



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

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

In Re: 30728952

Date: MAY 02, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a cinematographer, seeks classification as an individual 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 Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner satisfied the initial evidence requirements for this classification by meeting at least three of the ten evidentiary criteria set forth in the regulations. 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

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation;
- They seek to enter United States to continue working in the area of extraordinary ability; and
- Their entry into the United States has substantial prospective benefits for the country.

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 two-part analysis. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If a petitioner does not submit this

evidence, then they must provide 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; Amin v. Mayorkas*, 24 F.4th 383, 391-392 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013).

II. ANALYSIS

The Petitioner states he has worked in Kazakhstan’s film and television industry since 2013 and earned a certificate in cinematography in 2017.¹ The Petitioner indicates he intends to open his own U.S. company to produce commercial and video clips, to film a documentary, and to attend the Los Angeles Film School to study directing. The record shows that, after filing the petition, he worked on several U.S. film projects as an actor and production assistant.

A. Evidentiary Criteria

The Petitioner does not claim to qualify for extraordinary ability classification based on a one-time achievement. Accordingly, he must submit evidence meeting at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vii), by providing evidence that his work has been displayed at artistic exhibitions or showcases. Therefore, the Petitioner must demonstrate that he satisfies at least two additional criteria.

On appeal, the Petitioner maintains that the previously submitted evidence was sufficient to demonstrate that he meets five additional criteria:

- Published materials about him in major media, relating to his work in the field, under 8 C.F.R. § 204.5(h)(3)(iii);
- Original artistic or business-related contributions of major significance in the field, under 8 C.F.R. § 204.5(h)(3)(v);
- Authorship of scholarly articles, under 8 C.F.R. § 204.5(h)(3)(vi);
- Performance in a leading or critical role for organizations that have a distinguished reputation; under 8 C.F.R. § 204.5(h)(3)(viii); and
- High salary or other significantly high remuneration, in relation to others in the field, under 8 C.F.R. § 204.5(h)(3)(ix).

¹ We observe that the record does not contain a complete list of the Petitioner’s film and television credits. He provided screenshots from YouTube for three of his projects showing that he was credited as an “artistic lightener” on the television series [redacted] and as “playback” for the television series [redacted].

For the reasons provided below, we conclude the Petitioner has not demonstrated that he satisfies the requirements of at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Published material about the individual in professional or major trade publications or other major media, relating to the individual's work in the field for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iii)

In support of this criterion, the Petitioner submitted an article titled [REDACTED] published online by New Television (<https://www.novoetv.kz>) on [REDACTED] 2021. The article, an interview with the Petitioner, is about him and relates to his work in the film and television industry. However, the initial submission did not include evidence to establish that this website qualifies as a professional or major trade publication or other major media, as required by the plain language of the regulation.

In response to a request for evidence (RFE), the Petitioner stated that “Novoe TV is a Kazakh TV channel” whose website receives 104,157 visitors per month. The Petitioner stated that this “popularity index” was obtained from the website Similar.web but did not submit any corroborating documentation from Similar.web, or any other evidence relevant to this criterion.

The Director determined that the Petitioner did not provide sufficient evidence to support his claim that the article was published in major media. In evaluating whether a submitted publication qualifies as major media, relevant factors include the relative circulation, readership or viewership of the source that published it. *See generally 6 USCIS Policy Manual F.2(B)(1)*, <https://www.uscis.gov/policy-manual> (providing guidance on evaluation of initial evidence of extraordinary ability under the criteria at 8 C.F.R. § 204.5(h)(3)). On appeal, the Petitioner contends that the previously submitted evidence was sufficient to demonstrate that the New Television website qualifies as major media.

The Petitioner relies on an uncorroborated claim regarding the number of monthly visitors for the website that published the submitted article. Even if we accepted this information without supporting evidence from its purported source (Similar.web), we cannot determine based on a website traffic figure alone whether the New Television website is a qualifying form of media under this criterion. The record does not, for example, include its relative ranking among similar media in Kazakhstan or provide any other basis for comparison to support the Petitioner's claim that the website qualifies as “major media.”

Therefore, we agree with the Director's conclusion that the Petitioner did not meet his evidentiary burden to establish the article was published in major media. Further, the Petitioner does not claim the article was published in a professional or major trade publication or submit evidence that would support such a claim. Accordingly, the Petitioner has not satisfied this criterion.

Evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

For fields outside the academic arena, a scholarly article should be written for “learned persons” in a given field, a term that includes all persons having profound knowledge of a field. If the record demonstrates that a submitted article was written by the petitioner and qualifies as a scholarly article,

then we evaluate whether the article appeared in a professional or major trade publication or other major media. *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

The Petitioner initially submitted the following evidence in support of his assertion that he authored scholarly articles in his field:

- Article titled [REDACTED] published by the Russian web portal “Life Star” (life-star.ru) in [REDACTED] 2021, which identifies the Petitioner as the article’s author.
- Article titled [REDACTED] published by “Sub-Culture” web portal in [REDACTED] 2021, which appears to identify another individual [REDACTED] as the article’s author.²

In the RFE, the Director observed that one of the two articles did not clearly identify the Petitioner as the author. Further, the Director advised that the initial evidence did not establish that either of the submitted articles was written for and intended to be read by learned persons in the Petitioner’s field. Finally, the Director noted that the Petitioner did not provide evidence regarding the websites that published the submitted articles and therefore did not meet his burden to demonstrate that the articles appeared in professional or major trade publications or other major media. The Director provided a list of evidence the Petitioner could submit to address these evidentiary deficiencies.

In response to the RFE, the Petitioner provided brief descriptions of the Life Star and Sub-Culture web portals, stating that the former is “a daily updated magazine about the most interesting in the world of Russian and foreign show business,” and the latter is an “online guide to contemporary culture.” The Petitioner also included statements regarding the monthly website traffic for both websites, indicating that he obtained the data from Similar.web. His response did not address the Director’s question regarding the authorship of the article [REDACTED] or include any supplemental evidence, such as evidence to corroborate the claimed website traffic and additional information about the publications and their intended audience.

In concluding that the Petitioner did not satisfy this criterion, the Director emphasized that the record does not establish that he authored the article [REDACTED]. The Director further determined that there was insufficient evidence to establish that the other article appeared in a publication that qualifies as a professional or major trade publication or other major media. In reaching this conclusion, the Director advised that the Petitioner’s unsupported statement regarding website traffic for Life Star was insufficient to demonstrate that this website qualifies as major media.

On appeal, the Petitioner asserts that he provided sufficient evidence to establish that the Life Star web portal is a major media source and emphasizes that his previous letter included information regarding its monthly web traffic that he obtained from Similar.web. He further contends that the Director

² The byline for the article names this individual as the author. Below the article’s title, there is a reference to the Petitioner as a “film reviewer and cinematographer,” a link to his website, and a captioned photograph of him. We note the body of the article begins in the middle of a sentence and discusses only seven films, which suggests that one or more pages may be missing.

improperly discounted the article [redacted] noting that his name “appears multiple time on the byline of the article.”

Upon review, we agree with the Director’s conclusion that the Petitioner did not submit evidence that satisfies this criterion. While we acknowledge that the article [redacted] includes a reference to the Petitioner, it does not clearly attribute authorship to him given its inclusion of a byline identifying another individual as the article’s author.

With respect to the Petitioner’s claim that the Life Star web portal qualifies as major media, we note that the Director specifically requested “documentary evidence to establish that the publications in which the submitted articles appeared are professional publications, major trade publications or other major media.” As such, the Petitioner’s uncorroborated statements regarding website traffic data, which he claims he obtained from Similar.web, are not sufficient. As noted above in our discussion of the criterion at 8 C.F.R. § 204.5(h)(3)(iii), even if we accepted this information without supporting evidence from its purported source (Similar.web), we cannot determine based on a website traffic figure alone whether the Life Star website has a relative readership or viewership that qualifies it as major media. The record provides no basis for comparison of this website with other similar media in Kazakhstan.

Finally, although not addressed in the Director’s decision, the Petitioner has not demonstrated that the submitted articles are scholarly articles intended for an audience of learned persons in his field. Both articles, based on their contents and the brief descriptions of websites that published them, appear to be intended for a general audience. Accordingly, the Petitioner has not demonstrated that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(vi).

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)

To satisfy this criterion, a petitioner must show that they performed in a leading or critical role for an organization or establishment, or for a division or department of an organization or establishment. Evidence of experience should consist of letters from employers and should contained detailed information specifically addressing how the person’s role was leading or critical. *See generally 6 USCIS Policy Manual, supra*, at F.2(B)(1). In evaluating whether an individual has served in a leading role, we evaluate whether the submitted evidence establishes that the person, based on their job title, duties, and other evidence, was a leader within an organization or establishment. A critical role requires evidence that the individual has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. *Id.*

The Petitioner did not claim eligibility under this criterion at the time of filing. In response to the RFE, the Petitioner submitted evidence for consideration, including a letter from L-M-, a line producer for the [redacted] project [redacted] and a letter from M-A- of [redacted]. The record reflects that [redacted] hired the Petitioner to work as a production assistant in March 2023, nearly two years after he filed this petition. A petitioner must establish that they are eligible for the requested benefit at the time of filing. 8 C.F.R. § 103.2(b)(1). While the letter from L-M- speaks highly of the Petitioner’s skills, professionalism, and contributions to [redacted] this evidence cannot establish that he met this criterion when he filed this petition in July 2021.

We have considered two letters provided by M-A- of [REDACTED]. In her initial letter dated July 12, 2021, she mentioned the Petitioner's work on the television projects [REDACTED]. M-A-'s letter mentions the Petitioner's talents, his "honesty, accountability and trustworthiness in professional settings," his reputation as a "team player," and his "time management skills." While the letter describes the Petitioner as a "great leader" it does not elaborate on how he held a leading role for either of these projects or for [REDACTED] as a whole, nor did it discuss how his role was critical to the outcome of the company's activities. In fact, the letter does not specifically state what title or role the Petitioner held with respect to either television project or what duties he performed.

In a second letter submitted in response to the RFE, M-A- mentions that [REDACTED] worked with the Petitioner on [REDACTED]. She states that "filmmakers play a crucial role in the development of the film industry," and that the Petitioner "is a key participant in the development of the film industry." While M-A-'s letter praises the Petitioner's creative, technical, and artistic abilities, it does not address his specific role or duties on the listed television projects, his specific contributions to these projects, or explain how his role was leading or critical to the [REDACTED] organization. Rather, M-A- speaks broadly of the types of responsibilities generally held by filmmakers. Further, although she refers to the Petitioner as a "talented cinematographer," it is unclear he was credited as the cinematographer or director of photography for these projects.

On appeal, the Petitioner asserts that the Director, who discussed only the letter from L-M-, overlooked other evidence relevant to his eligibility under this criterion, and only considered his latest role as a production assistant. He specifically points to the letters from M-A-, already addressed above, and those provided by H-K- of [REDACTED], K-M- of [REDACTED] and S-S-, an industry professional who attests that he worked with the Petitioner on several different productions.

The letter from H-K- states that she has worked with the Petitioner on the U.S.-based production [REDACTED] [REDACTED] for "the past couple of years." However, other evidence in the record indicates that the Petitioner joined this project as a production assistant in 2022, well after the filing of the petition. Again, a petitioner must establish that they are eligible for the requested benefit at the time of filing. 8 C.F.R. § 103.2(b)(1).

The letter from K-M- states that the Petitioner worked with [REDACTED] a film and television studio, on eight projects between 2014 and 2020. He describes the Petitioner as a hard worker and fast learner, and praises his focus, professionalism, energy, sense of humor and positive demeanor. K-M-'s letter does not, however, provide detailed and probative information that specifically addresses how the Petitioner's role for [REDACTED] was leading or critical based on his title, job duties, or contributions of significant importance to the outcome of the organization's activities.

Finally, the letter from S-S- indicates that he has worked with the Petitioner on various television and film productions with several different production companies in Kazakhstan. S-S- does not state he is writing on behalf of a specific organization that employed the Petitioner in the past, nor does he identify the specific roles the Petitioner held with respect to the listed projects. Like the other colleagues and employers who provided letters in support of the petition, S-S- praises the Petitioner's personal attributes, technical and artistic skills, knowledge of film production, and dedication to his craft. He describes the Petitioner as a "team player who offers valuable contributions to any business"

and “the most talented cinematographer” he has known. However, the letter does contain the type of detailed and probative information needed to demonstrate that the Petitioner held a leading or critical role for an organization or establishment based on his specific duties and contributions.

Based on the foregoing discussion, the Petitioner has not met his burden to show that he has performed in leading or critical roles for the organizations that employed him. Accordingly, we need not evaluate whether such organizations have a distinguished reputation. 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)

In evaluating eligibility under this criterion, USCIS considers evidence that may include, but is not limited to: a petitioner’s tax returns, pay statements or other evidence of their past salary or remuneration for services; contracts, job offer letters or other evidence of prospective salary or remuneration for services; and comparative wage or remuneration data for the person’s field, such as geographical or position-appropriate compensation surveys. *See generally 6 USCIS Policy Manual, supra, at F.2(B)(1).*

At the time of filing, the Petitioner submitted the following evidence:

- A letter from K-M- of [redacted] who states that his company paid the Petitioner \$10,000 for his work on the film [redacted]
- A letter from A-A-, vice president of [redacted] who states that his company paid the Petitioner \$5000 per project for various three-month projects that included [redacted]
- A letter from M-A- of [redacted] who states that the Petitioner earned \$3,000 for his work on [redacted] over the course of 2.5 months on set.
- A letter from A-L-, who states he was the Petitioner’s colleague on the film [redacted] and that the Petitioner “earned \$1,400 per month in 2018.”
- A partially translated chart described as a “statistical report about average monthly salary in arts and entertainment in Kazakhstan.”

In the RFE, the Director advised the Petitioner that the submitted letters from previous employers and colleagues did not provide sufficient evidence of his actual salary or other remuneration. Further, the Director informed the Petitioner that the submitted “monthly salary report” did not cite a source for the salaries provided or “indicate in any way where they obtained their numbers.” The Director requested that the Petitioner provide additional evidence, such as foreign tax documents corroborating his income earned outside the United States and geographical or position-appropriate compensation or wage surveys.

In response to the Director’s determination that he did not provide sufficient evidence of his actual income, the Petitioner explained that “cinema is a project work, and the salary is different.” He emphasized that “letters from project customers were provided” to document the amount he earned for each project but did not submit any additional evidence regarding his past salary or other remuneration.

The Petitioner also submitted salary information from the website Mojazarplata.kz, which he describes as “a unique project that provides information on wages and working conditions for 1,600 professions in 20 industries” based on data received “from all over Kazakhstan.” The screenshots from the website identify the occupations of “film, theater or other related producers” and “legal, humanitarian and cultural professionals.” The average reported salary is KZT 191,962, and the maximum salary reported is KZT 323,143 (approximately \$712 per month).

The Director concluded that the Petitioner did not meet this criterion, noting that the submitted letters do not sufficiently document his actual earnings for any given period and do not qualify as supporting financial documentation. The Director further observed that the comparative wage data from Mojazarplata.kz does not support the Petitioner’s claim that he has commanded a high salary as a cinematographer because it does not provide comparative wage data for his specific field.

On appeal, the Petitioner asserts that the Director improperly rejected the salary information he provided from Mojazarplata.kz and contends that they required “an unrealistically high level of specificity by stating that the salary information provided for ‘film, theater and other related producers’ is not relevant for cinematographers.” The Petitioner further contends that he provided a reasonable explanation for his inability to provide “standard wage documentation,” given the project-related nature of his work. He maintains that the previously submitted letters demonstrate that he received a high salary in relation to other cinematographers.

While we acknowledge that persons in the Petitioner’s field may not typically work in permanent salaried positions, he has not adequately addressed the unavailability of any type of supporting financial documentation of his past earnings. While he may not be able to produce copies of weekly pay statements or the foreign equivalent of an IRS Form W-2, it is reasonable to conclude that he would have some documentary record of his own prior income either in the form of invoices for his services, payment receipts, prior contracts or deal memos, bank deposits, or income reported on a tax return. Similarly, it is reasonable to determine that his prior employers would maintain financial records of crew expenses for their film and television projects. His suggestion that it is unreasonable for USCIS to expect any type of evidence beyond letters from prior employers is not persuasive.

In addition, the letters the Petitioner submitted contain inconsistencies that undermine their probative value. For example, the letter from A-A- of [redacted] states that the Petitioner worked on several projects for his company, including the film [redacted] that this and other projects each lasted three months, and that the Petitioner was paid \$5,000 per project. The Petitioner stated in his own affidavit that he worked on [redacted] from 2020-2021 and that “the production took about a year.” The letter from K-M- of [redacted] states that the Petitioner earned \$10,000 for his work on [redacted]. We cannot determine, based on these inconsistent statements, what the Petitioner earned for his work on this film or how much time he devoted to this project.

With respect to the salary data the Petitioner provided from Mojazarplata.kz, we note that it is unclear from the evidence provided whether the salary data provided is for the occupation of “film, theater or other related producer” or for the broader classification of “legal, humanitarian and cultural professionals” as both occupations are identified on the submitted screenshots. We acknowledge the Petitioner’s assertion that he could not obtain specific salary information for the occupation of “cinematographer.” However, we note that salary surveys that rely on broad occupational categories

that include multiple occupations or multiple industries may not provide an accurate comparison to others in the field. *See generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

We agree with the Director's determination that the Petitioner did not sufficiently document his past earnings. Therefore, even if we concluded that the submitted comparative wage data provides an appropriate basis for comparison for the Petitioner's claimed occupation of cinematographer, the evidence would be insufficient to establish that he meets this criterion.

B. Summary and Reserved Issue

The record does not establish that the Petitioner meets any of the four evidentiary criteria discussed above. Because the Petitioner cannot 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) cannot change the outcome of the appeal. Therefore, we reserve and will not address this remaining issue. *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 D-L-S-*, 28 I&N Dec. 568, 576-77 n.10 (BIA 2022) (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 and conclude 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. 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 sustained national or international acclaim in the field, and that 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 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.