

Practice Pointer re Evidentiary Criteria in O, P and EB-1A Visa Categories 'Tips and Recent Trends at USCIS'

April 28, 2017 by Aja Pardini

O-1 Visa Classification 8 CFR PART 214 -- NONIMMIGRANT CLASSES

Definitions:

An individual alien who has extraordinary ability in the **sciences, arts, education, business, or athletics** which has been demonstrated by sustained national or international acclaim and who is coming temporarily to the United States to continue work in the area of extraordinary ability;
or

An alien who has a demonstrated record of **extraordinary achievement in motion picture and/or television productions** and who is coming temporarily to the United States to continue work in the area of extraordinary achievement.

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is **one of the small percentage who have arisen to the very top of the field of endeavor**.

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

O-1A Visa Classification:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of **science, education, business, or athletics**. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

Tip: nominations do NOT count here

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

Tip: this requires that the prize or award is nationally or internationally recognized NOT that the competition be national or international in scope.

For example, we have used emerging artist awards at a particular well-known summer theatre program in combination with a letter confirming that this award immediately triggers an industry-wide response and that winners are frequently offered agency representation and likely job offers on the basis of the award. Thus, it qualifies as nationally recognized.

(2) 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;

Tip: you can use a letter to confirm the specifics of the membership requirements if they are not available online or if they do not accurately explain the competitive nature of membership.

Tip: you can use a grouping of individuals of outstanding achievement, such as a designation as one of the 'top 30 under 30' or a member of the 'top ten filmmakers' selected by a group of industry experts, etc. Include clear documentary evidence that inclusion in the group was a selective process and name the judges, if possible.

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

Tip: this is quite restrictive and I would only use articles that specifically discuss the beneficiary and their work in the field. A mention or credit will not suffice. You must provide background information on the publication – circulation etc. Use sites like **similarweb.com** when there is no other information available.

Tip: google translations can be used but are horribly inaccurate / illegible in some languages. Suggest that clients use google translate as a starting point, but should revise the translation as needed.

Tip: if you use this category and most of the media simply credits or mentions the beneficiary, I suggest you reference AAO non-precedent decision, Matter of K-K-C-, ID# 127206 (AAO Nov. 29, 2016), (attached) which includes, in part:

*At the outset, the record supports the Director's findings regarding the **published material** and display criteria. Many of the items are about shows in which the*

Petitioner appeared, and while she did not corroborate that all of the media is major, the record does contain some articles that are about her, relating to her work, published in major media. For example, the article xxxxxx appeared in the the xxxxx. The Petitioner supplied information from two Internet sources verifying that the magazine is a major media publication in Uganda, thus satisfying the published material in major media criterion.

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

Tip: judging thesis presentations qualifies

Tip: the judging should have already occurred and not be forthcoming, and should be within the beneficiary's field of expertise

Trend: this is a fantastic objective category with very little pushback from USCIS. If the beneficiary has judged a competition within their field, they will get this category.

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

Tip: highly subjective, usually there is an argument but it is not always a strong one. Be sure to fulfill both portions of this criteria – original and significant. You can use letters to prove significance and even originality. Corroborating evidence is helpful, i.e. press articles, documentation of copy-cattng within the field, statistics showing a steady increase in usage / visibility / success around the time that the beneficiary made the original contribution.

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

Tip: articles qualify if they are informational and not commentaries or opinion pieces. This need not be traditional journal articles but if you do have journal articles, this is a strong and objective category.

Trend: this is a fantastic objective category with very little pushback from USCIS. If the beneficiary has written scholarly articles that are published, they will get this category.

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

Tip: use letters to confirm the beneficiary's role even if it's already apparent from the resume / LinkedIn that they held a critical role. Use the letter to describe exactly why their role was critical, what they accomplished during their tenure, and include mention of any original contributions of major significance to the organization, if they exist.

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

Tip: use payscale, glassdoor, indeed, salary1, and other public wage surveys as well as press articles about average earnings in any given field to prove beneficiary's earnings are above the 90th percentile. I have used the 75th percentile but 90th is much stronger.

Tip: do not discount this category for artists or other fairly low wage earners. It is comparative. Also, you can use annual or hourly. For example, 90th percentile for visual artists is \$40/hour or \$77,000/year.

Tip: Can be past, present or future earnings

Trend: this is a fantastic objective category with very little pushback from USCIS. If the beneficiary can show they are in the top 10th percentile, they will get this category, regardless of whether hourly or annual. You must clearly document the earnings and provide substantial documentation in support of your quoted averages in the field.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Trend: even though this has been recently addressed as a viable category even if other categories apply, it seems to remain quite subjective and should not be relied upon as one of your three strong criteria if it can be avoided.

O-1B Visa Classification – Arts (not including Motion Picture and Television)

Evidentiary criteria for an O-1 alien of extraordinary ability in the arts. To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

Tip: 'in the particular field' opens this up to top awards within a small niche field – if it really is significant in the field, do not avoid arguing this point

Tip: nominations do qualify

Tip: I have never submitted only the award but am aware that others have and have succeeded in obtaining approvals on that basis alone (i.e. the Grammy award alone)

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

Tip: remember this is restricted to lead or starring and does NOT include critical

Tip: use letters to confirm the lead, starring nature of the role if not immediately apparent from title, i.e. go behind the scenes where only the organization wins the award, gets the press articles etc. to clarify the beneficiary's particular contributions and thus, lead role

Trend: recent focus on has and WILL so be sure to confirm distinguished nature of future productions or events, if possible. (**see attached recent request for evidence from Vermont Service Center**)

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

Tip: include press about the beneficiary in major media OR other publications

Tip: include articles written BY the beneficiary

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

Tip: use letters to confirm critical nature of role if not immediately apparent from title, i.e. go behind the scenes where only the organization wins the award, gets the press articles etc. to clarify the beneficiary's particular contributions and such, critical role

Trend: recent focus on has and WILL so be sure to confirm distinguished nature of organizations and establishments the beneficiary will be engaged with in a lead, starring, or CRITICAL role, if possible. (**see attached recent request for evidence from Vermont Service Center**)

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

Tip: you can include awards and honors here that may not qualify as significant national or international awards or prizes in the particular field, but which is published in news sources OR other publications

Tip: this is where you would use social media numbers, such as Instagram followers in some art forms, and YouTube views and subscribers etc. Be sure to provide documentation as to why these numbers qualify as critical success, akin to 'ratings' as well as comparative profiles for other well-known artists in that field.

Trend: USCIS is questioning the validity of Instagram numbers (**see attached recent request for evidence from Vermont Service Center**) and are referencing a person's ability to "buy" followers as proof that this is not a reliable metric. There are a number of articles that clarify the validity of Instagram followers – especially in particular artistic genres, like tattooing – and which further confirm earmarks of purchased followers so that you can differentiate your client's profile.

Tip: you can include press, reviews, articles, interviews here that may not mention your client personally but which discuss a production in which they played a lead role. This may be similar to the evidence used to confirm the production was distinguished

Tip: Billboard charts fit here as do record sales reports

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

Tip: letters must list the beneficiary's achievements to qualify under this category. Do not fear repetition in letters. USCIS wants to hear the experts reciting the beneficiary's specific achievements.

Tip: these form the backbone of your case and ensure you, as the attorney, have a complete understanding of your client's achievements.

Tip: these letters can serve dual or multiple purposes and need not be separated by evidentiary category. For example, one can recognize achievements and confirm the beneficiary's lead role in a production of distinction and possibly also a critical role for their distinguished organization.

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

Tip: use payscale, glassdoor, indeed, salary1, and other public wage surveys as well as press articles about average earnings in any given field to prove beneficiary's earnings are above the 90th percentile. I have used the 75th percentile but 90th is much stronger.

Tip: do not discount this category for artists or other fairly low wage earners. It is comparative. Also, you can use annual or hourly. For example, 90th percentile for visual artists is \$40/hour or \$77,000/year.

Tip: Can be past, present or future earnings

Trend: this is a fantastic objective category with very little pushback from USCIS. If the beneficiary can show they are in the top 10th percentile, they will get this category, regardless of whether hourly or annual. You must clearly document the earnings and provide substantial documentation in support of your quoted averages in the field.

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Trend: even though this has been recently addressed as a viable category even if other categories apply, it seems to remain quite subjective and should not be relied upon as one of your three strong criteria if it can be avoided.

O-1B Classification – Motion Picture and Television Industry

Evidentiary criteria for an alien of extraordinary achievement in the motion picture or television industry. To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

Tip: SAME as above but generally a slightly higher standard and comparable evidence category is not available

Tip: keep client goals in mind when determining whether to apply under the film and television standard

Tip: this would include ALL film and TV personnel including animators, composers, vocalists, etc. and could affect your client's ability to take on film and TV work in the future if you avoid this standard in the initial submission

O-2 Visa Classification:

Trend: USCIS has been applying these regulations strictly so be sure to document these high standards well to avoid a request for evidence or denial

Tip: while O-1 is recognized as dual intent, O-2s must maintain nonimmigrant intent

(A) Alien accompanying an O-1 artist or athlete of extraordinary ability. To qualify as an O-2 accompanying alien, the alien must be coming to the United States to assist in the performance of the O-1 alien, [and must]

- be an integral part of the actual performance, and
- have critical skills and experience with the O-1 alien which are not of a general nature and which are not possessed by a U.S. worker.

Tip: this is a high standard but in practice you simply must prove that the O-2 possesses critical knowledge of the O-1 artist's aesthetic / repertoire / production etc. such that they cannot be replaced with a US worker.

Tip: there is no specific time requirement for the 'experience' with the O-1 alien although it must be "substantial"

(B) Alien accompanying an O-1 alien of extraordinary achievement . To qualify as an O-2 alien accompanying an O-1 alien involved in a motion picture or television production, the alien must

- have skills and experience with the O-1 alien which are not of a general nature and which are critical based on
 - a pre-existing longstanding working relationship or,
 - with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production.

Tip: this does require a longstanding relationship so while not specific, it requires more proof of experience than the O-2 for non film and TV cases

(C) The evidence shall establish the current essentiality, critical skills, and experience of the O-2 alien with the O-1 alien and that the alien has substantial experience performing the critical skills and essential support services for the O-1 alien. In the case of a specific motion picture or television production, the evidence shall establish that significant production has taken place outside the United States, and will take place inside the United States, and that the continuing participation of the alien is essential to the successful completion of the production.

EB-1A Extraordinary Ability Evidence Regulations

8 CFR PART 204 -- IMMIGRANT PETITIONS

An alien, or any person on behalf of the alien, may file an I-140 visa petition for classification under section 203(b)(1)(A) of the Act as an alien of **extraordinary ability in the sciences, arts, education, business, or athletics**.

Tip: with regard to a career change, particularly relevant to an athlete who moves into coaching, you can use evidence of the AAO recently clarified in a non-precedent decision, Matter of K-S-Y-, ID# 14269 (AAO Mar. 9, 2016) (attached) which includes, in part:

We may conclude that coaching is within an athlete's area of expertise under section 203(b)(1)(A)(ii) of the Act if (1) the individual's national or international athletic acclaim was recent, and (2) he or she sustained that acclaim upon transition to coaching at a national level. To make this determination, we consider the totality of the evidence.

Tip: this could be expanded into other careers to incorporate evidence of the beneficiary's prior successes which may be described as forming the foundation for the current success in a slightly different posture. You can introduce the case by explaining that the beneficiary, for example, 'parlayed' his or her exceptional talents as an actress into the realm of directing, whereby they now possess a unique perspective having thrived in successful careers on both sides of the camera.

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a **statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States**.

Tip: remember this in cases where clients are very established in their careers but may not have an immediate job offer

Tip: a simple statement by the beneficiary confirming their future plans is sufficient

Tip: the value of a petitioning employer is not so great as to tie a beneficiary into a position they may not plan to continue. I have not seen negative results with self-petitions.

Definitions:

Extraordinary ability means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.

Initial evidence. A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.

Such evidence shall include evidence of a **one-time achievement** (that is, a major, internationally recognized award), or at least three of the following:

Tip: nominations do NOT count here and not restricted to the particular field

PLEASE NOTE: ALL categories are identical to the O-1A standard above and thus, tips from the O-1A criteria apply to EB-1A criteria as well. The additions to the EB-1 test are categories (7) and (10):

(7) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

Tip: while this category IS restricted to the arts, it is NOT restricted to visual art. However, you must document that there has been a selective process such that the event you argue qualifies as an exhibition or showcase can be likened to a visual art exhibition. Examples include film festivals, film screenings at award ceremonies, theatre festivals, television specials that showcase a select group of talent, commercial photography published in major media, and more.

Tip: if you use this category outside the visual arts, I suggest you reference AAO non-precedent decision, Matter of K-K-C-, ID# 127206 (AAO Nov. 29, 2016), (attached) which includes, in part:

*At the outset, the record supports the Director's findings regarding the published material and **display criteria**. ... In addition, the Petitioner performed at in South Africa; she performed her solo show in 2010 and her other solo show in 2013. The coverage in the festival's official publication, confirms that both shows were primarily the Petitioner's work. Accordingly, these events constitute the display of her work at an artistic showcase or exhibition. (emphasis added)*

(10) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Tip: this category is restricted solely to the performing arts and to commercial success (i.e. critical success would not qualify). Album sales are particularly appropriate here.

Tip: often the commercial success of a production can be attributable to the lead actor or director, for example. A letter from the Producer directly crediting the beneficiary with

the commercial success of the production combined with documentary evidence of the actual commercial success could be used here.

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.

Tip: It may also be possible to argue that a film festival or other artistic exhibition (not visual arts) would serve as comparable evidence. You may want to reference AAO non-precedent decision, Matter of K-K-C-, ID# 127206 (AAO Nov. 29, 2016), which includes, in part:

*Regardless, even if the AAO were to consider the petitioner's "career as a screenwriter" as comparable evidence forth - regulation at 8 C.F.R. § 204.5(h)(3)(vii), the AAO is not persuaded that simply writing material for television shows or films is sufficiently comparable to having one's work displayed "at artistic exhibitions or showcases." For instance, **while a screenwriter or producer whose film is shown at film festival showcases (such as the Sundance Film Festival and the Cannes Film Festival) may constitute evidence comparable to "artistic exhibitions or showcases" for this regulatory criterion, simply writing a screenplay without having it showcased in some formal manner does not qualify as comparable evidence for this regulatory criterion.** To the extent that the petitioner is a writer for television or film productions, it is inherent to his occupation to write scripts for television shows or screenplays for motion picture films that are shown to the public. Not every such production is an artistic exhibition designed to showcase the writer's work. (emphasis added)*

Trend: even though this has been recently addressed as a viable category even if other categories apply, it seems to remain quite subjective and should not be relied upon as one of your three strong criteria if it can be avoided.

P Visa Classification

8 CFR PART 214.2(P) - Artists, athletes, and entertainers (FULL regulations are NOT included below)

An alien having a residence in a foreign country which he or she has **no intention of abandoning** may be authorized to come to the United States temporarily to perform services for an employer or a sponsor.

P-1B classification¹ applies to an alien who is coming temporarily to the United States to perform with, or as an integral and essential part of the performance of, an **entertainment group**

- **that has been recognized internationally** as being outstanding in the discipline
- for a sustained and substantial period of time, and

¹ P-1A related to athletes and is not included in this practice pointer

- who has had a sustained and substantial relationship with the group (ordinarily for at least 1 year) and provides functions integral to the performance of the group.

Tip: this is a slightly lower standard than the O-1B, so if you have an entertainment group and no O-1 to carry the O-2 applicants, this can be a great option.

Tip: you must provide evidence that the group is internationally recognized, meaning they cannot only have press / tours / performances within their home country or else they do not qualify OR must apply for a waiver of the international requirement.

Tip: similar to the O-2, there is no maximum number of applicants and one filing fee for all

Tip: essential support of the P-1 entertainment group is available, similar to the O-2

This may be demonstrated by the submission of evidence of the group's nomination or receipt of **significant international awards or prizes** for outstanding achievement in its field or by three of the following different types of documentation:

Tip: same categories of evidence apply – see discussion under O-1B above

Please see regulations for “Special provisions for certain entertainment groups” including Circus personnel, nationally known entertainment groups and the waiver of the 1-year relationship requirement in exigent circumstances.

Tip: dig for evidence of international recognition rather than request a waiver. 99% of cases, there is some evidence that exists that will prove recognition outside of the home country.

P-2 classification applies to an alien who is coming temporarily to the United States to perform as an artist or entertainer, individually or as part of a group, or to perform as an integral part of the performance of such a group, and who seeks to perform under a **reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states**, and which provides for the temporary exchange of artists and entertainers , or groups of artists and entertainers.

Tip: US Equity has a reciprocal agreement with Canadian Equity through which a Canadian Equity member can qualify for a P2 enabling the beneficiary to perform in an Equity production. An O is extremely rarely supported by Equity so often the P2 is the only available visa. US Equity provides a letter that is submitted to USCIS in support of the P2 application.

Tip: The American Federation of Musicians of the United States and Canada (AFM) have a reciprocal exchange program through which Canadian AFM will process a P2 visa application on behalf of Canadian AFM members at a relatively low cost and within a clear timeframe, as per their website. Beneficiaries can work directly with AFM or through an immigration attorney.

Tip: many beneficiaries who have used P2 for years, each with a short duration, will be thrilled to know that an O-1 and O-2 would be available for a maximum duration of three years.

P-3 classification applies to an alien artist or entertainer who is coming temporarily to the United States, either individually or as part of a group, or as an integral part of the performance of the group, to perform, teach, or coach under a commercial or noncommercial program that is **culturally unique**.

Tip: cultural uniqueness must be well-documented but should be considered when the group may not be internationally recognized and thus, does not qualify for the P-1B.

Tip: this also applies to a single artist rather than a group



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

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

MATTER OF K-K-C-

DATE: NOV. 29, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

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

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner met only two of the regulatory criteria, of which she must satisfy at least three.

The matter is now before us on appeal. In her appeal, the Petitioner submits case law and a policy memorandum. She maintains that the Director erred by imposing a novel evidentiary requirement that does not appear in the regulation and by giving insufficient weight to expert letters.

Upon *de novo* review, we will sustain the appeal.

I. LAW

Section 203(b) of the Act states in pertinent part:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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

(b)(6)

Matter of K-K-C-

(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 his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the 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).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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) *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Petitioner is a stage actress who has performed in a leading role at the national level in her native Uganda. She performed her one-woman show at the [REDACTED] in South Africa and at a [REDACTED] event in [REDACTED]. She obtained her Master of Fine Arts at the [REDACTED] in [REDACTED]. She submitted evidence of an award, published material about her shows and herself, and several reference letters. The Director concluded that the Petitioner had satisfied the published material and display at artistic exhibitions or showcases criteria,¹ but no other criterion.

On appeal, the Petitioner maintains that the Director imposed requirements not found within the awards criterion to exclude her award solely on the basis of its age restriction. The Petitioner also states that the Director did not afford sufficient weight to the opinions of the references. In response to our request for additional evidence (RFE), the Petitioner submits new information about the

¹ 8 C.F.R. § 204.5(h)(3)(iii), (vii).

Matter of K-K-C-

entities for which she has performed in a leading or critical role and information about her proposed employment in the United States. For the reasons discussed below, we find that the Petitioner has satisfied a third criterion. We further conclude that the evidence in the aggregate demonstrates her national or international acclaim.

A. Initial Evidence

At the outset, the record supports the Director's findings regarding the published material and display criteria. Many of the items are about shows in which the Petitioner appeared, and while she did not corroborate that all of the media is major, the record does contain some articles that are about her, relating to her work, published in major media. For example, the article, [REDACTED] appeared in the [REDACTED]. The Petitioner supplied information from two Internet sources verifying that the magazine is a major media publication in Uganda, thus satisfying the published material in major media criterion.² In addition, the Petitioner performed at [REDACTED] in South Africa; she performed her solo show [REDACTED] in 2010 and her other solo show [REDACTED] in 2013. The coverage in [REDACTED] the festival's official publication, confirms that both shows were primarily the Petitioner's work. Accordingly, these events constitute the display of her work at an artistic showcase or exhibition.³

Finally, we consider whether the Petitioner meets a third criterion. The Director did not consider whether she had performed in a leading or critical role for an organization or establishment with a distinguished reputation.⁴ In 2012, the Petitioner performed the lead role of [REDACTED] in [REDACTED] at the [REDACTED]. The review of this production reveals it was "one of the biggest budget productions in Uganda . . . thanks to sponsorship from [REDACTED] and [REDACTED] among others." This role constitutes a leading role for the organization that produced the show and the record establishes the distinguished reputation of the producers. In response to our RFE, the Petitioner documents that the creative advisor, [REDACTED] previously received a [REDACTED] in Drama for [REDACTED]. A review of the production at [REDACTED] characterizes the playwright, [REDACTED] as an "[a]cclaimed film don," and the director, [REDACTED] as an "award-winning American filmmaker." All of this information confirms that the show's production team enjoyed a distinguished reputation. As the Petitioner meets a third criterion, we now turn to an analysis of the totality of the evidence.

B. Final Merits Determination

In the final merits determination we consider the totality of the record to determine if a petitioner has established, by a preponderance of the evidence, that she has sustained national or international acclaim, and that her achievements have been recognized in the field through extensive

² 8 C.F.R. § 204.5(h)(3)(iii).

³ 8 C.F.R. § 204.5(h)(3)(vii).

⁴ 8 C.F.R. § 204.5(h)(3)(viii).

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documentation,⁵ making her one of the small percentage who has risen to the very top of the field of endeavor. In our analysis, we first discuss and consider the foreign national's accomplishments as a framework to perform an overall, final determination. We then weigh all of the filings together to determine if her successes are sufficient to demonstrate that she has extraordinary ability in her field.⁶

While it is inherent to the performing arts to be reviewed in the media, the Petitioner is the subject of several articles, including at least one in major media. The articles favorably evaluate her work. This level of media coverage is consistent with national or international acclaim.

Similarly, it is inherent to the performing arts to perform; not every production appearance is indicative of or consistent with national acclaim. The Petitioner, however, a native of Uganda, displayed her writing product and acting skills at [REDACTED] in South Africa. [REDACTED] artistic director of the festival, confirms that there are limited spots and "a stringent jury process." This level of exhibiting her work is commensurate with a performing artist of extraordinary ability.

While not addressed by the Director, we also find the nature of the Petitioner's roles notable. In addition to performing the lead role in [REDACTED] which debuted in [REDACTED] and [REDACTED] before opening at [REDACTED] she also played an important role in [REDACTED] at the [REDACTED] in [REDACTED] a theatre that has received a [REDACTED] for best regional theater. Performing at this level is consistent with national or international acclaim.

Finally, as the Petitioner meets three other criteria, we will consider the letters in our final analysis independently of whether they identify particular contributions and the impact on the field. [REDACTED] former executive director at the [REDACTED] describes the many roles the Petitioner performed there, concluding that her skill "is at the highest level in the field." Specifically, she "has a wide range of credits to her resume and has performed in several countries internationally to this point in time, performing in some eighteen different productions . . . both inside and outside the United States." [REDACTED] an actor and director who worked with the Petitioner at the [REDACTED] affirms that the Petitioner "has been acclaimed widely in her native country and without doubt has become one of Uganda's best and most renowned performers at this time." [REDACTED] curator and producer at the [REDACTED] states that the Petitioner "has reached the top small percentage of actresses in the field today, including in Uganda, in Africa, and internationally." Merely repeating the language of the statute or regulations does not satisfy a petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr*

⁵ While the statute requires extensive documentation, eligibility is to be determined not by the quantity of the filings alone but by their quality. *Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). We "examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence." *Id.*

⁶ See § 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.

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Associates, Inc. v. Meissner, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory statements. *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). Nevertheless, for the reasons discussed above, the record sufficiently corroborates these assessments of the Petitioner's standing in the field

The Petitioner has been featured prominently in the media, displayed two of her one-woman shows at a major theater festival, and appeared in leading roles, including one at the [REDACTED]. The reviews in the media and from her references confirm her overall talent and acclaim within the field. Considering the totality of this evidence, the Petitioner has demonstrated her eligibility.

III. CONCLUSION

The Petitioner submitted the requisite initial evidence and confirmed her extraordinary ability when considered in a final merits decision. Section 203(b)(1)(A)(i) of the Act. By demonstrating that she seeks to continue to work in her area of extraordinary ability, and there being no indication otherwise, we are satisfied that the Petitioner's entry will substantially benefit prospectively the United States. Section 203(b)(1)(A)(iii) of the Act. Therefore, she has met the burden of proof necessary to establish eligibility for the benefit sought. Sections 203(b)(1)(A), 291 of the Act.

ORDER: The appeal is sustained.

Cite as *Matter of K-K-C-*, ID# 127206 (AAO Nov. 29, 2016)



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

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

MATTER OF K-S-Y-

DATE: MAR. 9, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

Today we have occasion to explore how an individual may demonstrate eligibility for a first preference immigrant visa during a career transition from competing as an athlete to coaching the next generation of athletes.

The Petitioner, a judo expert, seeks classification as an individual “of extraordinary ability” in athletics (judo). *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This immigrant classification is available to foreign nationals 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, Texas Service Center, denied the petition. The Director concluded that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitate either (1) evidence of a one-time major achievement, or (2) evidence that meets at least three of ten regulatory criteria.

The matter is now before us on appeal. The Petitioner submits additional evidence and states that the Director erred in finding that fewer than three criteria were established.

Upon *de novo* review, we will sustain the appeal.

I. LAW

Subparagraph (A) of section 203(b)(1) of the Act makes an immigrant visa available to a foreign national:

- (i) [who] 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) [who] seeks to enter the United States to continue work in the area of extraordinary ability, and

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(iii) [whose] entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” is defined as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). To show extraordinary ability, the regulations require initial evidence of either (1) “evidence of a one-time achievement (that is, a major, internationally recognized award),” or (2) documentation that satisfies at least three of the ten evidentiary categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). If a petitioner submits the required initial evidence, we then conduct a final merits determination to evaluate whether the totality of the record demonstrates, by a preponderance of the evidence, that the individual enjoys sustained national or international acclaim and recognition of his or her accomplishments in the field of expertise. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In addition to demonstrating extraordinary ability, the Petitioner must also show by clear evidence that he is coming to the United States “to continue to work in the area of extraordinary ability.” Section 203(b)(1)(A)(ii) of the Act; *see also* 8 C.F.R. § 204.5(h)(5) (requiring that the continued work be within the “area of expertise”). We will explore below how one may satisfy this second statutory prong – working “in the area of extraordinary ability” – amid a career transition.

II. ANALYSIS

A. Extraordinary Ability

1. Antecedent Procedural Question

The Director determined that the Petitioner only satisfied two of the ten initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner asserts he satisfied additional criteria. We find the Petitioner’s evidence satisfies the following three criteria:

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The record reflects that the Petitioner won first place in both the [REDACTED] and the [REDACTED]. As explored in greater detail below, the record demonstrates that these are nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

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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. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The Petitioner provided an article from *Seoul Yonhap News* entitled “[REDACTED]” about his victory at the [REDACTED]. The piece features a large picture of the Petitioner clenching his fists in victory and describes his performance in the various rounds of the tournament. The Petitioner is clearly the article’s focus. Though the Petitioner did not provide additional evidence to demonstrate that this article was published by a “major” media, we take administrative notice that *Yonhap News Agency (Yonhap)* is Korea’s largest news organization with over 500 journalists and photographers at its Seoul headquarters.¹ It provides news to 78 foreign agencies, as well as 3000 news articles, pictures and other information each day to Korean newspapers, television networks and other media. *Id.* The far reach of *Seoul Yonhap News* qualifies it as major media. Accordingly, the Petitioner has met this criterion by submitting an article “about” him from a “major” medium. 8 C.F.R. § 204.5(h)(3)(iii).

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.

On appeal, the Petitioner states that a position on the national judo team is effectively the most difficult association membership for a judo athlete to obtain, particularly in Korea, which has the third-most Olympic medals in judo of any nation. The Petitioner was a member of the Korean national judo team in 2000, 2004, 2005, 2006, 2007, 2008, 2011, and 2012. Letters from Olympic medalists [REDACTED] and [REDACTED] refer to training with the Petitioner at the national training center. In addition, the record shows that the Petitioner placed first, second, or third in selection matches that determine who would be on the national team. Only those with the highest level of performance made the team, and that selection was performed by judo judges at the national level. We agree with the Petitioner that his membership on the Korean national team is, in effect, an association membership that requires outstanding achievements, as judged by national experts in judo.² Accordingly, the Petitioner has met this criterion. 8 C.F.R. § 204.5(h)(3)(ii).

¹ See *About Us*, Yonhap News Agency, <http://english.yonhapnews.co.kr/AboutUs/index.html> (last visited Jan 7, 2016 and incorporated into the record of proceedings).

² While 8 C.F.R. § 204.5(h)(3)(ii) expressly references a plurality of “associations in the field which require outstanding achievements of their members,” we construe this criterion broadly as inclusive of a singular “association.” A narrower interpretation could preclude individuals, who in fact clearly have extraordinary ability in their field, from establishing eligibility if their field is one in which only a single such association, no matter how distinguished, exists. See, e.g., *Buletini v. INS*, 860 F. Supp. 1222, 1230-31 (E.D. Mich. 1994) (single award satisfies “prizes or awards” criterion at 8 C.F.R. § 204.5(h)(3)(i)).

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2. Final Merits Determination

The next step is a final merits determination that considers all evidence in the context of whether or not the Petitioner has demonstrated a level of expertise indicating that he or she is one of that small percentage who have risen to the very top of the field of endeavor demonstrated by sustained national or international acclaim and achievements that have been recognized in the field through extensive documentation. Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2). See also *Kazarian*, 596 F.3d at 1119-20.

The Petitioner has demonstrated a long, successful, and recent career as a professional judo athlete at the highest level of national and international competition. For eight of the years between 2000 and 2012, the Petitioner was a member of the Korean national team. During that time, he competed in numerous national and international competitions and frequently placed first, second, or third.

To demonstrate the significance of his victories, the Petitioner provided information about the International Judo Federation's (IJF) point-based ranking system. For each of the seven most prestigious types of international competitions, judo athletes get a designated number of points based on how they finish:

	1st	2nd	3rd	5th	7th	1/16th	1/32nd	1 fight
Olympics	1000	600	400	200	160	120	80	40
World Championship	900	540	360	180	144	108	72	36
Masters	700	420	280	140	112	-	-	28
Grand Slam	500	300	200	100	80	60	40	20
Continental	400	240	160	80	64	48	32	16
Grand Prix	300	180	120	60	48	36	24	12
Continental Open	100	60	40	20	16	12	8	4

The Petitioner acquired his most impressive finishes in [redacted] and [redacted]. In [redacted] the Petitioner won first place at the [redacted] worth 500 points, more points than afforded an Olympic bronze medal. The aforementioned *Yonhap* article indicates the impressive nature of this accomplishment and the acclaim associated with it. In [redacted] he placed second at the [redacted] and first at [redacted] (now known as a [redacted]), worth 300 points each for a total of 600 points. When viewed in the context of the most prestigious international competitions, including the more universally recognized Olympic Games, the Petitioner's victories clearly indicate an athlete at the top of the field of endeavor.

The record also contains three letters of support from prominent Korean judo athletes who further substantiate the Petitioner's acclaim. [redacted] the [redacted] Team coach and winner of a gold medal in the [redacted] Olympics, stated he trained with the Petitioner on the Korean national team. He referenced the Petitioner's leadership as captain of the [redacted] team, as well as his win of the Best Player Award from the [redacted] in 2006, 2007, and 2008. Next, [redacted] coach of the [redacted] Team and winner of a

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gold medal in the [REDACTED] Olympics, described training with the Petitioner and noted that he served as a role model for others, particularly as [REDACTED] of the national team “from [REDACTED]” Lastly, [REDACTED] president of the Judo Union of [REDACTED] and current head of [REDACTED] national training center, authored a letter referring to the inspiration the Petitioner provided others by competing at the international level at an age when many have long since retired.

The Petitioner’s credentials show he has sustained his prominence in the field. The Petitioner was on the Korean national team as recently as 2012, and he continued to compete and win on the national and international levels through 2013. His more recent victories include placing third in 2012, in the [REDACTED] and second in 2013, in the [REDACTED] and [REDACTED]

The Petitioner’s achievements in competition, corroborated by expert letters and prominent news articles, demonstrate his accomplishments as a judo athlete as well as sustained acclaim and recognition in the field. As a result, the Petitioner has established his extraordinary ability in judo.

B. Continuing Work in the Area of Expertise

Next, the Petitioner must show “by clear evidence that he is coming to the United States to continue to work in the *area* of extraordinary ability.” Section 203(b)(1)(A)(ii) of the Act (emphasis added); *see also* 8 C.F.R. § 204.5(h)(5) (requiring that the continued work be within the “area of expertise”). Neither the statute nor the regulation defines the term “area,” whether of extraordinary ability or “expertise.”³

Defining the cognizable area of extraordinary ability or expertise is further complicated when, as here, a petitioner is transitioning to another phase of his or her career. Though he demonstrated extraordinary ability as a judo *athlete*, the Petitioner listed on the Form I-140, Immigrant Petition for Alien Worker, his proposed employment in the United States as judo *coach*. In a personal statement, the Petitioner indicated he plans to open a judo academy, train promising young players, and eventually coach an American judo team in the Olympics.

The question presented here is whether -- and if so, how -- a petitioner’s area of extraordinary ability or expertise may properly encompass both athletic competition as well as coaching other athletes. The U.S. Citizenship and Immigration Services Adjudicator’s Field Manual (AFM) provides an analytical footpath by which a petitioner may transition from athlete to coach and yet remain within his or her area of expertise:

In general, if a beneficiary has clearly achieved *recent* national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, adjudicators can consider the totality of the evidence as

³ We do not need to explore today the distinction, if any, between the statutory term “extraordinary ability” and the regulatory term “expertise.”

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establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise.

AFM ch. 22.2(i)(1)(C) (emphasis in original). We believe this statement may be expressed more simply as follows: We may conclude that coaching is within an athlete's area of expertise under section 203(b)(1)(A)(ii) of the Act if (1) the individual's national or international athletic acclaim was recent, and (2) he or she sustained that acclaim upon transition to coaching at a national level. To make this determination, we consider the totality of the evidence.⁴

As outlined above, the record demonstrates the Petitioner's recent athletic acclaim. He placed second in national competitions as recently as October of 2013, and was a member of Korea's national team as recently as 2012. He filed the instant petition on May 16, 2014, within seven months of his last major competitive achievement.⁵ Moreover, the record indicates no appreciable lapse between his days of competing as an athlete and coaching at the national level. Following retirement from competition in 2013, the Petitioner signed a contract with the Sports Authority of India in [REDACTED] to train Indian judo athletes preparing for the 2014 Asian Games and Commonwealth Games, the 2016 Olympic Games, and other international competitions.⁶ *Cf. Integrity Gymnastics & Pure Power Cheerleading, LLC v. USCIS*, No. 2:10-CV-440, 2015 WL 5380643 (S.D. Ohio Sep. 14, 2015) (upholding the AAO's finding that coaching was not within the cognizable area of expertise for a gymnast who last competed 20 years prior to coaching at the high school level). These considerations support a finding that the Petitioner's extraordinary ability and sustained acclaim as a judo athlete, addressed in section A above, extend to his work as a judo coach.

The record also shows a progression of education, experience, and licensing that has positioned the Petitioner to continue in his area of expertise as a judo coach. In 2003, he received a bachelor's degree in physical education with a focus on athletic coaching. In 2005, the Petitioner received a master's degree in physical education for which he wrote a thesis on the anxiety levels of athletes during judo matches. From 2003 to 2006, he coached the [REDACTED] University judo team, several members of which placed first, second, or third at national university tournaments. In 2008, the Petitioner obtained a Class 2 Judo Sports Coach License, and in 2011, he obtained a Class 1 Judo Sports Coach License. These preparatory steps taken by the Petitioner throughout his career as an athlete further support a finding that coaching is within his area of expertise.

The Petitioner demonstrated his extraordinary ability as a judo athlete. The totality of the evidence also establishes that the area of expertise in which he enjoys sustained national or international

⁴ While the AFM only expressly addresses the career transition between athlete and coach, we do not mean to imply that this is the only career transition that may occur within an individual's area of expertise. Because the case before us concerns the very athlete-coach transition contemplated in the AFM, we need not address what other career transition scenarios might warrant a similar analysis (e.g., athlete-to-broadcaster or musician-to-instructor).

⁵ We do not purport to establish a particular timeframe within which the transition from competing to coaching is deemed sufficiently recent.

⁶ The record further substantiates that arrangements were made for the Petitioner and his family to reside in India while he works with the Indian athletes.

acclaim includes judo coaching. AFM ch. 22.2(i)(1)(C). Finally, the Petitioner has demonstrated he seeks to work in the United States in this area of expertise, which encompasses both athleticism and coaching. 8 C.F.R. § 204.5(h)(5).

III. CONCLUSION

The Petitioner submitted the requisite initial evidence and demonstrated his extraordinary ability when considered in a final merits decision. Section 203(b)(1)(A)(i) of the Act. He presented a sufficient nexus between his ability as an athlete and his work as a coach, such that we conclude that he seeks to enter the United States to continue to work in his area of extraordinary ability. Section 203(b)(1)(A)(ii) of the Act. By demonstrating that he seeks to continue to work in his area of extraordinary ability, and there being no indication otherwise, we are satisfied that the Petitioner's entry will substantially benefit prospectively the United States. Section 203(b)(1)(A)(iii) of the Act. Therefore, the Petitioner has met the burden of proof necessary to establish eligibility for the benefit sought. Sections 203(b)(1)(A), 291 of the Act.

ORDER: The appeal is sustained.

Cite as *Matter of K-S-Y-*, ID# 14269 (AAO Mar. 9, 2016)

February 9, 2017

U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services
Vermont Service Center
30 Houghton St (VSC Premium Processing)
St. Albans, VT 05478-2399

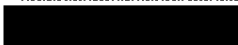
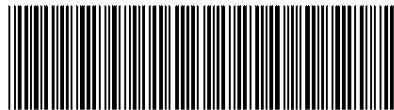


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**U.S. Citizenship
and Immigration
Services**

Beneficiary: 
I-129, Petition for a Nonimmigrant Worker



PREMIUM PROCESSING

IMPORTANT: THIS NOTICE CONTAINS YOUR UNIQUE NUMBER. THIS PAGE MUST BE SUBMITTED WITH THE REQUESTED EVIDENCE. MAIL THIS NOTICE AND YOUR RESPONSE TO THE ADDRESS ABOVE.

You are receiving this notice because U.S. Citizenship and Immigration Services (USCIS) requires additional evidence to process your form. Please provide the evidence listed on the attached page(s). Include duplicate copies if you are requesting consular notification. **Your response must be received in this office by May 7, 2017.**

Please note that you have been allotted the maximum period allowed for responding to a Request For Evidence (RFE). The time period for responding cannot be extended. 8 CFR 103.2(b)(8)(iv). Because many immigration benefits are time sensitive, you are encouraged to respond to this request as early as possible, but no later than the deadline provided above. If you do not respond to this notice within the allotted time, your case may be denied. The regulations do not provide for an extension of time to submit the requested evidence.

You must submit all requested evidence at the same time. If you submit only some of the requested evidence, USCIS will consider your response a request for a decision on the record. 8 CFR 103.2(b)(11).

If you submit a document in any language other than English, the document must be accompanied by a full and **complete** English translation. The translator must certify that the translation is accurate and he or she is competent to translate from that language to English. **If you submit a foreign language translation in response to this request for evidence, you must also include a copy of the foreign language document.**

Processing of your form or benefit request will resume upon receipt of your response. If you have not



heard from USCIS within **60 days of responding**, you may contact the USCIS National Customer Service Center (NCSC) at **1-800-375-5283**. If you are hearing impaired, please call the NCSC TDD at **1-800-767-1833**.

Responses (for Premium Processing cases only) may be faxed to **(802)-860-6900**. Include a copy of this notice. The Premium Processing e-mail address (vsc-premium.processing@dhs.gov) may only be used for inquiries. Do not send responses to the e-mail address.

I-129 O-1B Extraordinary Ability in the Arts

You, [REDACTED] filed Form I-129, Petition for Nonimmigrant Worker, seeking O-1B nonimmigrant classification for [REDACTED] as a Tattoo Artist.

The O-1B classification applies to individuals with extraordinary ability in the arts. The individual must have sustained national or international acclaim. His or her achievements must be in the field of expertise and show a record of prominence in his or her field.

To process your petition and determine if the beneficiary is eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items.
- Submit none of the suggested items and instead submit other evidence to satisfy the request.
- Explain how the evidence in the record already establishes eligibility.
- Request a decision based on the record.

Note, however, that you are responsible for providing evidence that best shows that you and the parties to this petition meet all requirements. Evidence must show that all parties were eligible for the requested benefit when you filed Form I-129.

Evidence of Prominence in the Field of Endeavor

You must show that the beneficiary has sustained national or international acclaim and recognition for achievements in the field of expertise. To demonstrate this, you may submit documentation to show the beneficiary was nominated for or received a significant, national or international award or prize in the particular field. Examples of this could include an Academy Award, an Emmy, a Grammy, or a Director's Guild Award. Alternatively, you may show that the beneficiary satisfies at least three of the six criteria discussed below.

Evidence of a Significant National or International Award

You did not submit any evidence for this option. You may still submit evidence to satisfy it.

Evidence that could help us determine that the award is a significant, nationally or internationally recognized award may show:

- That the award is nationally or internationally recognized;
- The criteria used to grant the award;
- The significance of the award in the field;
- The reputation of the organization or the panel granting the award;
- Previous winners of the award who held international acclaim at the time of receiving the



award; and

- How the award attracts competition from recognized individuals in the field such as an Academy Award, an Emmy, a Grammy, or Director's Guild Award.

Alternatively, you may attempt to show the beneficiary has demonstrated extraordinary ability by providing evidence to satisfy at least three of the criteria below.

Qualifying Criteria

If you choose not to submit evidence of a one-time award, you may submit documentation of at least three of the criteria in this section.

The beneficiary does not appear to satisfy three of the six criteria to show prominence in the field. You may still submit evidence to satisfy criteria in this section. The documentation you provide should show the beneficiary has a sustained record of prominence in the field of expertise.

To satisfy these requirements, you submitted:

- Multiple printouts of photographs;
- Printouts of media publications and industry design books;
- Printouts from various websites;
- Testimonials and information about the authors.
-
- amazon.com, goodreads.com, barnesandnoble.com, thingsandink.co, instagram.com

Lead or Starring Participant in Distinguished Productions

You may submit evidence showing the beneficiary has performed in the past, and will perform in the future, in productions or events with distinguished reputations. For this criterion, you must also show that the beneficiary has played and will play a leading or starring role in those productions or events.

You did not submit any evidence for this option. You may still submit evidence to satisfy it.

Evidence may include, but is not limited to:

- Written reviews from critics;
- Advertisements or publicity releases;
- Publications contracts;
- Endorsements;
- Materials from trade journals; and
- Magazine articles.

National or International Recognition

You may submit evidence showing the beneficiary has achieved national or international recognition for his or her achievements.

The evidence you submitted is insufficient. You indicate in your letter of support that the beneficiary has garnered press and features in major publications and industry design books. As evidence you provided a copy of an interview from [REDACTED] and printouts from industry design book such as: [REDACTED]

[REDACTED] You also provided reviews for the above named books from [REDACTED]

USCIS acknowledges that the beneficiary's work is displayed in the above publications; however, you have not established that these publications rise to the level of major publications and media by providing documentation demonstrating whether the publications have local, national, or international circulation, including circulation figures.

Furthermore, the evidence provided does not demonstrate that the beneficiary is a leading tattoo artist who has enjoyed international recognition and acclaim, financial success, is well known, or shows outstanding achievements in the field.

You may still submit evidence to satisfy this criterion.

Evidence may include, but is not limited to, critical reviews or other published materials by or about the beneficiary in:

- Major newspapers (include circulation figures);
- Major trade journals;
- Major magazines; and
- Other publications.

Note: Circulation information should be specific to the media format in which it was published. For example, if the article was published online, the evidence must relate to the website. If it was published in print, the evidence must relate to the printed publication.

Lead, Starring, or Critical Role

You may submit evidence showing the beneficiary has performed in the past, and will perform in the future, for organizations and establishments that have distinguished reputations. For this criterion, you must also show that the beneficiary has played, and will play, a lead, starring, or critical role for those organizations and establishments.

The evidence you submitted is insufficient. In your support letter you state that the beneficiary has performed in a leading and critical role and will continue to perform in a leading and critical role for distinguished organizations encompassing international tattoo conventions such as [REDACTED]

[REDACTED], tattoo shops such as [REDACTED]. As evidence you provided testimonial letters from [REDACTED]

USCIS acknowledges that the beneficiary has worked for [REDACTED]. However, it is not evident that the beneficiary held a lead, starring or critical role within these organizations, as a whole. For example, [REDACTED] mentions how the beneficiary has contributed to the company's growing popularity. The author further adds the beneficiary has played a critical role for the company, [REDACTED], as one of their leading tattoo artists. Additionally, Author [REDACTED] states that the "shops continue to thrive on his artistic talent and unique contributions..."

However, you have not provided independent corroborative evidence to demonstrate that the success of these tattoo shops was dependent on the beneficiary's work. Therefore, it is not evident that the beneficiary has had a lead, starring or critical role in these establishments as a whole.



This is a two part criterion. Not only do you have to establish that the beneficiary has performed in the past, you also have to establish they will play a lead, starring, or critical role for those organizations and establishments in the future. While you state that the beneficiary will continue to perform a leading role for the distinguished organizations, simply going on record without additional supporting documentation is insufficient to meet the burden of proof. While you have provided contracts and itineraries of the beneficiary's future engagements, you have not demonstrated that the beneficiary will hold a critical role in these organizations as whole, such as possessing skills, or having responsibilities within the organization that would not be easily replaced or performed by another individual.

You may still submit evidence to satisfy this criterion.

Evidence may include, but is not limited to:

- Newspaper articles or other published materials about the beneficiary and the organizations and establishments where he or she has performed and will perform;
 - Trade journals;
 - Publications; and
 - Testimonials.
- Note: Letters and testimonials should provide as much detail as possible about the beneficiary's achievements in the field and give the credentials of the author, including the basis of his or her knowledge of the beneficiary's role.

Commercial or Critically Acclaimed Successes

You may submit evidence showing the beneficiary has a record of major commercial or critically acclaimed successes.

The evidence you submitted is insufficient. As evidence you provided media publications, industry design books, pictures from [REDACTED], the London Tattoo Convention posts and Brighton Tattoo Convention Instagram, and a testimonial.

You state in your support letter that a tattoo artist's *Instagram* following is an important factor in determining their commercial success as well as the success. You further quote [REDACTED] testimonial, "...a strong *Instagram* following means that an artist is tapping into a demand, inspiring others, and reaching new people every day. This is all critical to the success of the studio where these artists work." Lastly, you add that the beneficiary's posts garner 2,015 to 4,640 likes per post.

However, you have not provided corroborative evidence to demonstrate that the beneficiary's popularity on *Instagram*, for example, the 108,000 followers, is at or above other renowned tattoo artists featured on *Instagram*. Furthermore, the *Instagram* posts, *Google* posts, and the [REDACTED] posts, alone, does not demonstrate or establish commercial or critically acclaimed successes. For example, having an *Instagram* post which has "4,640" likes does not rise to the level of international recognition through outstanding achievement.

Additionally, you mention that the beneficiary is featured in industry design books such as [REDACTED]. However, you do not demonstrate how these publications garner a record of major commercial or critically acclaimed success for the beneficiary. Further, you did not establish that these publications rise to the level of major publications and media by providing documentation demonstrating whether the publications have local, national, or international circulation, including circulation figures.

You may still submit evidence to satisfy this criterion.

Evidence may include, but is not limited to:

- Title, rating, standing in the field;
- Box office receipts;
- Motion picture or television ratings;
- Chart ratings; and
- Other evidence of occupational achievements reported in trade journals, major newspapers, or other publications (include circulation figures).

Significant Recognition

You may submit evidence showing the beneficiary received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field of endeavor.

The beneficiary appears to have met this criterion based on the testimonials submitted.

Remuneration

You may submit evidence showing the beneficiary has commanded, now commands, or will command a high salary or other substantial remuneration.

You did not submit any evidence for this option. You may still submit evidence to satisfy it.

Evidence to establish whether the beneficiary's compensation is high relative to that of others working in the field may take many forms. Examples may include, but are not limited to:

- Copies of contracts or similar reliable evidence;
- Documents showing the beneficiary received a high salary or other significant forms of compensation for services in comparison to others in the field, which may include equity in lieu of cash; or
- A statistical comparison of the salaries in the beneficiary's field, from a government or private institution or a similar organization. This should show that the beneficiary commanded a high salary or other significantly high remuneration for services compared to others in the field.
- Geographical or position-appropriate compensation surveys and organizational justifications to pay above the compensation data;
- The Bureau of Labor Statistics (BLS): <http://www.bls.gov/bls/blswage.htm>;
- The Department of Labor's Career One Stop website:
http://www.careeronestop.org/SalariesBenefits/Sal_default.aspx;
- The Department of Labor's Office of Foreign Labor Certification Online Wage Library:
<http://www.flcdatacenter.com>;
- Testimony from industry experts;
- Other corroborative evidence showing that the wage rate is high relative to others working in the field.

Note: U.S. Department of Labor (DOL) prevailing wage rate information alone does not generally establish the salary or other remuneration is "significantly" higher than others in the field. If you submit DOL prevailing wage rate information, you should submit additional evidence showing that the wage rate is high relative to others working in the field (such as the examples above).

Comparable Evidence

If the preceding achievement criteria do not readily apply to the beneficiary's occupation, you may

submit comparable evidence to establish the beneficiary's eligibility. You should indicate why the criteria do not apply to the occupation.

You may still submit additional comparable evidence to demonstrate distinction or prominence.

When submitting comparable evidence, you should explain why the evidence you submitted is "comparable" to demonstrate distinction or prominence.

When submitting comparable evidence, you should:

- Explain how the regulatory criteria is not applicable to the beneficiary's occupation; and
- Explain why the evidence you submitted is "comparable" to the applicable regulatory requirement.

