

September 22, 2023

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
P.O. Box 82521  
Lincoln, NE 68501-2521



U.S. Citizenship  
and Immigration  
Services

ANDREY MARKELOV  


RE: ANDREY MARKELOV  
I-140, Immigrant Petition for Alien Worker  


### **NOTICE OF INTENT TO DENY**

This is in reference to your Form I-140, Immigrant Petition for Alien Worker, filed on behalf of ANDREY MARKELOV on September 12, 2023. You have submitted all required initial evidence, but that evidence does not establish eligibility for the requested benefit. Pursuant to Title 8, Code of Federal Regulations, Part 103.2(b)(8)(iii), we hereby notify you of our intent to deny this petition.

The petitioner seeks classification as an alien of extraordinary ability as a product designer and developer in the field of product design and development.

INA Section 203(b)(1)(A) defines an “alien with extraordinary ability” in the following terms:

--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
- iii. The alien’s entry into the United States will substantially benefit prospectively the United States.

8 Code of Federal Regulations (8 CFR), 204.5(h)(2) defines “extraordinary ability” as:

A level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor.

USCIS and the legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas in the extraordinary ability classification. See 56 Federal Register 60897, 69898-99 (Nov. 29, 1991).

8 CFR 204.5(h)(3) indicates that an individual can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the individual’s receipt of such an award, the regulation outlines ten criteria, at least three of

which must be satisfied for an individual to establish the sustained acclaim necessary to qualify as an individual of extraordinary ability. The criteria are outlined below.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

A two-part analysis is used to determine whether the beneficiary is an individual of extraordinary ability:

- First, we determine whether the petitioner has submitted evidence to show that the beneficiary:
  - Has received a one-time achievement (a major internationally recognized award); or,
  - Qualifies under at least three of the ten regulatory criteria required for this classification.
- Second, we determine whether the petitioner has submitted evidence demonstrating that the beneficiary:
  - Has sustained national or international acclaim.
    - In determining whether the beneficiary has enjoyed "sustained" national or international acclaim, such acclaim must be maintained. A beneficiary may have achieved extraordinary ability in the past but then failed to maintain a comparable level of acclaim thereafter; and,

- Has achievements that have been recognized in the field of expertise, indicating that the beneficiary is one of that small percentage who has risen to the very top of the field of endeavor.

## **Part I: Criteria Analysis**

The petitioner has not established that the beneficiary has received a one-time achievement that is a major, internationally recognized prize or award. As a result, the evidence must demonstrate that the beneficiary has fulfilled at least three of the ten criteria listed in the regulations.

USCIS has determined that the petitioner has provided sufficient documentation to establish the beneficiary has met the following regulatory criteria:

- **Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Title 8 C.F.R.. § 204.5(h)(3)(i).**
- **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 specialization for which classification is sought. Title 8 C.F.R.. § 204.5(h)(3)(iv).**
- **Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. Title 8 C.F.R.. § 204.5(h)(3)(vi).**
- **Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. Title 8 C.F.R.. § 204.5(h)(3)(vii).**
- **Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. Title 8 C.F.R.. § 204.5(h)(3)(ix).**

USCIS has determined that the petitioner provided documentation, but failed to establish eligibility for the following criteria:

*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. Title 8 C.F.R.. § 204.5(h)(3)(ii).*

Criterion has not been met.

The plain language of this criterion requires evidence (1) of membership in associations, (2) that the associations be in the alien's field for which classification is sought, and (3) that the associations require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

You submitted evidence that you are a member of International Association of Designers and Eurasian Art Union but provided no evidence that they require outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. Requirements that only include employment or activity in a given field; minimum education, experience, or achievement; recommendations by colleagues or current members; or payment of dues do not satisfy this criterion, because these requirements do not constitute outstanding achievements.

To assist in determining that your membership satisfies this criterion, you may submit information to establish that the individuals who review prospective members' applications are recognized as national

or international experts in their disciplines or fields, and the section of the association's constitution or bylaws that discusses the qualifications required by the review panel of the association, specifically membership.

***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. Title 8 C.F.R. § 204.5(h)(3)(iii).***

Criterion has not been met.

The plain language of this criterion requires evidence (1) of published material, (2) that the published material contain the title, date, and author of the material, and any necessary translation, (3) that the published material is about the beneficiary relating to the beneficiary's work in the field, and (4) that the published material qualifies as professional or major trade publications or other major media. The petitioner must satisfy all of these elements to meet the plain language of this criterion.

You submitted articles title, *How to Reinvent the Periodic Table, Andrew Marcus Talks About How UX Experience is Crucial in Software Design, Talbica – gorgeous interactive Periodic table, Professional Approach: 7 solutions for business #10*. Along with transcripts of your appearance on a YouTube channel and Russian TV.

You provided data from SimilarWeb which is a tool to broadly determine internet domain traffic, not to determine a publication's circulation. Material on the internet can include many types of domains, not all are objective or vetted in the manner of major media and publications with editors or peer review. General web domain statistics offer inappropriate comparisons that are not useful to determine whether a source constitutes major media commensurate with this criterion.

Furthermore, the petitioner did not establish that any of the websites represent professional or major trade publications or other major media. While you provided "About Us" and "Media Information" screenshots from the websites promoting themselves, the Petitioner did not present objective, probative evidence to corroborate the websites' assertions. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos, No. CV 06 5105 SJO (C.D. CA July 6, 2007), aff'd 2009 WL 604888 (9th Cir. 2009)* (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of a major medium).

To assist in determining that a publication qualifies as a professional or major trade publication or other major media, you may submit evidence indicating:

- its title, date, and author of published material;
- URL address on each page of screenshots;
- its circulation (online and/or in print) and comparative circulation data of major publications in the field;
- the intended audience of a publication.

Note that the evidence submitted should be specific to the media format in which it was published. If material was published online, the evidence should relate to the website. If it was published in print, the evidence should relate to the printed publication.

Notes:

***Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. Title 8 C.F.R. § 204.5(h)(3)(viii).***

Criterion has not been met.

A leading role should be established that the person is (or was) a leader within the organization or establishment or a division or department thereof. A title, with appropriate matching duties, can establish that a role is leading. Similarly, a critical role is established by the person's contributions 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. Evidence under this criterion must provide specifics relating to how the person's role was leading or critical to an organization or establishment. *See Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012). Additionally, an organization or establishment claimed under this criterion must be marked by eminence, distinction, excellence, or a similar reputation.

This criterion has two elements that must be met before the criterion can be granted. The first criterion is that the petitioner has performed in a leading or critical role for organizations or establishments or a division or department thereof. Based on the record, you not have satisfied this element. You submitted support letters from [REDACTED] Designer and editor-in-chief at [REDACTED], [REDACTED], [REDACTED], et al.; however, the letters do not contain contact information in accordance with Title 8 C.F.R. § 204.5(g) Initial evidence—(1) General and therefore cannot be considered probative.

The second element is that your employer has a distinguished reputation. The record does not establish that your current or previous employers have a distinguished reputation. For example, the record does not establish that the organization has received media coverage at a level illustrating its eminence, distinction, or excellence, which can confirm its distinguished reputation. *See 6 USCIS Policy Manual* (providing Webster's online dictionary's definition of "distinguished"). Although you work for a company that may have a well-known name; you must still provide evidence with the record to establish that such a company meets the second element of the criterion.

To assist in determining that you performed in a leading or critical role for a distinguished organization or establishment or a division or department of an organization or establishment, please submit letters from high-level executive officers with personal knowledge of the significance of your leading or critical role. The letters should contain detailed and probative information which specifically addresses how your role for an organization or establishment was leading or critical. Details should include your specific tasks and accomplishments as compared with other product designer and developers. Evidence under this criterion must provide specifics relating to how your role was leading or critical for an organization or establishment or a division or department of an organization or establishment. The letters shall include the name, address, and title of the writer.

Furthermore, the evidence must establish that the organization or establishment for which you claim to have performed a leading or critical role has a distinguished reputation. To assist in determining that the organization or establishment has a distinguished reputation, you must submit documentation of its eminence, distinction, and excellence.

If the petitioner believes the beneficiary qualifies under any of the regulatory criteria that USCIS has determined that the petitioner has failed to establish eligibility under, or any additional regulatory criteria, the petitioner should submit clarifying evidence, or submit additional evidence in response to

- Additional published material should be dated prior to the date of submission of this Form I-140.
- The published material should be about the beneficiary's work in the field, not just about the beneficiary's employer or other organizations the beneficiary is associated with.
- Marketing materials created for the purpose of selling the beneficiary's products or promoting the beneficiary's services are not generally considered to be published material about the beneficiary.
- Unevaluated listings in a subject matter index or footnote, or reference to the beneficiary's work without evaluation are insufficient.

Here, the Petitioner did not offer independent evidence, such as website traffic figures from third parties, demonstrating the websites' standings as major media.

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

Criterion has not been met.

The plain language of this criterion requires evidence (1) of the person's contributions related to scientific, scholarly, artistic or business fields, (2) that the person's contribution is original, and (3) that the beneficiary's original contribution are of major significance to the field. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

You submitted translations of Zhurnalus No. 334 Surreal shadows of the exointelligence era which mentions a detailed practical article you wrote. The evidence states, "Interface designer Andrey Markelov wrote an article for us on how the design complex tables that are used in financial systems." The evidence provides a detailed design description of what appears to be interface software. Since the majority of the evidence provided in the record falls under the field of art and not science we must request clarification of your field of endeavor pertaining to this criterion. INA 203(b)(1)(A)(ii) provides that you seek "to enter the United States to continue work in the area of extraordinary ability," not areas of extraordinary ability. Thus, you may claim only one area (i.e., occupation and field) for each I-140 filing. *See Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (illustrating that USCIS may reasonably interpret that continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field).

To assist in determining whether your contributions are original and of major significance in the field, you may submit:

- Published materials about the significance of the person's original work;
- Testimonials, letters, and affidavits about the person's original work;
- Documentation that the person's original work was cited at a level indicative of major significance in the field; and
- Patents or licenses deriving from the person's work or evidence of commercial use of the person's work.

Please note: submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.

this portion of the notice of intent to deny.

## **Part II. Final Merits Analysis**

As the petitioner has submitted evidence to demonstrate the beneficiary has met at least 3 of the 10 regulatory criteria, USCIS must now examine the evidence presented in its entirety to make an initial final merits determination, of whether or not the petitioner, by a preponderance of the evidence, has demonstrated that the beneficiary possesses the high level of expertise required for the E11 immigrant classification.

Establishing eligibility for the high level of expertise required for the E11 immigrant classification is based on the beneficiary possessing:

- Sustained national or international acclaim.
  - In determining whether the beneficiary has enjoyed “sustained” national or international acclaim, such acclaim must be maintained. A beneficiary may have achieved extraordinary ability in the past but then failed to maintain a comparable level of acclaim thereafter; and,
- Achievements that have been recognized in the field of expertise, indicating that the beneficiary is one of that small percentage who has risen to the very top of the field of endeavor.

The record shows you submitted receipt of awards from A’Design Award and Competition 2023, 365 AIGA Year in Design 2022, and CSS Design Award for website of the day on May 24, 2023. The evidence provides information about their national or international in stature and fall within your field of endeavor of product design and development in the arts. While it is an honor to have your products recognized. We note that all the awards were received within the year prior to the filing of your petition and does not demonstrate that you have sustained acclaim or that you are recognized as one of the top of your field.

You submitted evidence of your participation in the judging of others in 2023 by being a juror for the W3 Awards and the Davey Awards. The record shows your ability to participate as a juror was through your membership with Academy of Interactive and Visual Arts (AIVA). You submitted an email from Kari Gillenwater congratulating you on your membership approval into AIVA on June 6, 2023.

You submitted evidence of your acceptance to Orpetron Web Design Awards Jury on February 11, 2023, where you also participated as a member of the jury. However, you did not establish that your judging experience places you among the small percentage at the very top of this field. *See* 8 C.F.R.. § 204.5(h)(2). You did not show, for example, how the number of reviews you conducted or the positions you held on the editorial boards compared with those of others at the very top of the field.

You submitted articles you published on bootcamp.uxdesign.cc and uxdesign.cc. The articles are titled, Design of scatter plots, Design of graphs.Part two.Lines, Design of graphs.Part one.Scales, Design of complex tables, et al. You submitted other articles however, they do not appear to be scholarly in nature or within your field of endeavor. An overwhelming majority of your evidence appears to fall under the art field. However, some of the articles you submitted fall under the science field and are not considered probative. We note that the articles meeting the plain language are all dated between November 20, 2022 and February 3, 2023. The evidence does not demonstrate that you have sustained acclaim in your field of endeavor.

You submitted evidence of your work being displayed at artistic exhibitions or showcases. The record shows your work on Talbica-Interactive Periodic Table at the (MOOD) Museum of Outstanding Design was exhibited from July 18 to July 20, 2023 and you submitted evidence of your work being

exhibited virtually on The One Page Love website. The evidence shows it was published on The One Page Love website for exhibit on July 31, 2023. The record shows your work was displayed within two months of the filing of the petition and does not demonstrate sustained acclaim in your field of endeavor.

The evidence shows you earn a salary that has been determined to be significantly higher than others in your field. However, USCIS cannot find that your salary is documentation of your sustained acclaim, or that you are recognized as one of the top of her field. Particularly, you have not demonstrated that you receive any acclaim or recognition from others for receiving a high salary.

We note that an overwhelming majority of the record provides evidence dated within the year leading up to the filing of your petition. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition, and an individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Evidence provided has not established that the petitioner has established sustained national or international acclaim. USCIS and the legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas in the extraordinary ability classification. With that in mind, USCIS has determined that the beneficiary's record does not established that he is recognized nationally or internationally as one of that small percentage who has risen to the very top of the field .

Pursuant to section 291 of the INA, whenever any person makes an application for an immigration benefit, he shall bear the burden of proof to establish eligibility. Accordingly, the petitioner must prove by a preponderance of the evidence, in other words, that it is more likely than not, that the beneficiary is qualified for the benefit sought. See *Matter of E-M-*, 20 I. & N. Dec. 77 (BIA 1989). After a careful review and analysis of all evidence within the record, USCIS finds that the petitioner has not established eligibility for the benefit sought.

The petitioner is hereby notified that it is the intent of USCIS to deny this Form I-140 petition. The petitioner has 30 (thirty) days (33 (thirty-three) days if this notice is received by mail) to submit evidence in response to this request. Any evidence submitted will be carefully reviewed. Failure to submit evidence in response to this notice of intent to deny will result in the denial of this Form I-140 petition based upon the reasons set forth in this notice.

**PLACE THE ENCLOSED COVERSHEET ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THIS COVERSHEET WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL.**

Sincerely,

