



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

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

MATTER OF M-K-L-S-

DATE: AUG. 11, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an opera singer, seeks classification as an “alien 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, Nebraska Service Center, denied the petition. The Director concluded that the Petitioner did not satisfy any initial evidence criteria, when evidence satisfying at least three criteria is required.

The Petitioner appeals the matter to us and submits additional evidence and a brief. She indicates that she has satisfied at least three initial evidence criteria and has shown her extraordinary ability as an opera singer.

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

I. LAW

The Petitioner may demonstrate her extraordinary ability through sustained national or international acclaim and achievements that have been recognized in her field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states:

Aliens with extraordinary ability. -- An alien is described in this subparagraph if –

(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
- (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).

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); *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 we examine "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").

II. ANALYSIS

The Petitioner is a soprano opera singer. The Director found the Petitioner did not submit the necessary initial evidence because she did not demonstrate her receipt of a major, internationally recognized award or provide documentation satisfying at least three of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Upon *de novo* review, we find that the Petitioner has submitted sufficient initial evidence to meet the following three criteria.¹ She has not, however, shown her extraordinary ability because she did not establish she is one of the small percentage who has risen to the very top of the field.

¹ Because the Petitioner meets three criteria, we will not address the remaining criteria claimed. We consider the entire record of evidence, however, in the final merits determination.

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A. Evidentiary Criteria

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

The Petitioner provided evidence that she won third prize in the solo voice category at the 2002 [REDACTED] held in [REDACTED] Philippines. The Petitioner submitted documentation showing that the competition was created through presidential proclamations that indicate it is intended to "promote Philippine music as an art." The mission of the competition is to discover and develop outstanding young Filipino musicians and artists. As a result, the Petitioner's third place finish qualifies as receipt of a lesser nationally recognized award for excellence in the field of endeavor.

Evidence of the individual'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.

The Petitioner provided documentation showing that she was a judge at the 2005 [REDACTED] sponsored by [REDACTED] and the [REDACTED] Philippines. She also presented evidence of her membership on the board of judges for the [REDACTED] 2011 [REDACTED]. As a result, the Petitioner has satisfied the plain language of this criterion.

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases.

According to the plain language requirements of this criterion, a qualifying exhibition or showcase must be artistic in nature. Various forms of artistic display may satisfy this requirement, including visual art, performing arts, music, graphic art, and fine art. In this case, the Petitioner provided programs from the [REDACTED] held in 2004, 2005 and 2006. The Petitioner's name appears on the programs as the featured soprano singer and her biography is included inside. As a result, we conclude that the Petitioner's craft was sufficiently on display during these concerts to satisfy the plain language of this criterion.

B. Merits Determination

As the Petitioner has submitted the necessary initial evidence, we now conduct a final merits determination that considers the entire record in the context of whether or not the Petitioner has demonstrated extraordinary ability as an opera singer by showing that she enjoys a level of expertise indicating she is one of the small percentage who has risen to the very top of the field of endeavor. Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Based on the totality of the material submitted, we find that the Petitioner has not made the requisite showing.

(b)(6)

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The Petitioner provided evidence of a nationally recognized award for excellence in the field of endeavor with her third place prize in the solo voice category at the 2002 [REDACTED] While national in scope, this competition is limited to young Filipinos. Although indicative of talent and potential, this competition is dedicated to promoting promising artists and musicians. As a result, the Petitioner's third place finish almost fifteen years ago does not represent the sustained national or international acclaim necessary for this benefit.

The Petitioner won an encouragement award in the [REDACTED] of the 2015 [REDACTED] hosted by the [REDACTED] [REDACTED] has existed for 77 years for the purpose of providing financial support to young opera singers. In 2015, the competition had 400 applicants, with 57 receiving awards ranging from top prize, first prize, second prize, third prize, and grant, to the encouragement award. The [REDACTED] is for competitors 30 to 45 years of age, while the general division is for those 21 to 35 years of age. The Petitioner submitted a letter from the president of [REDACTED] board of trustees stating that the Petitioner's receipt of the [REDACTED] "means that she has been recognized by people from the opera industry, through this competition, as a voice to look forward to." While we note the international nature of the competition, we find that receipt of the [REDACTED] is indicative of her future potential, and not status as one who has already established herself at the top of the field.

The Petitioner won the 2007-08 [REDACTED] at the [REDACTED] [REDACTED] The Petitioner indicated that this is a competitive contest within the school. A letter confirming the Petitioner's first place finish indicates her award meant that she was then to perform in a concert with the [REDACTED] The Petitioner does not, however, provide additional details to show that the competition and her prize are nationally or internationally recognized.

The appeal also emphasizes distinctions the Petitioner received after the filing of the instant petition on April 10, 2015. In October 2015, the Petitioner was recognized at [REDACTED] [REDACTED] awards as the winner in the arts and culture category. She is also a finalist for, and will be competing in, the 2016 [REDACTED] hosted by the [REDACTED] Eligibility must, however, be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). As a result, we may not consider these or any other accolades received after the date of the petition's filing.

The Petitioner highlights her position as a soloist with the [REDACTED] in 2000 and 2001. To demonstrate her success with the club, the Petitioner references a letter from [REDACTED] the [REDACTED] conductor during that time. [REDACTED] explains that the choir participated in several highly-rated international competitions that resulted in multiple prizes. He

² The letter refers to the [REDACTED] but we assume this to be a typographic error.

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refers to the choir's "legendary success." The Petitioner provides documentation showing that in 2000 and 2001, the choir won several awards at international choir competitions. While notable, these accomplishments occurred approximately 15 years ago at the collegiate level. The relevant regulations require that the Petitioner demonstrate sustained national or international acclaim. We consider these accomplishments in conjunction with the Petitioner's other accolades in determining whether the Petitioner meets the requirements for the benefit sought. In this case, the Petitioner's success as a college [REDACTED] soloist is relevant, but does not show the continued national or international acclaim necessary to establish that she is one of the small percentage at the top of the field.

The Petitioner provided several articles that reference her performances and work. She presented numerous entries from arts and leisure columns in the [REDACTED]. The articles generally give a description of performances and the authors' impressions of each. They mention the Petitioner's work and are complimentary. To demonstrate the influence of the publication, the Petitioner submitted a [REDACTED] entry stating that it is one of the [REDACTED] broadsheets in the country. Keeping in mind [REDACTED] limitations,³ our consideration of material from this source will vary depending on whether an entry's relevant information is corroborated, as well as the purpose for which it is presented. As with any submission, we must evaluate its probative value and credibility. *See Chawathe*, 25 I&N Dec. at 376. In this instance, the [REDACTED] article does not include a citation for the readership claimed. Without corroborating evidence, the Petitioner has not demonstrated the significance of a publication in the [REDACTED].

The Petitioner submitted three clippings from the [REDACTED]. One indicates that the Petitioner will be performing at a commemoration of the [REDACTED] of [REDACTED] death. The article focuses on [REDACTED]. Another contains a picture of the Petitioner and other performers at a [REDACTED] event. The last mentions her name as a singer with the [REDACTED]. The Petitioner provided graphics showing the [REDACTED] is the most widely read broadsheet in metro [REDACTED] with 40% of readership. The Petitioner also submitted [REDACTED] which mentioned her as a soprano performing at the [REDACTED]. Based on the copy provided on appeal, the source of the article is not clear. The Petitioner indicates the article is from the [REDACTED] the country's most widely read newspaper. Although these articles mention the Petitioner, she is not their focus. The entries indicate that the Petitioner is sufficiently talented that performance reviews mention her. Mere references to the Petitioner or her work, even if in a few major media outlets, do not necessarily indicate that she is part of that small percentage at the very top of her field.

A column in the [REDACTED] 2008, Filipino version of [REDACTED] focuses on the Petitioner and whether her move to [REDACTED] represents a "talent drain or a world pool of talent." The Petitioner

³ [REDACTED] is an online, open-source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. *See General Disclaimer*, [REDACTED] (August 10 2016, 1:05 PM), [REDACTED] General disclaimer; *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008).

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provided information on how to subscribe to this publication, but did not otherwise give details regarding its readership numbers or influence. Similarly, she submitted an article in [REDACTED] about her role as an ambassador of Filipino culture, but did not provide supporting information regarding the publication's influence. These articles might show that the Petitioner has received some attention from the field. Without more, however, these articles do not establish the necessary national or international acclaim. The record includes a handful of materials that briefly reference the Petitioner, and one article that offers more information on her and her work. This limited media coverage of the Petitioner is not indicative of someone who is among the best opera singers within or outside of the Philippines.

The record includes documentation showing the Petitioner's activities as a judge of the work of others in her field. She submitted a program for the [REDACTED] held on [REDACTED] 2005. The Petitioner did not, however, demonstrate the significance of her serving in this position. For example, she did not provide information regarding the prestige or renown of the competition, or the qualifications necessary for serving as one of its judges.

She also provided a brochure stating that she was a judge at the 2011 [REDACTED] sponsored by the [REDACTED] Assistant [REDACTED] the school's coordinator, states: "All the judges for the competition were chosen from top-caliber teachers, performers, and managers/promoters in the Philippine classical music scene." He does not, however, provide additional substantiation to demonstrate that the Petitioner's selection as a judge for this competition verifies her national or international acclaim. Conclusory statements are not sufficient to meet the Petitioner's burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). [REDACTED] also notes that the Petitioner taught master classes during which, for example, advanced students sang and she critiqued their work. Although these activities show that the Petitioner has received some recognition in her field, she has not demonstrated that her participation establishes her as one of the small percentage at the top of the field.

The Petitioner provided evidence that she performed as a featured singer in three [REDACTED] presented by the [REDACTED] and held in [REDACTED] in 2004, 2005, and 2006. [REDACTED] is a non-profit organization dedicated to preserving the [REDACTED]. The concert program states: "Because of its uniqueness, the [REDACTED] has earned prestige and made its mark on the international cultural scene so much so that many foreign artists and musicians write to express interest in performing at this annual musical event." The record does not contain, however, corroborating information regarding the prestige of the concert. For example, there is no evidence of media coverage of the event. The Petitioner also demonstrated that she sang in a featured performance at the [REDACTED]. Although she provided information indicating the [REDACTED] stature as a venue for cultural development, she did not explain why her performance there means she has risen to the very top of her field. She has not clarified how the organization chooses performers or if it only selects those who have achieved national or international acclaim.

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The Petitioner is featured as the soprano singer on a 2013 album called [REDACTED]. To commemorate the [REDACTED] anniversary of the birth of composer [REDACTED] the Petitioner and four others recorded some of his best works on CD. The evidence provided does not include information regarding the CD's sales, its popularity, or any influence it had on the field or the public. Without documentation showing the prestige of being selected to perform on the album, or the import of the performance, the Petitioner's participation does not demonstrate the acclaim or recognition necessary to establish eligibility.

On appeal, the Petitioner states that she has received a high level of remuneration for her services, which is demonstrative of extraordinary ability. She provides a printout from an unknown website showing that the average opera singer earns an annual salary of \$40,000 and receives between "\$450 to \$1,000+" per performance. The Petitioner submitted a letter from the vice president and artistic director of the [REDACTED] indicating that the Petitioner performed two concerts in 2004 for which she received 11,000 Philippine pesos each. The record does not include, however, information regarding the compensation of opera singers in the Philippines in 2004. Without a basis for comparison, we cannot conclude that this amount indicates extraordinary ability. She also provided a 2009 contract with [REDACTED] indicating she was paid \$3,000 for a performance, as well as a letter dated 2010 from [REDACTED] inviting her to be the featured soloist at an event on an unknown future date for total compensation of \$3,500. Although the level of remuneration for these last two events is higher than the average figure cited, they represent only two engagements over the course of her career. The Petitioner has not established that she regularly receives significantly high remuneration for services such that we can conclude she is one of the small percentage of individuals at the very top of her field of endeavor.

Lastly, the Petitioner highlights letters of recommendation. The first is from [REDACTED] a Filipino musician, composer, and conductor. [REDACTED] stated that he met the Petitioner when she took his music theory class at the [REDACTED]. He then worked with her more substantially at the [REDACTED] where he was the executive and artistic director. [REDACTED] cites the Petitioner's engagements at [REDACTED] and [REDACTED] as indicative of the level of her craft. As noted above, however, the Petitioner's performance at [REDACTED] as part of the [REDACTED] ceremony occurred after the filing of the instant petition.

Letters from [REDACTED] the president of [REDACTED] based [REDACTED] and [REDACTED] a concert tenor, emphasize the Petitioner's work as a singer and diction coach for the [REDACTED] rendition of [REDACTED] a Filipino opera, performed on [REDACTED] and [REDACTED] 2014. The Petitioner provided evidence showing that she transliterated the script and acted as a diction coach for cast members, some of whom did not speak the play's language, Tagalog. She also sang a supporting role in the opera. The Petitioner indicates that she has submitted a [REDACTED] review of the opera, however, the copy provided is illegible and does not appear to reference the Petitioner. She states that her transliteration of the script, the first Filipino opera at [REDACTED] should be considered an original contribution of major significance in the field, and therefore indicative of her extraordinary ability. The record does not show, however, that the Petitioner's transliteration had an impact beyond [REDACTED] production. Potential future uses are

noted; however, the Petitioner must demonstrate the actual present impact of her work rather than speculation about its future effect on the field. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49.

Although the evidence submitted shows the Petitioner is an active, professional opera singer, it does not establish that she has reached the very top of the field nationally or internationally, as required for this immigration benefit. While, the record illustrates that she has received some attention from the field, it does not establish that she has sustained national or international acclaim.

III. CONCLUSION

The Petitioner has provided the requisite initial evidence. She has not demonstrated in a final merits determination, however, that she possesses the extraordinary ability required by regulation. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-K-L-S-*, ID# 17485 (AAO Aug. 11, 2016)