



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

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

In Re: 30867421

Date: SEP. 16, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a director of global brand and marketing communication strategy, 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 that the Petitioner did not establish that he had received a one-time achievement (a major, internationally recognized award) or that he satisfied at least three of the initial evidentiary criteria, as required for the requested classification. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] 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 [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen'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 recognition of their 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 they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner states that he is an established media and communication professional with nearly 20 years of experience. He began his career as a journalist in China where he focused on news in the automotive industry. The Petitioner joined [redacted] a Chinese internet media company, as director of the “Auto Channel.” The Petitioner states that while with [redacted] he continued his studies and research in journalism in the United States, where he focused on “strategic communications, especially business journalism, changing media business models, leadership and media sales.” He then joined [redacted] an electric vehicle company, and currently serves as their director of global marketing and communication strategy and planning, as well as head of visual design. He seeks to continue in this position in the United States.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed that he met nine of these criteria:

- (i), Lesser nationally or internationally recognized awards;
- (ii), Memberships in associations that require outstanding achievements;
- (iii), Published materials in major trade or professional publications or other major media;
- (iv), Participating as a judge of the work of others in the field;
- (v), Original business-related contributions of major significance;
- (vi), Authorship of scholarly articles in professional or trade publications;
- (vii), Display of work in the field at artistic exhibitions or showcases;
- (viii), Performing in leading or critical roles for organizations or establishments with a distinguished reputation; and

- (ix), Commanding a high salary, or other significantly high remuneration, in relation to others in the field.

The Director issued a request for evidence (RFE), notifying the Petitioner that the evidence in the record was not sufficient to establish that the Petitioner met any of the claimed criteria. The Director allowed the Petitioner an opportunity to submit additional evidence to attempt to demonstrate that he satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In response to the RFE, the Petitioner submitted additional evidence and reasserted that he met the following criteria:

- (i), Lesser nationally or internationally recognized awards or prizes;
- (ii), Memberships in associations that require outstanding achievements;
- (iii), Published materials in major trade or professional publications or other major media;
- (v) Original contributions of major significance;
- (vii), Display of work in the field at artistic exhibitions or showcases;
- (viii), Performing in leading or critical roles for organizations or establishments with a distinguished reputation; and
- (ix), Commanding a high salary, or other significantly high remuneration, in relation to others in the field.

In his response to the RFE, the Petitioner did not disagree with the Director's conclusions or submit additional evidence regarding the following criteria:

- (iv), Participating as a judge of the work of others in the field; and
- (vi) Authorship of scholarly articles in professional or trade publications.

In denying the petition, the Director determined that the Petitioner did not meet any of the claimed criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

#### A. Evidentiary Criteria

On appeal, the Petitioner submits a brief and additional evidence in support of 8 C.F.R. § 204.5(h)(3)(ix). The Petitioner asserts that the Director dismissed evidence that establishes that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). For the reasons discussed below, we find that the Petitioner has established that he meets one criterion, specifically the criterion at 8 C.F.R. § 204.5(h)(3)(viii), having performed in a leading role for an organization with a distinguished reputation. However, as he has only met one criterion, he has not satisfied the initial evidentiary requirements.

*Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).*

The Petitioner initially claimed that he meets this criterion based on his two undergraduate degrees from China, his master's degree in fine arts from the United States, and two certificates of completion from the [redacted] Visiting Professional Program. In addition, he submitted evidence that he received the following awards:

- [redacted] Award, 2021;
- [redacted] Award, 2019;
- [redacted] Scholarship, 2019;
- [redacted] Scholarship, 2021; and
- [redacted] Fellowship, 2021.

In the RFE, the Director noted that the Petitioner's degrees, professional certificates, scholarships and fellowship were not considered awards and did not meet the plain language of the criterion described at 8 C.F.R. § 204.5(h)(3)(i). The degrees and certificates establish that the Petitioner successfully completed academic programs, but he has not established that these constitute either prizes or awards. The Petitioner has also not established that his scholarships and fellowship are nationally or internationally recognized, or that they are awards for excellence in the field of endeavor, media and communication.

The Director also noted that the record did not include information about the [redacted] Award or the [redacted] Award, such as major trade publications or other media demonstrating that the awards are nationally or internationally recognized for excellence in the field of endeavor.

In response to the RFE the Petitioner only provided information about the [redacted] Award. The Director concluded that, although the award is a nationally or internationally recognized award for excellence in marketing, the award was given to the Petitioner's employer, [redacted] rather to the Petitioner.

The Petitioner does not address or contest on appeal the Director's conclusion that he does not meet this criterion. Accordingly, we deem these grounds to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

*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. 8 C.F.R. § 204.5(h)(3)(ii).*

To meet the standards of this criterion, an individual must submit evidence that 1) they are a member of an association; 2) the association is in their field of extraordinary ability; 3) the association requires outstanding achievements as a condition for membership; and 4) that the outstanding achievements are judged by national or international experts in their fields.

In support of this criterion the Petitioner submitted evidence of his participation in the following:

- As a panel member at the 2013 Conference of [redacted] of China;
- As a judge at the Award Ceremony of Outstanding Brands of Chinese [redacted] [redacted] and
- As a member of the [redacted] Global Marcom Strategy Committee.

In the RFE, the Director noted that the Petitioner did not provide evidence that these associations require outstanding achievements of its members, as judged by recognized national or international experts in their fields. He also noted that the Petitioner's participation as a member of the [redacted] [redacted] Global Marcom Strategy Committee appeared to be a job-related duty.

In response to the RFE, the Petitioner provided no new evidence, but requested that the Director consider his selection "as a member of the 20 person professional panel of judges" of the [redacted] [redacted] conference as evidence that he meets this criterion. The Director concluded that the record did not establish that the 2013 Conference of [redacted] of China or the Award Ceremony of Outstanding Brands of Chinese [redacted] are associations within the meaning of 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner does not address or contest on appeal the Director's conclusion that he does not meet this criterion. Accordingly, we deem these grounds to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5.

*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. 8 C.F.R. § 204.5(h)(3)(iii).*

This criterion requires evidence showing published material about the individual and their work in the field of extraordinary ability. In addition, that material must include basic information such as its title, date and author, and must have been published in professional or major trade publications or other major media. The phrase "other major media" is generally accepted to mean a publication with significant reach and recognition, and it follows that we may reasonably require evidence of the same type of reach and recognition through circulation data. *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 185 (D. N.J. 2021).

The record includes several published articles, some mentioning the Petitioner and some featuring the Petitioner.<sup>1</sup> The Petitioner also provided printed entries published on Wikipedia and his biographic information published on several websites. The Director determined that this criterion was not met because the Petitioner did not submit evidence to demonstrate that the articles were published in professional or major trade publications or other major media. The Director noted that the record did not include evidence to establish the circulation statistics for the publishing sources, or evidence of the intended audience for the publications, although this was specifically requested in the RFE.

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<sup>1</sup> While we discuss a sampling of these articles, we have reviewed and considered each one.

Additionally, the Director noted that some of the articles were in a foreign language and did not include full English translations, and some material did not identify the author, only an “editor.” The Director cited to the specific requirement of 8 C.F.R. § 204.5(h)(3)(iii) that “evidence shall include the title, date, and author of the material, and any necessary translation.” The Director further determined that not all of the articles relate to the Petitioner’s work in the field of endeavor.

On appeal, the Petitioner states that the Director erred in determining that the published material about him is not related to his field of endeavor in media and communication. He further asserts that the English translations of the materials he provided are of the relevant information that is “necessary” for this criterion, and that the Director incorrectly concluded that an editor may not also be an author. The Petitioner states that the published material about him includes “feature articles, personal profiles, biographical sketches, news reports and interviews, internet search results and citations in professional and major media and trade publications in print as well as on the worldwide web.”

As the Director noted, some of the published material the Petitioner submitted does not include a full English translation of the original. For example, the Petitioner provided an English translation of an article published on the website auto.ifeng.com in 2014, titled [REDACTED]. The translation states, “The following is the transcript of a speech given by [the Petitioner], [REDACTED] Deputy Director, Chief Writer, and Founder of the [REDACTED] ...,” but no English translation of the actual speech is provided. An English translation of another article, published on the website www.12gang.com on [REDACTED] 2014, states, “[the Petitioner], [REDACTED] Deputy Editor-In-Chief and Chief Writer, spent an hour and half exchanging ideas and interacting with over a hundred members of the audience on different career paths at [REDACTED]. However, there is no further translation and the article does not address the value of the Petitioner’s work and contributions.<sup>2</sup> See 6 USCIS Policy Manual F.2(B)(1). The Petitioner did not submit complete English translations in response to the RFE or on appeal. Therefore, we are precluded from determining whether this material demonstrates that the Petitioner meets this criterion.

We note that several published materials in the record, while mentioning the Petitioner, do not discuss the Petitioner’s work in the field of media and communication. For example, a 2014 post published on the [REDACTED] website, titled [REDACTED] includes a photo with a caption mentioning that the Petitioner presented a commemorative album on behalf of [REDACTED] to a Tesla executive. However, the publication does not include any discussion of the value of this action to the field of media and communication.

The record includes two published materials that relate to the Petitioner’s art exhibitions. A 2015 article titled [REDACTED] published on “The Website of Phoenix New Media Limited,” discusses the Petitioner’s solo oil painting exhibition. A second article, titled [REDACTED] was published on the blog, The Missouri Atlas, on [REDACTED], 2016 and discusses the Petitioner’s artwork and journalism career. However, the articles do not discuss the value of the Petitioner’s contributions to the field of

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<sup>2</sup> We note that the record includes a second, identical English translation of this article. The second translation states that it was published in *Forbes* magazine on [REDACTED] 2014. The record does not include a copy the original article in *Forbes*. Further, neither translation provides the name of the author, as required by 8 C.F.R. § 204.5(h)(3)(iii).

media and communication. Additionally, the Petitioner does not provide evidence that “The Website of Phoenix New Media Limited” or The Missouri Atlas blog are professional or major trade publications or other major media, such as their relevant circulation, readership or viewership that should be compared to other statistics. 6 USCIS Policy Manual F.2(B)(1), (“In evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media”).

The record includes a printout from the [redacted] website with a photo and “biographic sketch” of the Petitioner describing his academic background and career, published on [redacted] 2007. The biography appears to be for the purpose of identifying the Petitioner as a member of the [redacted] staff. Similarly, a printout from the [redacted] website includes a biographic profile of the Petitioner and samples of his artistic work. Regarding these types of materials, the USCIS Policy Manual notes, “Any materials the petitioner submits must demonstrate the value of the person’s work and contributions ... Marketing materials created for the purpose of selling the person’s products or promoting the person’s services are not generally considered to be published material about the person.” *Id.* The biographic information and personal profiles do not include any discussion of the value of the Petitioner’s work and contributions and do not demonstrate that he meets this criterion.

On appeal, the Petitioner references an article titled, [redacted] written by [redacted] and asserts that this demonstrates that there is published material about him in major media related to his work in media and communication. The Petitioner states that the article was published on the [redacted] website and covers an interview he gave on China’s Central Television where he gives his “view on the action against monopoly in auto.”

The English translation of the article states, “[the Petitioner] [redacted] Chief Writer, expressed his believe that the action against monopoly in auto is an upgrading of management of the consumption process ...” There is no further translation of the article. The record includes a photograph that the Petitioner titled “In 2014, I had interview on China Central Television CCTV News Channel,” and a CD with content the Petitioner labeled “[the Petitioner’s] Interview on China’s Central TV (CCTV).” However, the record does not include a transcript with English translation of the interview. Nor does the record include evidence demonstrating the value of this interview to the field of media and communication.

For these reasons the Petitioner did not show that he satisfies this criterion.

*Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).*

In order to meet the plain language requirements of this criterion, a petitioner must show that they have not only been invited to judge the work of others, but also that they actually participated in the

judging of the work of others in the same or allied field of specialization. *See 6 USCIS Policy Manual F.2, supra.*

With the initial filing the Petitioner asserted that his duties with [redacted] [redacted] included job responsibilities to “recruit, appraise and guide qualified personnel in the field.” In support of his claim, the Petitioner references the following evidence:

- An article from the [redacted] website with English translation, titled [redacted] [redacted] dated [redacted] 2010. The article was written by the Petitioner and lists his position as “Chief Writer and Director of the News Department,” and describes his responsibilities.
- An offer letter from [redacted] dated May 4, 2021, offering the Petitioner the position of Director, Global Marcom Strategy and Planning and includes a list of responsibilities.

In the RFE, the Director stated, “in an occupation where judging the work of others is an inherent duty of the occupation, simply performing one’s job-related duties demonstrates competency but is not evidence that one’s ‘achievements have been recognized in the field of expertise.’”

In response to the RFE, the Petitioner stated, “I have no additional evidence as you requested in the notice for this category to submit at this time. But I reserve the right to dispute the interpretation of the meaning of judging in the notice.”

The Petitioner does not address or contest on appeal the Director’s conclusion that he does not meet this criterion. Accordingly, we deem these grounds to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5.

Although we deem this issue waived, we do not agree with the Director’s specific reasoning in concluding that the evidence in the record was not sufficient. We have reviewed the Petitioner’s initial evidence submitted in support of this criterion *de novo*, however, and we conclude that it does not establish that the Petitioner meets the plain language requirements. The job responsibilities described in the article and in the offer letter do not describe the Petitioner’s role as a judge of the work of others in the field of media and communication. Neither submission indicates that the Petitioner was “invited to judge the work of others.” Neither description mentions whose work the Petitioner reviews or even what type of work he reviews. The record does not include evidence that the Petitioner actually participated as a judge or of any works he judged that were in the field of media and communication. Additionally, the article from the [redacted] website was written by the Petitioner and is not independent, objective evidence in support of this criterion.

*Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy this criterion, a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field. *See 6 USCIS Policy Manual F.2, supra.* For example, a petitioner may show that the contributions have been widely

implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

In support of this criterion the Petitioner submitted recommendation letters and an expert opinion letter. The Petitioner also provides his original articles and reports about the automotive industry in China.

The Director concluded that the evidence established that the Petitioner is “engaged in the field” but was not sufficient to demonstrate “original contributions that can be considered of major significance to the field.” He determined that the recommendation letters did not illustrate how the Petitioner’s contributions are both original and of major significance in the field. He noted that one recommendation letter did not include information required by 8 C.F.R. § 204.5(g) but did not identify what specific information was missing.

On appeal, the Petitioner asserts that the Director erred in not considering the recommendation and support letters as probative evidence that he meets this criterion. He notes that the Director did not identify what information was missing from the recommendation letter and states that “six expert testimonies all contain specific discussion of my accomplishments in detail from one or several perspectives, and are all backed by objective documentary evidence.” The Petitioner also asserts that the Director did not consider his original publications, including evidence that his reports were “cited and commented widely within and outside China,” and included “interviews with industry and government leaders” such as Elon Musk of Tesla, Peter Mertens of Volvo, and Rufus Yerxa of the World Trade Organization.

Upon review of the recommendation and expert opinion letters in the record, we agree with the Director’s analysis that the letters do not establish the Petitioner’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

A recommendation letter from [redacted] professor at [redacted] praises the Petitioner as a student of writing and for his course project, a memoir that the Petitioner self-published. However, the letter does not discuss how the Petitioner’s work has been of major significance in the field of media and communication.

A recommendation letter from [redacted] professor at [redacted] describes the Petitioner’s “creative contributions” in fine arts, performance, writing, and music. However, the letter does not discuss how the Petitioner’s works have been of major significance in the field of media and communication.

A recommendation letter from [redacted] also praises the Petitioner as a student and writer, as well as musician, noting that his music has been played on “the city’s best progressive music station.” However, the letter does not explain how Mr. [redacted] is in a position to judge the Petitioner’s work or how the Petitioner’s work has been of major significance in the field of media and communication.

A recommendation letter from [redacted] Editor-In-Chief of [redacted] (China), describes the Petitioner’s career and accomplishments as a journalist and artist. He states, “Since he started his

career, he has stood out by making original contributions of major significance.” Mr. [ ] then describes those contributions only generally and without specificity. For example, he states that the Petitioner’s work as a reporter and editor “set a new standard for journalistic writing.” However, he does not elaborate to describe this standard or its significance to media and communication. Mr. [ ] states that the Petitioner created new organizations on his own, including [ ] [ ] However, Mr. [ ] does not describe these organizations or their significance to the field of media and communication. Nor does the record include detailed information about the objective of these organizations or describe how these organizations are contributions of major significance to media and communication.

A recommendation letter from [ ] former treasurer of [ ] describes the Petitioner’s professional contributions, including creating “well-known Chinese media platforms [ ] [ ] as well as creating “an event titled [ ] [ ] a seven day journey from Beijing to Shenzhen testing the viability of an electric vehicle.” Mr. [ ] also points to the Petitioner’s “exclusive breaking news report” in [ ] 2009 on the Geely Holding Group purchase of Volvo that “generated worldwide attention and commentary in the global economy and industry.” Although Mr. [ ] describes the Petitioner’s contributions as “impressive,” he does not describe the significance of these contributions to the field of media and communication.

An expert opinion letter from Dr. [ ] of the [ ] discusses the Petitioner’s work as a student of journalism and in media and communication. He praises the Petitioner’s accomplishments and states that his past successes demonstrate his exceptional ability. He also notes that the Petitioner earned three “merit-based awards in the art field, proving his extraordinary achievements in comparison to others.” However, Dr. [ ] does not explain how the Petitioner’s achievements, including his awards in art, were of major significance to the field of media and communication.

In reviewing the Petitioner’s other evidence submitted in support of this criterion, we note that the record does not include full English translations of the Petitioner’s original articles, as required by 8 C.F.R. § 103.2(b)(3)(stating that any document containing foreign language submitted to USCIS shall be accompanied by a certified “full English language translation”). The Petitioner provided translations of author, title, publication and date. However, without complete English translations of the content of these works, we are precluded from determining that they are contributions of major significance in the field of media and communication.

The Petitioner submitted a [ ] 2009 article that he wrote for the [ ] regarding the Geely Holding Group purchase of Volvo. He asserts that this article was an “international exclusive news report” that “generated global media repost and created a huge buzz internationally.” The record includes a partial English translation of the content of the article, which indicates that a Chinese government official served as the Petitioner’s source of information on the sale agreement and that the information “has not been officially confirmed by the two parties yet.” The translation credits the Petitioner as reporter and another person as “intern.” The Petitioner also provided multiple articles from various news sources also reporting news of Geely’s purchase of Volvo. He asserts that his original article served as the foundation for these additional reports globally. However, none of these articles cites directly to the Petitioner’s article as a source. Nor does the Petitioner explain how

his exclusive news report, while potentially important to news in the automotive industry, was of major significance to the field of media and communication.

We acknowledge that the record includes evidence of the Petitioner's original artistic work, including a self-published book and art exhibitions. However, the record does not include evidence that these original works are contributions of major significance to the field of media and communication. We acknowledge the Petitioner's assertion that he organized an event to test a Tesla electric vehicle in China. However, the record does not include documentary evidence to support this claim. We also acknowledge the Petitioner's assertion that he founded "professional organizations of far-reaching influence" - [redacted] However, the Petitioner does not describe these organizations in sufficient detail or explain their significance to the field of media and communication.<sup>3</sup>

For these reasons, the Petitioner did not show that he satisfies this criterion.

*Evidence of the alien'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).

The record includes evidence of multiple articles the Petitioner wrote in his role as a journalist in the automotive industry in China. The record also includes evidence that the Petitioner authored and published a work of fiction titled [redacted]

In the RFE, the Director noted that the record did not include evidence that the Petitioner's book was written in his field or that it was published in a professional or major trade publication or other major media. In response to the RFE, the Petitioner stated, "I have no additional evidence as requested for this category to be submitted at this time."

The Petitioner does not address or contest on appeal the Director's conclusion that he does not meet this criterion. Accordingly, we deem these grounds to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5.

*Evidence of display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

As noted above, the record includes evidence that the Petitioner's original artwork has been displayed at artistic exhibitions. In the RFE, the Director determined that the Petitioner's art exhibitions were not related to his field.

In response to the RFE, the Petitioner provided evidence describing the field of media and communication. He provided evidence of his official job description as Director of Global MarCom and asserted that this includes "art and design." He also provided a personal statement describing his art exhibitions as "related to [his] contributions to media and communication in general." He

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<sup>3</sup> We note that, in his recommendation letter, Mr. [redacted] references these organizations as "well-known Chinese media platforms," rather than "professional organizations," as the Petitioner and Mr. [redacted], in his letter, describe them. The Petitioner does not explain these inconsistencies. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record).

explained that art and business are not mutually exclusive in the interdisciplinary field of media and communication.

The Director concluded that the additional evidence did not establish that the Petitioner's artistic exhibitions were in the field of media and communication. The Petitioner does not address or contest on appeal the Director's conclusion that he does not meet this criterion. Accordingly, we deem these grounds to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5.

*Evidence that the alien 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 qualify under this criterion, a petitioner must show that they played a leading or critical role for an organization or establishment, and that that organization or establishment has a distinguished reputation. When evaluating whether a role is leading, we look at whether the evidence establishes that the person is or was a leader within the organization, or a department or division thereof. A title, with appropriate matching duties, can help to establish that a role is or was leading. For a critical role, we look at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment. *6 USCIS Policy Manual F.2(B)(1), supra.*

To support that an organization has a distinguished reputation, the relative size or longevity of an organization is considered together with other relevant information, such as the scale of its customer base or relevant media coverage. "Merriam-Webster's online dictionary defines 'distinguished' as 'marked by eminence, distinction, or excellence' or 'befitting an eminent person.'" *Id.*

The Petitioner points to his roles with [redacted] various news outlets in China, and [redacted] [redacted] in support of this criterion. The Director determined that, although the Petitioner established that these organizations have a distinguished reputation, this criterion was not met because the evidence did not show that the Petitioner performed in a leading or critical role.

On appeal, the Petitioner maintains that he has performed in a critical role for his previous employers. He cites to his roles as "Deputy Editor-in-Chief and Chief Writer" with [redacted] "Associate director of editorial department" with [redacted] "Senior Reporter" with [redacted] [redacted] "Director of the auto news department" with [redacted] and "Director, Global MarCom Strategy and Planning" with [redacted]. The Petitioner also references letters from his former employers which provide detailed descriptions of the duties of these roles, an organizational chart reflecting his leadership position with Faraday, and recommendation letters that describe his contributions of significant importance.

The recommendation and support letters in the record from previous employers describe in sufficient detail the Petitioner's role as leading or critical.

Upon review of the entire record, including the organizational chart, experience and recommendation letters describing the Petitioner's role and responsibilities and contributions, as well as published material about the distinguished reputation of the Petitioner's current and former employers, we

conclude that the Petitioner has met this criterion. Therefore, this portion of the Director's decision is withdrawn.

*Evidence that the alien 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).

To establish eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(ix), a petitioner must show that they have commanded a high salary, or other significantly high remuneration for services, in relation to others in the field. Evidence relevant to demonstrating an individual's high salary may include comparative wage or remuneration data for the person's field, such as geographical or position-appropriate compensation surveys. *See generally*, 6 USCIS Policy Manual F.2(B)(1), *supra*.

The Petitioner provided wage data from the U.S. Bureau of Labor Statistics (BLS) for media and communication workers in California for 2020. He also submitted an offer letter from [redacted] [redacted] stating his offered annual salary as \$180,000.

In the RFE, the Director declined to consider the Petitioner's offered salary with [redacted]. He stated, "The letter from [redacted] holds no evidentiary value ... letters of employment only indicate what you may earn and not what you have actually earned."

In response to the RFE, the Petitioner submitted copies of 2023 pay and tax records documenting his annual income in 2022, an employment verification letter, and additional comparative wage data. The Petitioner's 2022 IRS Form W-2, Wage and Tax Statement, which reflects his total compensation with [redacted] as \$166,881.28. The Petitioner's pay stubs for March and April 2023 reflect that the Petitioner was paid \$7,500 biweekly, and a one-time bonus of \$1,250. His year-to-date earning as of April 30, 2023, are stated as \$64,652.03, including regular salary, bonus and stock options. A May 2023 employment verification letter states the Petitioner's annual compensation as \$180,000. Additional wage data in the record from Payscale.com for 2023, indicates that a marketing director in [redacted] California, with a bachelor's degree has a salary range of \$41,000 to \$130,000, with an average salary of \$74,344.

The Director declined to consider the Petitioner's 2023 pay records and 2022 Form W-2 as these were issued after the petition's filing in October 2022. Citing to 8 C.F.R. § 103.2(b)(1), (12), and *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm.1971), the Director concluded that the Petitioner did not establish eligibility as of the date of filing and did not meet this criterion.

On appeal, the Petitioner submits additional pay records dated prior to the date of filing. The additional evidence reflects that the Petitioner was consistently paid \$7,500 biweekly since July 2022, prior to the date of filing.

The Director's determination that the Petitioner did not meet this criterion was based on the conclusion that the Petitioner's evidence of salary and remuneration was either a projection of future income based on his offer of employment or was dated after the date of filing. However, in evaluating this criterion, USCIS does not interpret the phrase "has commanded" to mean that the person must have already earned such salary or remuneration. Therefore, a credible contract or job offer showing

prospective salary or remuneration may establish that the person has been able to command such compensation. *Id.*

The Petitioner's 2022 Form W-2 provides sufficient evidence that the Petitioner "has commanded" a salary as a media and communications worker, the occupation he intends to pursue in the United States. The Petitioner's May 2023 employment verification letter further demonstrates that his prospective salary as Director, Global MarCom Strategy and Planning can be considered additional evidence in this instance. However, the record does not include comparative wage or remuneration data for the proper comparison position.

The BLS wage data reflects that the mean salary for California-based "media and communication workers, all other" was \$49,730 in 2020. However, the Petitioner has not established that the BLS mean salary data for "media and communication workers, all other" is an appropriate basis for comparison to his offered salary at the level of "director."

The data from Payscale.com reflects that the average salary for a California-based marketing director with a bachelor's degree was \$74,344 in 2023. While we may consider the Petitioner's prospective salary in 2023, the record does not demonstrate that the data from Payscale.com is comparable to the Petitioner's position. Demonstrating that his total remuneration is high compared to the average base salaries in the field does not suffice. The data from Payscale.com does not include a specific job description for marketing director. 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, F.2(B)(1), supra.*

The Petitioner does not provide additional comparative wage data on appeal. Upon de novo review of the comparative wage data, we conclude that the Petitioner has not established by a preponderance of the evidence that he has commanded a high salary in relation to others in the field. Therefore, the Petitioner has not met the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

## B. Summary

Upon review of the record, we conclude that the Petitioner has established that he satisfies the initial evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(viii), having performed in a leading or critical role for organizations with distinguished reputations. However, for the reasons discussed above, we conclude that 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 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed the record in the aggregate, and conclude that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. 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 accomplishments in media and communication 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 national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

### III. CONCLUSION

The Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.