



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

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

MATTER OF P-K-H-

DATE: JUNE 20, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a singer, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) § 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 the Petitioner did not submit sufficient evidence to meet at least three initial evidence criteria.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief indicating that the Director erred in finding she did not submit sufficient initial evidence.

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

I. LAW

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

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

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

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

- (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 USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

The Director found the Petitioner did not demonstrate extraordinary ability because she did not submit initial evidence meeting at least three of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director found the Petitioner satisfied only the criterion related to published material about her in professional or major trade publications or other major media related to her work in the field. *See* 8 C.F.R. § 204.5(h)(3)(iii). After a review of the evidence in the record, we agree that the Petitioner has met only this one initial evidence criterion. On appeal, the Petitioner reasserts that she has also met the three evidentiary criteria discussed below.

A. Initial evidence

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

In response to a request for evidence issued by the Director, the Petitioner provided a statement indicating that, "while it is true that the [Petitioner] herself has not received nationally or internationally recognized prizes or awards for excellence, many of the projects in which she has been involved have received such awards." She listed eight films and two television shows with which she was involved that received awards or nominations for awards. The Director found that the evidence provided did not meet this criterion because 1) the awards named are not in the

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Petitioner's field of endeavor, 2) the Petitioner did not receive the awards, and 3) the Petitioner did not establish the national or international recognition of the awards.

We first note that this criterion requires the receipt of an award and therefore requires more than a nomination. As a result, we will address only those awards that were actually received. The Petitioner provided printouts from the [REDACTED] to show her role as vocalist as a member of the productions' music departments. The printouts confirm the following awards:

- [REDACTED] — 2011 [REDACTED] awarded to [REDACTED] 2012 [REDACTED] awarded to [REDACTED]
- [REDACTED] — 2010 [REDACTED] for [REDACTED] awarded to [REDACTED]
- [REDACTED] — 2009 [REDACTED] Special Mention for Director;
- [REDACTED] — 2007 [REDACTED] awarded to [REDACTED] 2007 [REDACTED] 2008 awarded to [REDACTED] 2007 [REDACTED]
- [REDACTED] — 2005 [REDACTED] awarded to [REDACTED] 2004 [REDACTED] awarded to [REDACTED] and [REDACTED]
- [REDACTED] — 2003 [REDACTED] awarded to [REDACTED] and [REDACTED]

On appeal, the Petitioner states that the Director erred in concluding that her field of expertise is vocal music and that many of the awards, such as those for directing, do not relate to it. She specifically states that her field of expertise is "arts" and that all of the awards therefore fall within that category. The Petitioner refers to the statutory language indicating that, in order to demonstrate eligibility, a petitioner must demonstrate his or her extraordinary ability in the sciences, arts, education, business, or athletics, urging that the sciences, arts, education, business, or athletics are the potential fields of endeavor. *See* § 203(b)(1)(A)(i) of the Act.

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The Petitioner's proposed reading is not supported by the plain language of the relevant statute and regulations, by principles of construction, or logical policy. The statute states that an individual can have extraordinary ability in "the sciences, arts, education, business, or athletics" and that such ability is demonstrated through evidence that the individual's "achievements have been recognized in the field through extensive documentation." Section 203(b)(1)(A)(i) of the Act. The term field is not defined, and the Petitioner does not provide justification for interpreting "field" to be the broad areas of "the sciences, arts, education, business, or athletics."

In explaining why the Petitioner should be able to claim awards in seemingly different areas, she notes that "[o]ne artistic field cannot be easily separated from another there is invariably overlap and interplay in all aspects of art." The statement that "one artistic field cannot be easily separated from another," itself underscores that several different fields exist within the broader category of arts. This narrower reading of the term "field" is encouraged by the language used in a related regulation. Eligibility for this benefit can be demonstrated by establishing that an individual "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). If, as the Petitioner requests, we understood the term "field" to be defined in broad terms, petitioners would be forced to demonstrate that an individual had reached the top of the entire science world, the entire art world, or the entire world of sports, for example. We find that such a reading would impose too strict a standard. We have consistently employed a narrower reading of the term "field," which has been upheld in the courts. See *Kazarian*, 596 F.3d at 1122 (upholding our evaluation of the individual's contributions to the field of physics, not all of science); *Visinscaia*, 4 F.Supp.3d at 131-32 (upholding our evaluation of the individual's contributions to the field of dance, not all of athletics). The Petitioner does not claim to have expertise in the field of directing, producing, acting, script writing, music composition, or music production. As a result, we agree with the Director that the awards for work in these areas are not in the Petitioner's field of endeavor.

The Director further found that the awards listed in the petition were not received by the Petitioner, as required to satisfy this criterion. We agree with this finding. Most of the awards were either specifically given to other individuals or are for aspects of filmmaking with which the Petitioner has not demonstrated involvement, such as directing, acting, producing, and screenwriting. On appeal, the Petitioner states that, "the [D]irector erred in finding that since the award did not go directly to the [P]etitioner, it cannot be considered toward meeting this criterion." She does not provide an explanation for this statement. We first note that the plain language of this criterion requires that the individual of extraordinary ability receive the award. In addition, however, the Petitioner has not demonstrated that the awards named are sufficiently related to her work such that she can otherwise take credit for them. The one film which received an award specifically related to music is [REDACTED] which won [REDACTED] at the 2004 [REDACTED]. The second page of the film's [REDACTED] printout states that its music is by [REDACTED] and [REDACTED]. The Petitioner's name is found on the last page of the print-out under the listing for the music department, where she is credited with "additional vocals." Others credited under the music department include the executive soundtrack producer, the music engineer, and several musicians. Given the numerous other individuals that contributed to the film's soundtrack in significantly more

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involved roles, we cannot conclude that the Petitioner effectively received the award for [REDACTED] by performing additional vocals.

The Director also noted that the record does not contain information to show that the [REDACTED] award is nationally or internationally recognized. On appeal, the Petitioner does not provide additional information to establish recognition of this award. As a result, we agree that the Petitioner has not demonstrated that the [REDACTED] award is nationally or internationally recognized. On appeal, the Petitioner instead states that the Director erred by not considering other unspecified nominations and awards. As previously explained, this criterion requires the receipt of an award by the Petitioner. Evidence of awards given to others for different aspects of a production is not sufficient to meet its requirements.

Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In the denial, the Director found the Petitioner did not establish that her roles as a musical vocalist were leading or critical for the films or television shows cited. On appeal, the Petitioner challenges the Director's statements that she must show "the productions could not have been produced without [her] contributions" or that "[her] role was more leading or critical than others employed in similar positions for the projects." We agree with the Petitioner that this reasoning does not accurately state the regulation's requirements. We do find, however, that the Petitioner has not met her burden of proof in demonstrating that she performed in a leading or critical role.

A leading role should be apparent by its position in the organizational hierarchy and the role's matching duties. A critical role is apparent by its overall impact on the organization or establishment. Aside from taking issue with the Director's rationale for the finding, the Petitioner does not provide evidence or explanation to support a finding that she performed in a leading or critical role. As noted by the Director, the Petitioner submitted articles regarding the importance of music in film. Regardless, the Petitioner has not provided additional information to demonstrate the impact of her involvement in the music of these productions. The Petitioner's name is listed for "vocals" or "additional vocals," however, the record is otherwise silent regarding the extent of her involvement. Without more, the Petitioner has not shown she played leading or critical role in a film or television show.

The Petitioner also raises her participation in the music festival, [REDACTED]. She provided documentation characterizing the event as "[REDACTED]." The Director noted that the event poster listing the [REDACTED] performers has the Petitioner's name in smaller font than many of the other performers, suggesting she did not have a leading or critical role. On appeal, the Petitioner states that:

[She] should not be penalized just because "font size" on the poster indicated that she is perhaps not as famous as [other performers]. Her presence on the poster indicated that she has risen to the top few percentage points of artists in the world in this genre. The director

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should have acknowledged this fact and considered the evidence in the totality of the circumstances.

Here, the Petitioner argues that her participation in the festival should be considered as evidence of her extraordinary ability. Although such a consideration may be appropriate for a final merits determination, we must first evaluate whether the Petitioner has provided sufficient initial evidence to meet three of the regulatory criteria. The relevant question at this juncture is therefore whether the Petitioner has shown that she played a leading or critical role in the festival. Other than the poster, the Petitioner did not provided documentation regarding her relative position or importance to [REDACTED]. We decline to find that, merely by virtue of participating in the event, she necessarily played a leading or critical role. As a result, the Petitioner has not met her burden of proof to establish that she meets this criterion.

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

As evidence of commercial success, the Petitioner provided documentation regarding the box office sales attributable to several of the films for which she provided music vocals:

- [REDACTED] — \$14,586
- [REDACTED] — £199,259
- [REDACTED] — \$18,935,657
- [REDACTED] — \$74,655
- [REDACTED] — \$285,585
- [REDACTED] — \$30,143

The Petitioner did not submit documentation regarding the commercial success of these films other than Internet printouts listing the above box office returns. She did not provide information necessary to demonstrate that these returns represent commercial success as opposed to commercial failure, such as production, distribution, or promotional costs. Moreover, the Petitioner has not demonstrated that the box office returns represent her own commercial success. She did not indicate what she was paid to participate in the movie production, or that the commercial success is sufficiently related to her work to satisfy this criterion. We cannot equate a film's box office revenues to the Petitioner's commercial success without more details establishing that connection.

The Petitioner submitted other evidence of a music career in Poland. She did not, however, provide specific information regarding her record sales or other commercial success related to her music. Without more details, documentation generally referring to the Petitioner's musical accomplishments is not sufficient to meet the requirements of this criterion.

B. Summary

The documents submitted in support of extraordinary ability must show that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings in the context of whether or not the Petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) that the individual “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20 (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

III. CONCLUSION

The Petitioner has not provided the requisite initial evidence to establish extraordinary ability, as 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. In visa petition proceedings, 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 P-K-H-*, ID# 16855 (AAO June 20, 2016)