



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

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

MATTER OF K-K-C-

DATE: NOV. 29, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an actress and playwright, 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 Nebraska Service Center denied the petition. The Director concluded that the Petitioner met only two of the regulatory criteria, of which she must satisfy at least three.

The matter is now before us on appeal. In her appeal, the Petitioner submits case law and a policy memorandum. She maintains that the Director erred by imposing a novel evidentiary requirement that does not appear in the regulation and by giving insufficient weight to expert letters.

Upon *de novo* review, we will sustain 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

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(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) (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 stage actress who has performed in a leading role at the national level in her native Uganda. She performed her one-woman show at the [REDACTED] in South Africa and at a [REDACTED] event in [REDACTED]. She obtained her Master of Fine Arts at the [REDACTED] in [REDACTED]. She submitted evidence of an award, published material about her shows and herself, and several reference letters. The Director concluded that the Petitioner had satisfied the published material and display at artistic exhibitions or showcases criteria,¹ but no other criterion.

On appeal, the Petitioner maintains that the Director imposed requirements not found within the awards criterion to exclude her award solely on the basis of its age restriction. The Petitioner also states that the Director did not afford sufficient weight to the opinions of the references. In response to our request for additional evidence (RFE), the Petitioner submits new information about the

¹ 8 C.F.R. § 204.5(h)(3)(iii), (vii).

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entities for which she has performed in a leading or critical role and information about her proposed employment in the United States. For the reasons discussed below, we find that the Petitioner has satisfied a third criterion. We further conclude that the evidence in the aggregate demonstrates her national or international acclaim.

A. Initial Evidence

At the outset, the record supports the Director's findings regarding the published material and display criteria. Many of the items are about shows in which the Petitioner appeared, and while she did not corroborate that all of the media is major, the record does contain some articles that are about her, relating to her work, published in major media. For example, the article, [REDACTED] appeared in the [REDACTED]. The Petitioner supplied information from two Internet sources verifying that the magazine is a major media publication in Uganda, thus satisfying the published material in major media criterion.² In addition, the Petitioner performed at [REDACTED] in South Africa; she performed her solo show [REDACTED] in 2010 and her other solo show [REDACTED] in 2013. The coverage in [REDACTED] the festival's official publication, confirms that both shows were primarily the Petitioner's work. Accordingly, these events constitute the display of her work at an artistic showcase or exhibition.³

Finally, we consider whether the Petitioner meets a third criterion. The Director did not consider whether she had performed in a leading or critical role for an organization or establishment with a distinguished reputation.⁴ In 2012, the Petitioner performed the lead role of [REDACTED] in [REDACTED] at the [REDACTED]. The review of this production reveals it was "one of the biggest budget productions in Uganda . . . thanks to sponsorship from [REDACTED] and [REDACTED] among others." This role constitutes a leading role for the organization that produced the show and the record establishes the distinguished reputation of the producers. In response to our RFE, the Petitioner documents that the creative advisor, [REDACTED] previously received a [REDACTED] in Drama for [REDACTED]. A review of the production at [REDACTED] characterizes the playwright, [REDACTED] as an "[a]cclaimed film don," and the director, [REDACTED] as an "award-winning American filmmaker." All of this information confirms that the show's production team enjoyed a distinguished reputation. As the Petitioner meets a third criterion, we now turn to an analysis of the totality of the evidence.

B. Final Merits Determination

In the final merits determination we consider the totality of the record to determine if a petitioner has established, 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

² 8 C.F.R. § 204.5(h)(3)(iii).

³ 8 C.F.R. § 204.5(h)(3)(vii).

⁴ 8 C.F.R. § 204.5(h)(3)(viii).

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documentation,⁵ making her one of the small percentage who has risen to the very top of the field of endeavor. In our analysis, we first discuss and consider the foreign national's accomplishments as a framework to perform an overall, final determination. We then weigh all of the filings together to determine if her successes are sufficient to demonstrate that she has extraordinary ability in her field.⁶

While it is inherent to the performing arts to be reviewed in the media, the Petitioner is the subject of several articles, including at least one in major media. The articles favorably evaluate her work. This level of media coverage is consistent with national or international acclaim.

Similarly, it is inherent to the performing arts to perform; not every production appearance is indicative of or consistent with national acclaim. The Petitioner, however, a native of Uganda, displayed her writing product and acting skills at [REDACTED] in South Africa. [REDACTED] artistic director of the festival, confirms that there are limited spots and "a stringent jury process." This level of exhibiting her work is commensurate with a performing artist of extraordinary ability.

While not addressed by the Director, we also find the nature of the Petitioner's roles notable. In addition to performing the lead role in [REDACTED] which debuted in [REDACTED] and [REDACTED] before opening at [REDACTED] she also played an important role in [REDACTED] at the [REDACTED] in [REDACTED] a theatre that has received a [REDACTED] for best regional theater. Performing at this level is consistent with national or international acclaim.

Finally, as the Petitioner meets three other criteria, we will consider the letters in our final analysis independently of whether they identify particular contributions and the impact on the field. [REDACTED] former executive director at the [REDACTED] describes the many roles the Petitioner performed there, concluding that her skill "is at the highest level in the field." Specifically, she "has a wide range of credits to her resume and has performed in several countries internationally to this point in time, performing in some eighteen different productions . . . both inside and outside the United States." [REDACTED] an actor and director who worked with the Petitioner at the [REDACTED] affirms that the Petitioner "has been acclaimed widely in her native country and without doubt has become one of Uganda's best and most renowned performers at this time." [REDACTED] curator and producer at the [REDACTED] states that the Petitioner "has reached the top small percentage of actresses in the field today, including in Uganda, in Africa, and internationally." Merely repeating the language of the statute or regulations does not satisfy a petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr*

⁵ While the statute requires extensive documentation, eligibility is to be determined not by the quantity of the filings alone but by their quality. *Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). We "examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence." *Id.*

⁶ See § 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.

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Associates, Inc. v. Meissner, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory statements. *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). Nevertheless, for the reasons discussed above, the record sufficiently corroborates these assessments of the Petitioner's standing in the field

The Petitioner has been featured prominently in the media, displayed two of her one-woman shows at a major theater festival, and appeared in leading roles, including one at the [REDACTED]. The reviews in the media and from her references confirm her overall talent and acclaim within the field. Considering the totality of this evidence, the Petitioner has demonstrated her eligibility.

III. CONCLUSION

The Petitioner submitted the requisite initial evidence and confirmed her extraordinary ability when considered in a final merits decision. Section 203(b)(1)(A)(i) of the Act. By demonstrating that she seeks to continue to work in her area of extraordinary ability, and there being no indication otherwise, we are satisfied that the Petitioner's entry will substantially benefit prospectively the United States. Section 203(b)(1)(A)(iii) of the Act. Therefore, she has met the burden of proof necessary to establish eligibility for the benefit sought. Sections 203(b)(1)(A), 291 of the Act.

ORDER: The appeal is sustained.

Cite as *Matter of K-K-C-*, ID# 127206 (AAO Nov. 29, 2016)