U.S. Citizenship
and Immigration
Services

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

MATTER OF A-T-

DATE: NOV. 2, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a ballroom dancer and instructor, 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 of the Texas Service Center denied the petition. Specifically, the Director concluded that the Petitioner had satisfied only two of the regulatory criteria, of which a Petitioner must meet at least three.

The matter is now before us on appeal. In her appeal, the Petitioner submits additional documentation and a brief stating that she meets at least one additional criterion.

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 that 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) (including items such as awards, published material in certain media, and scholarly articles).

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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

II. ANALYSIS

The Petitioner is a ballroom dancer who participates in competitions and events in the United States and Europe and instructs students in her local area. As the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

The Director found that the Petitioner met the awards criterion under 8 C.F.R. § 204.5(h)(3)(i) based on her first place finish at the 2015 [redacted] her first place finish at the 2009 [redacted] and her second place finish at the 2008 [redacted] In addition, the Director determined that the Petitioner met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) based on her participation at the [redacted]

in Connecticut. The Petitioner has also demonstrated that her performances meet the criterion for display at artistic exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii). For instance, the Petitioner performed as part of a dancing tour with at the in Connecticut. Accordingly, she has met at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, that she has sustained national or international acclaim, and that her achievements have been recognized in the field through extensive documentation, making her one of the small percentage who has risen to the very top of the field of endeavor. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. We will consider all of the Petitioner's evidence, including documentation submitted under the three prongs that she met as well as documentation submitted under additional prongs. In this matter, we determine that the Petitioner has not shown her eligibility.

The record indicates that the Petitioner has successfully competed at national and international dancesport championships. As previously discussed, the Petitioner placed first at the 2015 and the 2009 as well as second at the 2008 The Petitioner also documented her second place finish at the 2012 third place finish at the 2012 and first place finish at the 2009 Although the Petitioner has received nationally or internationally recognized dancesport awards, she did not demonstrate that such achievements have garnered her sustained national or international acclaim and a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Under the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner documented her membership with the and the The Petitioner's evidence, however, does not demonstrate that outstanding achievements are required for membership with or Instead, the documentation indicates that individuals are able to register with as opposed to being granted membership based on outstanding achievements, as judged by recognized national or international experts. Regarding although the registration requirements provide for minimum standards such as residency, education (adjudicators), and competition experience (national judges), they are not indicative of expertly evaluated outstanding achievements. With regard to the evidence reflects full and

[1] The Petitioner indicated that she won additional dancing awards; however, she did not document the record of proceedings.

probationary membership requirements for organizations who wish to join the such as proof of existence and length of service, rather than the membership requirements for individuals. Therefore, the Petitioner did not establish that the membership requirements are tantamount to outstanding achievements, so as to reflect that "her achievements have been recognized in the field of expertise." *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Regarding the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner offered various materials that mention her as a competitor but are not published material about her. Specifically, the screenshots and articles simply list the Petitioner's finishes along with the placements of the other dancers at competitions. Furthermore, the evidence mostly contains photographs of the Petitioner with captions reflecting advertisements for shows instead of published material discussing her work. In addition, the Petitioner presented blurbs for dance shows in local publications such as the and rather than articles that feature her in professional or major trade publications or other major media. The record does contain a 2012 article from the that was indicative of published material about the Petitioner relating to her work; however, the Petitioner did not establish that the is a professional or major trade publication or other major medium. Nevertheless, a single article published approximately three years prior to the filing of the petition is not consistent with the sustained national or international acclaim for this highly restrictive classification.

In regards to the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv), the Petitioner established that at time of the filing of her petition, she judged dancers from studios in the northeastern region of the United States in the in Connecticut in 2015. In addition, the Petitioner served as a judge at the in New York in 2014. An evaluation of the significance of the Petitioner's judging experience is acceptable under *Kazarian,* 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. Without evidence that sets the Petitioner apart from others in her field, such as evidence that she has served as a judge of acclaimed ballroom dancers or of a prestigious national or international competition rather than students or amateurs at local dance studios, the record does not demonstrate that she "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

Under the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), the Petitioner discussed her education credentials from and referred to a letter from national examiner for as evidence of her combined skills as a dancer and trainer. Although states that the Petitioner "is most highly trained in all four styles of ballroom dancing," she did not explain how she has used her training to influence the ballroom dancing or dancesport field in a significant way. Having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the Petitioner has already used those unique skills to impact the field, so as to demonstrate original contributions of major significance. In addition, indicates that

she is personally training the Petitioner to hopefully become a and examiner, and that "[s]he would be a great asset to our industry." Given the descriptions in terms of future applicability and determinations that may occur at a later date, the actual impact on the field has yet to be determined. The Petitioner did not establish how her current training to become a and examiner has been of major significance in the field or how the evidence under this criterion shows sustained national or international acclaim.

Moreover, the Petitioner indicated that she has taught three students who have won various dancesport competitions. The record indicates that her students have won competitions, such as the 2015 The Petitioner, however, has not demonstrated how those awards are original contributions of major significance to the field; rather the record indicates that the Petitioner's teaching and impact were limited to her students. The Petitioner did not show that "her achievements have been recognized in the field of expertise." *See* 8 C.F.R. § 204.5(h)(3).

Regarding the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), the Petitioner indicated that she wrote two treatises regarding the teaching of dancesport that were published by universities in Russia. The Petitioner presented an uncertified English language translation for the first page of a document entitled, ' but did not submit a full, English language translation for the remaining parts. In addition, the Petitioner submitted an uncertified translation of a cover page entitled, without providing a copy and translation of the entire document. Scholarly articles are generally written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. Because she did not provide full and certified translations, the submitted articles have diminished probative value.[2] The Petitioner did not show that her papers were peer-reviewed, contain any references to sources, or were otherwise considered "scholarly," and she did not demonstrate that her work was published in professional or major trade publications or other major media. Regardless, the record does not contain documentary evidence reflecting the citation of her papers. Citation history or other evidence of the impact of the petitioner's articles is often evaluated when determining significance to the field. For example, numerous independent citations for an article authored by the Petitioner would provide solid evidence that others have been influenced by her work and are familiar with it. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. On the other hand, few or no citations of an article authored her may indicate that her work has gone largely unnoticed by his field. Here, the Petitioner did not demonstrate that her papers have attracted a level of interest in her field commensurate with sustained national or international acclaim.

As noted above, the Petitioner provided evidence satisfying the display criterion under 8 C.F.R. § 204.5(h)(3)(vii). As it is expected that a dancer, such as the Petitioner, would perform in a dance

[2] The regulation at 8 C.F.R. § 103.2(b)(3) requires that any foreign language document must accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

setting at festivals, exhibitions, and other events, we will evaluate the extent to which the display of her work is reflective of acclaim consistent with this highly restrictive classification. The record reflects that the Petitioner has performed at local exhibitions, including venues such as the in Connecticut; in Connecticut; and in New York. The Petitioner did not establish that these are considered prestigious or popular venues, or that her exhibitions garnered attention in a manner consistent with sustained national or international acclaim. Further, the petitioner did not demonstrate that her performances brought praise from critics, drew record crowds, or raised attendance. Without evidence distinguishing the Petitioner's shows from others in her field, she has not shown that she "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

In summary, the Petitioner's achievements in the aggregate confirm that she is a talented dancer. She has performed in front of audiences, received awards, and judged other dancers. Her achievements, however, do not demonstrate that she has sustained national or international acclaim or that she is one of the small percentage at the very top of her field of endeavor.

C. O-1 Nonimmigrant Status

We note the record of proceedings reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.,* 724 F. Supp. at 1103. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that she is an individual of extraordinary ability. A review of the record in the aggregate does not confirm that she has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. She, therefore, has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

For the above reasons, the Petitioner has not met her 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).

ORDER: The appeal is dismissed.

Cite as *Matter of A-T-*, ID# 10139 (AAO Nov. 2, 2016)