [redacted] meets the regulatory requirements. The Petitioner did not submit circulation figures for the print edition

of the magazine or readership statistics for its website, and did not submit any evidence that a significant proportion of web traffic to third-party platforms such as *Issuu* relates to *Inesquecivel Casamento*.

The Petitioner also indicated that the magazine's *Pinterest* page has "596K subscribers." A submitted printout from that page, however, indicates "596.5 thousand *monthly views*," and "76.6 thousand followers." The distinction is important because followers may visit the site repeatedly during a given month. The Petitioner did not establish that the monthly views reflect over 596,000 different viewers. Also, the Petitioner did not establish how the *Pinterest* page relates to the circulation of the magazine itself, either in print or online. The Petitioner submitted *SimilarWeb* printouts showing online readership figures for several of the identified third-party sites such as *Pinterest*, but not for the actual publications that the Petitioner asserts included published material about him.

The Petitioner also asserted that the trade show programs were "magazines that were distributed within and outside the event." The Petitioner asserted that "[m]ore than 900 people" attended the event, but did not submit evidence to establish that this level of distribution qualified the program as a professional or major trade publication or other major media. A magazine publisher sponsored the trade show, and an article about the trade show in that magazine included photographs credited to the Petitioner and to several other photographers, but the Petitioner did not establish that the magazine published any material about him, relating to his work.

The person and the person's work need not be the only subject of the material; published material that covers a broader topic but includes a substantial discussion of the person's work in the field and mentions the person in connection to the work may be considered material about the person relating to the person's work. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. In this instance, the Petitioner has not established that any qualifying publication carried substantial discussion of the Petitioner's work. The Petitioner's name in a photographer's credit is not substantial discussion.

Marketing materials created for the purpose of selling the person's products or promoting the person's services are not generally considered to be published material about the person. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). Most of the materials the Petitioner has submitted under this criterion have been promotional in nature, in the context of publications whose purpose appears to be helping couples to locate and choose wedding photographers.

The Petitioner has not shown that he and his work have been the subjects of qualifying media coverage.

3. Artistic Display

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

The Director concluded that the Petitioner had satisfied this criterion, but the record does not establish that the Petitioner's work was displayed at *artistic* exhibitions or showcases as the regulation requires. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). Instead, the Petitioner has documented *commercial* exhibition of his work at trade shows.

The Petitioner also stated that clients in various industries have used his photographs in their advertising campaigns and for virtual tours on Google Street View. The Petitioner did not explain how, or establish that, these commercial applications of his work amount to artistic exhibitions or showcases. Google shows these photographs not for artistic purposes, or to draw attention to the Petitioner's work as a photographer, but to show images of the business establishments depicted in the photographs and thereby drive commercial traffic to those businesses.

The Petitioner has not met the burden of proof regarding the requirements of this criterion.

We now turn to the remaining criteria that the Petitioner claimed, but which the Director did not grant.

4. Leading or Critical Role

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

The Petitioner submitted letters from commercial clients in Brazil and South Florida, stating that the Petitioner's work has helped them to promote their businesses. The clients include a swimming pool construction and service company, a chemical manufacturer, a hamburger restaurant, a film festival in [redacted] that exclusively shows Brazilian films, and other businesses. The Petitioner did not submit objective, documentary evidence to show that these clients have distinguished reputations. The entities' own promotional materials and press releases lack sufficient weight. *See Braga v. Poulos,* No. CV 06-5105 SJO, 2007 WL 9229758, at *7 (C.D. Cal. July 6, 2007) *aff'd* 317 F. App'x. 680 (9th Cir. 2009) (stating that the AAO "should not rely" on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

The letters credit the Petitioner with helping the companies to grow, but they provide few details regarding these general claims and the extent of the Petitioner's effect on the businesses. The observation that the Petitioner's photography has been helpful to the Petitioner's clients is not sufficient to show that the Petitioner's roles have been critical. To establish a critical role, a petitioner must show that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. Letters describing the role should contain detailed and probative information that specifically addresses how the person's role for the organization or establishment was or critical. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The general letters from local businesses do not rise to this standard.

The Petitioner, on appeal, asserts that his work produced "tangible results and measurable outcomes," but when elaborating on this point, the Petitioner offers only vague assertions. For example, the Petitioner states that his work for the film festival "gained significant traction in American and Brazilian media outlets," and his work for a realtor "directly impacted the effectiveness of property listings, enhancing the organization's overall success."

We agree with the Director that the Petitioner has not met the criterion's regulatory requirements.

5. Commercial Success

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

The Petitioner asserted that "he achieved a commercial success in his field" because his photographs appeared "on the cover of newspapers, magazines, and websites," and his "images have been utilized by Google Maps . . . boasting over seven (7) million views . . . drawing attention to his acclaimed work as a Photographer and helping to build his renowned reputation."

The wording of the regulatory criterion requires documentation of box office receipts or sales of recordings to establish commercial success in the performing arts. The Petitioner, on appeal, contends that "viewership numbers serve as modern equivalents of traditional box office receipts or sales, demonstrating widespread public consumption of his artistic work." The Petitioner, however, did not establish that the use of his photographs in Google Street View and related applications amounts to commercial success, involving monetary transactions akin to the sale of tickets or recordings.

The Petitioner has not shown that users visit Google Street View in order to appreciate his photographs as art. Rather, the Petitioner's panoramic photographs show the interiors of shops, warehouses, and other business establishments, and serve a utilitarian, promotional purpose.

Even if we were to disregard the regulatory reference to "sales" and the "performing arts" in favor of the Petitioner's proposed standard of "public consumption," the evidence would still have to show that the volume of that consumption reflects commercial success relative to others involved in similar pursuits. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The Petitioner has not provided any basis for comparison to show that his photographs on Google consistently receive substantially more views than those of other photographers.

The Petitioner's work has been used commercially, but the Petitioner has not established commercial success in this respect. The Petitioner submitted copies of his studio's tax returns, indicating gross receipts of $66,919 and net profit of $26,184 in 2021 and gross receipts of $78,209 and net profit of $29,346 in 2022. The Petitioner did not provide any basis for comparison to show that this level of income and business activity reflects commercial success relative to others in his field.

We agree with the Director that the Petitioner has not satisfied the regulatory requirements of the criterion.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining claimed criterion at 8 C.F.R. § 204.5(h)(3)(v), concerning original contributions of major significance, cannot change the outcome of this appeal. Therefore, we reserve this issue.[1]

[1] *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).

B. Final Merits Determination

Because the Director concluded that the Petitioner submitted the required initial evidence, the Director evaluated whether the Petitioner has demonstrated, by a preponderance of the evidence, sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, whose achievements have been recognized in the field through extensive documentation.

Although we disagree with the underlying determination that the Petitioner had satisfied the required criteria, nevertheless we will discuss the final merits determination here.

A final merits determination entails analyzing a petitioner's accomplishments and weighing the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[2] In this matter, we agree with the Director that the Petitioner has not established eligibility.

On appeal, the Petitioner states that the Director "erred in not continuing with the Final Merits Evaluation." But the record shows that the Director *did* undertake a final merits determination, resting on the following conclusions:

- Letters from clients do not establish the significance of the Petitioner's photographs. The Director stated: "The testimonials do not demonstrate that the petitioner's work provoked widespread public commentary, nor do they show that experts throughout the field applied and implemented the petitioner's art of photographer."

- The Petitioner had not submitted "preexisting, independent, and objective evidence of major contributions that would be expected of one whose original work has contributed to the field in a major and significant way."

- The record does not include "extensive documentation" of "sustained national or international acclaim," as section 203(b)(1)(A)(i) of the Act requires.

- The Petitioner has documented practical applications of his work that have benefited his customers, but he has not shown that he has reached the top of his field and achieved sustained national or international acclaim.

- The Petitioner has documented the publication of some of his photographs, but has not shown a publication record that reflects sustained acclaim at the top of the field.

On appeal, the Petitioner asserts that he "has published over 1,000 photos, collectively garnering more than 12 MILLION views in a well-recognized platform, a strong indication of his prominence in his field." These figures relate to Google's use of his photos in virtual tours on Google Street View.

[2] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

Screen captures from Google Street View show credits naming the Petitioner as the photographer who took the images, but the burden is on the Petitioner to show that these credited images have resulted in sustained acclaim. The Petitioner has not established that the use of his images on Google is, itself, evidence of such acclaim. The purpose of the images is not to display the work of the photographer, but to promote the businesses shown in the photographs. These photographs may have helped to increase traffic to those businesses, but the Petitioner's involvement in this promotional strategy does not inherently demonstrate that the Petitioner is at the very top of the field of commercial photography. The Petitioner has not established that his uploading of images to Google distinguishes him from other commercial photographers, or that his photographs on Google have received more attention than images uploaded by other commercial photographers.

The Petitioner emphasizes that his Google photos have been viewed millions of times. He had posted thousands of photographs to that platform, thus averaging a few thousand views per photograph. The raw number of views does not establish acclaim or recognition as a photographer. The Petitioner has not shown that the view count results from his reputation or skill as a photographer, rather than interest in the subject matter shown in those photographs. Also, the Petitioner has provided no context to show the significance of that number of views. For instance, the Petitioner submits no evidence to show that his view count per photograph is higher than that of most other photographers who have uploaded photographs to the same platform.

Client satisfaction establishes a measure of success in the Petitioner's field, but it cannot suffice for the Petitioner to show that his work has benefited his customers. The statute and regulations require the Petitioner to submit extensive documentation showing that his work has earned him sustained acclaim and recognition not only among local businesses but at a national or international level. The Petitioner has not met this substantial burden.

The Petitioner has documented a viable career as a professional photographer, attracting local clients first in [redacted] and later in Florida. But we agree with the Director that the Petitioner has not submitted objective, documentary evidence that would distinguish him from others in his field to an extent that we could conclude that he is nationally or internationally acclaimed and at the very top of his field.

III. CONCLUSION

The record does not show 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. 953, 954 (Assoc. Comm'r 1994) (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 (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. 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 a degree of recognition of his work that rises to the level of sustained national or international acclaim and demonstrates 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 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).

The Petitioner has not demonstrated eligibility as an alien of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.