U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40304461

Date: JUL. 06, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a tattoo artist, 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(b0(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.

USCIS denied the petition, concluding the record did not establish that the Petitioner qualifies as an alien of extraordinary ability either as the recipient of a major, internationally recognized award, or that the Petitioner meets at least three of the ten initial regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). 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 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 sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the 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 is a tattoo artist with approximately 10 years of professional experience in Venezuela and the United States. He states that he currently serves as a resident artist at [redacted] LLC in [redacted], California and intends to continue working there as a tattoo artist.[1]

A. Evidentiary Criteria

Because the Petitioner has not indicated or demonstrated that he has received a major, internationally recognized award, he must instead satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(ii)(i)-(x). In his initial petition, the Petitioner claimed to meet four criteria. USCIS evaluated the claims the Petitioner made in the initial petition and in response to the request for evidence (RFE) and concluded the Petitioner only satisfied two criteria, participation as a judge of others' work at 8 C.F.R. § 204.5(h)(3)(iv) and display of work at artistic exhibitions or showcases at 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner reasserts the same four criteria presented in the initial filing, published materials about the alien in professional or major media (iii); judge of the works of others (iv); display of work at artistic exhibitions or showcases (vii); and high salary or remuneration for services (ix), and adds one additional criterion that he claimed in response to USCIS' RFE, leading or critical role for distinguished organizations or establishments (viii). He contends that he satisfies "five of the ten regulatory criteria." After reviewing all the evidence in the record, we conclude the Petitioner has not demonstrated eligibility for this highly restrictive immigrant classification for the reasons we will discuss below.

1. Published Material about the Petitioner

[1] The record shows the Petitioner has been working in the United States for several years pursuant to O-1 nonimmigrant status. We acknowledge that this status is granted to persons of extraordinary ability in the arts. However, the nonimmigrant and immigrant extraordinary ability categories have different definitions, evidentiary requirements, and standards for persons in the arts. "Extraordinary ability in the field of arts" in the nonimmigrant O-1 classification means "distinction." 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, "extraordinary ability" reflects that the individual is among the small percentage at the very top of the field. Regardless, each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions.

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." These materials must include "the title, date, and author of the material, and any necessary translation." *Id.* The published material should be about the alien and their work, rather than the alien's employer and its work (or about an organization and its work). Professional or major trade publications may be identified by their intended audience, while other major media and major trade publications should have elevated circulation or readership relative to other media in the field. *See generally 6 USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

In support of this criterion, the Petitioner submitted copies of online articles published by media outlets such as, *El Farandi*, *La Patilla*, *Univision*, *El Universal*, and *The Wynwood Times*, as well as evidence of appearances on radio and television (TV) programs. He asserts that these publications and broadcasts feature his work and professional achievements in the field of tattoo art. The Petitioner also submitted website traffic data, media fact sheets, and transcripts of the TV and radio interviews.

USCIS concluded that the Petitioner did not satisfy this criterion because he failed to submit sufficient evidence establishing the circulation and reach of the publications and demonstrating that the submitted evidence qualified as professional or major trade publications or other major media. Upon de novo review, we conclude that the Petitioner has submitted sufficient evidence to establish that some of the published materials appeared in media outlets with significant circulation or audience reach. The record also demonstrates that the articles focus primarily on the Petitioner and his artistic work and professional achievements. Accordingly, the Petitioner has submitted sufficient evidence to satisfy this criterion.

2. Comparable Evidence

This regulatory provision provides petitioners the opportunity to submit comparable evidence to establish the person's eligibility, if it is determined that the evidentiary criteria described in the regulations do not readily apply to the person's occupation. *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policymanual. When evaluating such comparable evidence, officers must consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation. *Id.*

The Petitioner asserts that the criterion at 8 C.F.R. § 204.5(h)(3)(ii), relating to membership in associations, is not readily applicable to his occupation because "the tattoo industry does not have formal, peer-reviewed associations that admit members based on documented outstanding achievement." Instead, he requests that we consider his selection as a representative of the tattoo supply company [redacted] LLC as comparable evidence, arguing that the competitive, merit-based selection process is equivalent to membership in a qualifying association.

The Petitioner also asserts that the criterion at 8 C.F.R. § 204.5(h)(3)(x), relating to commercial successes in the performing arts in the form of box office receipts or record, cassette, compact disk, or video sales, is not "readily applicable" to him. Instead, he contends that his teaching role at the [redacted] and his celebrity clientele constitute comparable evidence demonstrating that he has risen to the top of his field.

We acknowledge the Petitioner's assertion that his brand sponsorship, celebrity clientele, and teaching role constitute comparable evidence in lieu of the criteria set forth at 8 C.F.R. § 204.5(h)(3)(ii) and (x). Because the Petitioner has already established that he meets the initial evidentiary requirement, we will consider the claimed comparable evidence in the following final merits determination.

B. Final Merits Determination

As the Petitioner has established that he meets the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has 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.

The Petitioner contends on appeal that USCIS failed to conduct a proper final merits analysis. Nonetheless, we exercise *de novo* review of all issues of fact, law, policy, and discretion. *See Matter of Christo's, Inc.*, 26 I&N Dec. 537. This means that we look at the record anew and are not required to defer to findings made in the initial decision. Furthermore, our decision may address new issues that were not raised or resolved in the prior decision.

While we may not discuss every document in the record, we have reviewed and considered each one. Based on our de novo review, we conclude the Petitioner has not demonstrated eligibility for this highly restrictive immigrant classification for the reasons we will discuss below.

The Petitioner maintains that the totality of the evidence establishes that he is among the small percentage of individuals who have risen to the very top of the tattoo art field. He contends that his sustained acclaim, widespread recognition, and commercial success demonstrate that he has achieved sustained national and international acclaim and belongs to the small percentage who have risen to the top of his field. However, the record, in the aggregate, does not support the conclusion that he has shown the required acclaim and recognition, or otherwise shown that he is one of the small percentage of individuals who have risen to the very top of the field of endeavor. *See* Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

The Petitioner claimed eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(ii) by submitting comparable evidence consisting of his appointment as a brand representative for the tattoo supply company [redacted] LLC. He asserts that this appointment demonstrates his "technical excellence, professional influence, and public reputation" and constitutes "a credential of the highest professional order." In support of this claim, the Petitioner submitted letters from [redacted] LLC.

Regardless of whether the submitted evidence satisfies the regulatory criterion as comparable evidence, the record does not demonstrate that the Petitioner's collaboration with [redacted] LLC or his brand sponsorship resulted in sustained national or international acclaim or reflects a career of acclaimed work. *See Donskoy v. United States Citizenship & Immigr. Servs.*, No. 21-CV-04757-

CRB, 2021 WL 5240224, at *5 (N.D. Cal. Nov. 11, 2021) (upholding the petitioner's membership did not demonstrate the requisite level of achievement or sustained acclaim to establish extraordinary ability). For example, the Petitioner has not established how his collaboration with [redacted] LLC compares to the brand partnerships obtained by other artists at the top of the field or otherwise shown that such an appointment is indicative of extraordinary ability. The record also does not demonstrate that the Petitioner's sponsorship by [redacted] LLC resulted in significant national or international recognition.

The Petitioner submitted copies of online articles published by media outlets, including *El Farandi*, *La Patilla*, *Univision*, *El Universal*, and *The Wynwood Times*, as well as evidence of appearances on radio and television (TV) programs. He asserts that these publications and broadcasts highlight his work and professional achievements in the field of tattoo art. The Petitioner also submitted website traffic data, media fact sheets, and transcripts of the TV and radio interviews. While the record shows the Petitioner received media coverage, the evidence is insufficient to demonstrate sustained national or international acclaim. Here, the Petitioner has not established that his overall media coverage is indicative of the level of recognition associated with the small percentage of individuals who have risen to the very top of his field of endeavor. Additionally, the submitted media evidence does not demonstrate that the Petitioner has maintained a career of acclaimed work or otherwise satisfied the very high standard applicable to this classification.

The Petitioner claims that he has served as a judge of other artists' work at various competitions, including the [redacted] in [redacted] New York in 2024. In support of this claim, he submitted evidence describing the events, including brochures, articles with photographs, promotional materials, and support letters. While the record reflects that the Petitioner has engaged in some judging activity, this limited experience does not demonstrate sustained national or international acclaim over the course of his career. The record also does not establish that the tattoo expositions where the Petitioner served as a judge are widely recognized as leading or highly prestigious competitions in the field such that participation as a judge would indicate that the Petitioner is among the small percentage of individuals at the very top of his field.

Moreover, the Petitioner has not shown how his judging experience compares to others at the very top of the field or demonstrated that his participation has attracted significant attention or recognition from the broader tattoo art industry. Without evidence that sets the Petitioner apart from others in his field, such as evidence that he has a consistent history of reviewing or judging recognized, acclaimed experts in his field, the Petitioner has not shown that his narrow judging experience places him among that small percentage who has risen to the very top of the field of endeavor. *See Hamal v. United States Dep't of Homeland Sec.*, No. 21-5160, 2023 WL 1156801, at *2 (finding the petitioner did not show that he served as a judge of renowned directors as opposed to aspiring artists or the competitions were considered prestigious or attracted significant attention by the field).

The Petitioner submitted evidence to demonstrate that he has appeared at tattoo conventions, including the [redacted] in Florida, the [redacted] in Venezuela, as well as tattoo exhibitions such as the [redacted] in New York and the [redacted] in California. He stated that he has showcased and promoted his work through these events and through social media. However, the record does not sufficiently demonstrate that the Petitioner's work has garnered a level of attention or has been regularly featured at highly

reputable venues consistent with being among the small percentage of individuals who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

With respect to his claimed leading or critical role, the Petitioner asserts that he has performed critical functions at the [redacted] by serving as a senior instructor, mentor, and curriculum developer. In support of this claim, he submitted a letter from the founder of [redacted] LLC, who states that the Petitioner occupies a leading and critical role within the studio due to his "influence on operations, development of groundbreaking techniques, and delivery of high-complexity services." The letter further explains that the Petitioner "played a pivotal role in the development and implementation of [redacted] by [redacted], a proprietary tattooing technique involving anesthesia that has revolutionized the client experience for complex, large-scale tattoos." According to the author, the Petitioner was "among the first artists trained" in this tattooing technique and was "instrumental in refining the workflow, maintaining quality standards, and helping to introduce the technique to a global audience." The Petitioner also submitted articles discussing his work with celebrity clientele and other materials asserting that he has served in critical roles.

Regardless of whether the submitted evidence satisfies the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii), the record does not establish that the Petitioner's roles and responsibilities are indicative of a career marked by sustained national or international acclaim, as required for individuals of extraordinary ability. Similarly, although the evidence demonstrates that the Petitioner has made contributions to [redacted] LLC, including implementing new tattooing technique and instructing students, these activities primarily reflect recognition, exposure, and influence within [redacted] LLC. The Petitioner has not established that these responsibilities resulted in widespread recognition throughout the broader field or otherwise demonstrate that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Furthermore, the record does not demonstrate that the Petitioner's contributions have resulted in national or international acclaim or that the field or the public at large had taken notice of his work. 8 C.F.R. § 204.5(h)(3).

The Petitioner asserts that he has commanded a high salary in his field. In support of this claim, he submitted tax returns, S Corporation records reflecting that he receives income through an S Corporation, information regarding tattoo artists' hourly and average compensation in his geographic area, salary data from Salary.com and the U.S. Bureau of Labor Statistics, and expert letters discussing compensation standards within the Petitioner's field. Regardless of whether the submitted evidence satisfies the regulatory criterion, the record does not establish that the Petitioner consistently received high compensation over the course of his career such that his earnings reflect sustained national or international acclaim. Although the Petitioner contends that, through his S Corporation, he charges rates that exceed those of the average tattoo artists in his area, this compensation, standing alone, is insufficient to demonstrate that his compensation is indicative of extraordinary ability. Viewed in the totality of the evidence, the Petitioner has not established that his earnings reflect the level of sustained national or international acclaim or achievements associated with the small percentage of individuals who have risen to the very top of the field.

The Petitioner emphasizes his brand sponsorship with [redacted] LLC, his instructional and teaching roles at [redacted], and his celebrity clientele as comparable evidence of his commercial success in the performing arts. He contends that the totality of the evidence demonstrates

his "status at the top of the field." However, the record does not sufficiently establish that the Petitioner is among the small percentage at the very top of his field. Although the evidence demonstrates that he has achieved professional success and recognition, it lacks sufficient independent and objective evidence showing that his contributions and reputation have been widely recognized across the field on a national or international level. Likewise, the record does not sufficiently demonstrate the extent of the Petitioner's influence or establish that his tattoo artwork has had a significant impact across the broader field of tattoo art. Accordingly, the evidence does not establish that the Petitioner's achievements are indicative of the sustained acclaim and extraordinary level of distinction contemplated by the statute and regulations.

Although the Petitioner provided support letters, including letters stating that he has extraordinary ability as a tattoo artist, is renowned as being representative of unique tattoo artwork, is among the top tier talent, and that his work has been prominently featured at major international conventions, the record does not contain sufficient information to establish that the Petitioner is viewed by the overall field, rather than by a solicited few, to be among the upper echelon or that he has garnered recognition on a national or international scale, consistent with being among the small percentage at the very top of the field of endeavor. *Mishra v. Richardson*, No. 1:20-cv-991 (LMB/TCB), 2021 WL 1566071, at *3 (E.D. Va. Apr. 20, 2021) (finding that none of the plaintiff's letters point to evidence of extensive documentation of his accomplishments to show sustained national or international acclaim). Moreover, while the letters highlight the Petitioner's work, they do not reflect a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See Bodhankar v. USCIS*, No. 1:19-CV-706 (MAD/CFH), 2020 WL 777211, at *5 (N.D.N.Y. Feb. 18, 2020) (finding the submitted letters failed to establish the plaintiff's contributions resulted in significant acclaim).

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought.[2] Here, 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. *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,"); *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2002) (stating that extraordinary ability is such an elite level of accomplishment); *Onaghise v. Dep't of Homeland Sec.*, No. 3:20-CV-03033-X, 2022 WL 4073344, at *2 (N.D. Tex. Sept. 2, 2022) (holding that extraordinary ability visas are known as "Einstein" visas, are extremely "coveted," and are "reserved for only the most talented" aliens"). In this case, 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. Section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he is among the small percentage at the top of his field. *See* 8 C.F.R. § 204.5(h)(2).

Although the Petitioner himself and his support letters emphasized his extraordinary ability in his field, the record is insufficient to demonstrate sustained acclaim in order to qualify for an immigrant visa under this classification. The totality of the evidence does not demonstrate that the Petitioner has garnered a level of recognition for expertise in his field that would be expected from an individual at the top of his field. Accordingly, the record, as a whole, does not demonstrate eligibility for the benefit

[2] *See generally 6 USCIS Policy Manual, supra*, at F.2(B)(2) (providing that some evidence weighs more favorably on its own, while other evidence is more persuasive when viewed with other evidence).

sought. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 FR 30703-01, 30704. Here, the Petitioner has not established that he enjoys a career that meets this very high standard.

III. CONCLUSION

The Petitioner has submitted the required initial evidence that meets at least three of the ten categories of evidence listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we have provided the type of final merits determination referenced in *Kazarian*, 596 F. 3d at 1119-20. Based on our review of the record as a whole, we conclude that the record, in the aggregate, does not support a conclusion that the Petitioner has established the acclaim and recognition required to be classified as an alien of extraordinary ability in his field.

The Petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields. Here, he has not shown that his accomplishments rise to the required level of 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 is one of the small percentage of individuals who have risen to the very top of the field of endeavor. *See* Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated eligibility to be classified as an alien of extraordinary ability in his field. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.