



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

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

MATTER OF E-Q-

DATE: MAY 9, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

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

The Director, Texas Service Center, denied the petition. The Director concluded the Petitioner submitted documentation that met only two of the initial evidence criteria, of which a Petitioner must satisfy at least three.

The matter is now before us on appeal. In his appeal, the Petitioner submits additional material and a brief. He indicates that he has satisfied at least three initial evidence criteria and has shown extraordinary ability as a dancer and choreographer.

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 provided documentation satisfying only two criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x), when meeting at least three is required. Upon *de novo* review, we find that the Petitioner has satisfied only two of the necessary regulatory criteria as a dancer. However, even if he had given sufficient initial evidence and demonstrated extraordinary ability as a dancer, the Petitioner has not shown he is coming to the United States to work in his area of expertise, as required by section 203(b)(1)(A)(ii) of the Act.

A. Extraordinary ability

1. Initial Evidence

Prior to this appeal, the Petitioner did not articulate which of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) he met. The criteria he claims on appeal are addressed below.

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

The Director addressed this criterion and noted that, although the Petitioner provided copies of certificates and photographs of trophies, he gave no information to show these awards are national or international, how these awards were given, or the caliber of individuals competing for the awards. On appeal, the Petitioner highlights the following five awards without discussing their significance:

- 1995 – a certificate indicating the Petitioner received the medal of [REDACTED] at the [REDACTED] amateur festival [REDACTED]
- 2011 – a diploma for taking part in an examination of a children's choreographic ensemble as choreographer of the ensemble [REDACTED]
- 2012 – a "deed" for taking part in a charity concert as choreographer for the same ensemble;
- 2013 – a diploma awarding the Petitioner the "big prize" for his role as choreographer of the same ensemble; and
- 2013 – a diploma awarding the Petitioner the title of [REDACTED] for successfully taking part in a folklore festival as choreographer of the same ensemble.

The Petitioner states that the Director failed to review these awards on their merits. Upon *de novo* review, however, we agree that the documentation submitted by the Petitioner does not satisfy this criterion. The plain regulatory language requires that the Petitioner show not only that he has won prizes or awards, but that these accolades are nationally or internationally recognized, and are awarded for excellence in the field of endeavor. It is the Petitioner's burden of proof to demonstrate that the material in the record satisfies the plain language of the regulation. Section 291 of the Act, 8 U.S.C. § 1361.

In this case, although the Petitioner provides copies of the above awards, he does not give the necessary context to establish either that they are nationally or internationally recognized, or that they are for excellence in either dance or choreography. The first award indicates that the Petitioner received the medal of [REDACTED] at a [REDACTED] amateur festival. The Petitioner did not explain the meaning of the title [REDACTED] how many similar designations were awarded, why they were awarded, who made the selection, or what selection criteria were used. Similarly, the record does not otherwise contain details regarding the festival or its recognition, either nationally or internationally. Without such background information, the Petitioner has not demonstrated that this award satisfies the criterion.

Both the 2011 and 2012 diplomas appear to be recognition of participation in two events as the choreographer of a children's dance group. The Petitioner did not provide information about the events in which he participated. In addition, the record does not suggest that these events were so selective in choosing participants such that a simple acknowledgement of participation is akin to a nationally or internationally recognized award for excellence. As a result, these diplomas do not satisfy this criterion.

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It is unclear whether the 2013 awards correspond to a single event. Regardless, the Petitioner again provided no information regarding either the events or the awards he received. The “big prize” title alone is not sufficient to establish that the award is nationally or internationally recognized. Without a description of the selection process or criteria used to choose the “big prize” winner, the Petitioner has also not corroborated that it was awarded for excellence in the field of endeavor. Due to the absence of background information regarding this and the other named awards, the Petitioner has not satisfied his burden of proof in meeting this criterion.

Documentation of the individual’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.

Although the Petitioner did not specifically address this criterion, the Director found the Petitioner satisfied it through evidence that he danced for [REDACTED]. Upon review, we find that the material relating to the Petitioner’s time with [REDACTED] is better analyzed under the criterion related to performing in a leading or critical role for organizations or establishments that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). We therefore will discuss these submissions under that criterion below.

As related specifically to this criterion, we find that, although dancing for [REDACTED] clearly requires talent, the Petitioner’s relationship with the troupe was that of an employee. As a result, we do not consider his involvement as membership in an association, but rather employment by a company. In addition, the Petitioner did not provide evidence regarding the process for becoming a dancer for [REDACTED] or other documentation to demonstrate that members must have outstanding achievements, as judged by recognized national or international experts in the field. Accordingly, his role with this troupe is not a qualifying membership in an association.

With respect to his union membership, the Petitioner submitted a letter from the [REDACTED] of the [REDACTED] indicated that the Petitioner has been a member of the [REDACTED] since 2007. The letter states: “The aim of the [REDACTED] is to promote by ascertained rule a revival and propaganda of the folk dance, esthetic education of the young generation, heritage of [REDACTED] folk, classical, ballroom and other nations’ dances based on the best traditions.” According to [REDACTED] membership requirements are as follows: “The honoured person in art and choreography has the right to join in [REDACTED]. He does not offer further explanation as to what an individual must accomplish in order to be considered an “honored person.” Furthermore, neither [REDACTED] letter nor the other material in the record provides information regarding who makes the determination regarding admittance to the organization. Without further evidence, the Petitioner has

¹ The Petitioner appears to refer to [REDACTED] interchangeably as the [REDACTED] the [REDACTED] and the [REDACTED]

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not shown that this membership requires outstanding achievements of its members, as judged by recognized national or international experts. As a result, the record does not establish that the Petitioner's membership in the [REDACTED] satisfies this criterion.

Published material about the individual in professional or major trade publications or other major media. The materials must relate to the individual'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.

This criterion was not previously claimed by the Petitioner or addressed by the Director. On appeal, the Petitioner states that he has satisfied this criterion with "affidavits which cite to major media publications regarding [REDACTED]. The Petitioner does not identify the specific affidavits or publications to which he refers. A review of all affidavits and reference letters in the record reveals that an affidavit from the [REDACTED] contains the following language:

Some of the world critics:

1. When people thought there were no miracles left, ensemble [sic] [REDACTED] came to the states [sic] and shocked us, (American newspaper [REDACTED] [.]
2. Ensemble [REDACTED] is a great phenomenon, which should be witnessed by everyone at least once in life. (French newspaper [REDACTED] [.]
3. [G]reatest dancers in the world, they are flying, creating wind on the stage (Australian newspaper [REDACTED] [, and]
4. "[REDACTED] creates magic and wonders with human bodies.[]" (American newspaper [REDACTED] year 2002)[.]

No other affidavits or letters discuss the publication of material about the Petitioner or [REDACTED]. The Petitioner did not provide copies of the articles cited in the affidavit, nor are the citations otherwise corroborated in the record. The regulation at 8 C.F.R § 103.2(b)(2) requires primary evidence unless the Petitioner shows that such documentation either does not exist or is unavailable. In this case, the Petitioner does not maintain that copies of the articles are unavailable.² See also *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) for the proposition that uncorroborated affirmations are insufficient).

Furthermore, we note that this criterion requires material about the Petitioner. An article that reports on a company or event generally is not sufficiently about a performer to meet this criterion. See, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). The Petitioner does not indicate that any of the articles listed refer specifically to him or his performance.

² The use of direct quotations in the letter suggests the articles were at least available for the author's examination.

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Lastly, the Petitioner does not provide information about the publications named in order to demonstrate that they are major media. For all of these reasons, the Petitioner has not submitted evidence that satisfies this criterion.

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

The Director found the Petitioner satisfied this criterion. Upon review of the record, we agree that the Petitioner has provided evidence of his work displayed in artistic exhibitions. Specifically, the Petitioner submitted posters and brochures confirming that he performed as a dancer and soloist at numerous [REDACTED] shows. As a result, the Petitioner has satisfied this criterion.

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

On appeal, the Petitioner states for the first time that he provided evidence "to show that he was an acclaimed solo ballet dancer and led the academy of [REDACTED] from 2001 through 2013." Though we agree that [REDACTED] is an organization with a distinguished reputation, the Petitioner has not given sufficient documentation to corroborate his 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 evident by its overall impact on the organization or establishment.

The Petitioner submitted a joint letter of recommendation from the two leaders of [REDACTED] General Director, and [REDACTED] Chief Choreographer. Their letter states that the Petitioner was a soloist dancer with the troupe until 2013 and that he is very talented and gifted. The letter does not otherwise contain specific information about the Petitioner's role in the ballet as being leading or critical. Although evidence indicates the Petitioner was a soloist for [REDACTED] it does not describe how many dancers [REDACTED] employs, how many of these are soloists, or whether the designation of soloist has meaning beyond signifying that an individual dances a more challenging part.

The Petitioner also provided a letter signed by numerous dancers from [REDACTED] The letter affirms that he was "a spine" of the group and that "most part[s] of our complicated programs are built on him." Though we acknowledge this opinion, the letter does not give context and reasoning to support its conclusions. The opinions of the Petitioner's references are not without weight; however, we are ultimately responsible for making the final determination regarding eligibility for the benefit sought. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). Thus, the content of references' statements and the basis of their opinion regarding the Petitioner's reputation are important considerations. Specifically, USCIS need not accept primarily conclusory affirmations. *1756, Inc. v. Att'y Gen. of the United States*, 745 F. Supp. 9, 15 (D.D.C. 1990). The letter also characterizes the Petitioner as "one of the best dancer[s] of contemporaneity," though no objective evidence in the record supports singling him out for such a label. The letter also indicates the Petitioner is "personally known" by the former presidents of Georgia and the United States, [REDACTED] and [REDACTED] in that he met the men after a [REDACTED] performance.

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Given the unsupported conclusions, the letter from the Petitioner's former colleagues does not provide sufficient reasoning underlying its statements regarding the Petitioner role for [REDACTED]. Accordingly, the Petitioner has not satisfied this criterion.

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

On appeal, the Petitioner provides a letter from [REDACTED] Director of [REDACTED]. The letter includes a list of a "few main concerts" between 1998 and 2013, some of which list a number of spectators. This criterion requires documentation of the Petitioner's commercial success shown, for example, by box office receipts. Although the letter refers to the number of viewers for certain tours, the record contains no corroboration of the tour dates or ticket sales. Notably, the Petitioner does not submit box office receipts, as required by the plain language of the statute, or similar evidence of attendance, such as reports in the media. In addition, while the criterion requires that the commercial success be related to the Petitioner, the record does not corroborate the Petitioner's participation in the specific concerts listed and, if he did perform, that his performance can be credited with the commercial success. For example, the record does not contain the promotional materials for the events to confirm whether he was prominently featured. For these reasons, the letter from [REDACTED] is not sufficient to establish the Petitioner's commercial success as a dancer.

2. Conclusion

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.

B. Continuing Work in the Area of Expertise

Even if the Petitioner had demonstrated that he possesses extraordinary ability, he has not shown that he seeks to enter the United States to continue to work in his area of expertise, as required under section 203(b)(1)(A)(ii) of the Act. The regulations indicate that, in order to meet this prong of the statute, a petitioner must present:

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[C]lear evidence that he or she is coming to the United States to continue to work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

Part 6 of the Form I-140 is entitled “Basic Information About the Proposed Employment” and requests details regarding a petitioner’s intended work. The Petitioner left this section of the form blank. He did not submit a personal statement regarding his intended future employment, an employment contract, or other materials regarding this requirement. The Director’s request for evidence (RFE) asked for items regarding the Petitioner’s intended employment and included specific examples of suitable documents. Despite this specific request, the Petitioner does not indicate, even on appeal, in what capacity he will work in the United States.

Based on the totality of the record, it is unclear whether the Petitioner intends to work in the United States as a dancer, a choreographer, or an instructor. The Petitioner did not submit sufficient initial evidence of extraordinary ability in any of these roles. The two satisfied criteria relate to the Petitioner’s experience as a dancer. The Petitioner’s filings suggest, however, that he has transitioned in his professional career from a dancer to an instructor and choreographer. The Petitioner’s “work book” indicates that he stopped dancing for ██████████ in 2013. On the Petitioner’s Form G-325, Biographic Information, he specified that his only employment since 2009 has been as a self-employed choreographer. A letter dated June 7, 2014, from ██████████, owner of ██████████ in ██████████ Pennsylvania, affirms that the Petitioner is the instructor for a children’s ██████████ dance program that takes place at the gym two nights per week.

In general, we consider dancing, choreographing, and instructing to be different areas of ability. As a result, even if the Petitioner were able to establish his extraordinary ability as a dancer, instructing or choreographing would not be considered within the same area of expertise. *See Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002). There are limited circumstances, however, in which we allow an individual to transition from one role to another and be considered within the same area of expertise. *See* Adjudicator’s Field Manual (AFM) ch. 22.2(i)(1)(C) (allowing a transition from athlete to coach in the case of recent acclaim as an athlete and evidence of coaching at the national level). In this case, however, the Petitioner has not demonstrated an overall pattern of sustained acclaim and extraordinary ability that extends to either his work as a choreographer or instructor, such that we might consider one of them to be within the same area of his expertise. *See id.*

Regarding his abilities as a choreographer, the letter from other ██████████ dancers suggests that the Petitioner helped with choreography for the troupe. The letter does not contain information or details regarding the Petitioner’s degree of involvement with the choreography process. In addition, we note that the troupe employs individuals solely dedicated to choreographing, as indicated by the reference letter from ██████████. The Petitioner provided documentation that he is a member of the ██████████ however, as stated above, he does not give

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information to show that such membership requires a particular level of skill or ability. Several of the diplomas the Petitioner has presented as awards appear to be for his work choreographing children's dance performances. Due to the lack of information regarding these certificates and the festivals at which they were given, however, these documents do not substantiate any particular level of ability attained by the Petitioner as a choreographer. Lastly, the Petitioner has given letters showing he has been employed in the United States teaching dance at [REDACTED]. The letter from students' parents expressing gratitude for the Petitioner's instruction does not confirm a pattern of sustained acclaim extending from the Petitioner's career as a dancer to instructing, as contemplated by the AFM. *See id.* As a result, the evidence does not reflect a sufficient nexus between dancing, choreography, and instructing to consider any of the two within the same area of expertise. For all of the above reasons, even if the Petitioner had established extraordinary ability as a dancer, he has not demonstrated his intent to continue working in his area of expertise.

III. CONCLUSION

The Petitioner has not provided the requisite initial evidence to establish extraordinary ability, as required by regulation. In addition, the Petitioner has not shown that he intends to work in the United States in his claimed area of expertise.

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, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of E-Q-*, ID# 16295 (AAO May 9, 2016)