



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

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

MATTER OF A-L-P-

DATE: SEPT. 15, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a performer 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 classification makes visas available to foreign nationals 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, concluding that the Petitioner had not provided documentation satisfying the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

The matter is now before us on appeal. In her appeal, the Petitioner submits additional evidence, and argues that she meets the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii).

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 –

- (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,

(b)(6)

Matter of A-L-P-

(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 her achievements in the field through a one-time achievement (that is a major, internationally recognized award). If she does not submit this documentation, then she must provide sufficient qualifying evidence that meets at least three of the ten criteria 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 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

A. Evidentiary Criteria

In this case, the Petitioner has not shown that she is the recipient of a qualifying award at a level similar to that of an Oscar from the Academy of Motion Picture Arts and Sciences. As such, she must provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director found that the Petitioner met the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii) through submission of a blog about her posted on the website of the [REDACTED]

In addition, the Director determined that the Petitioner met the judge of the work of others criterion at 8 C.F.R. § 204.5(h)(3)(iv) based on her participation in the [REDACTED] as an adjudicator of young dance performers ages [REDACTED] to [REDACTED]. The Petitioner has also demonstrated that her performances and choreography meet the criterion for display at artistic

Matter of A-L-P-

exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii). For instance, the Petitioner has appeared on stage as a cast member in off-Broadway productions. 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 conduct a final merits determination. Specifically, we evaluate whether the Petitioner 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. In this matter, we determine that the Petitioner has not shown her eligibility.

The awards claimed under 8 C.F.R. § 204.5(h)(3)(i) do not indicate national or international acclaim for the Petitioner, nor reveal a high level of recognition for her work as a performer or choreographer. For example, the Petitioner indicated that [REDACTED] a short film in which she choreographed a bowling alley dance sequence, received an [REDACTED] for [REDACTED] in 2013. While an [REDACTED] is an internationally recognized award, the Petitioner has not shown she was the recipient of this award. Rather, [REDACTED] director, writer, and main character, received the award, according to the listing from [REDACTED] submitted by the Petitioner. She also submitted a list of various international film festival awards won by [REDACTED] and its subsequent feature length production [REDACTED] but there is no evidence showing that the awards were presented to the Petitioner for her choreography rather than to [REDACTED] for his direction, writing, and acting. As such, the [REDACTED] and film festival awards presented to [REDACTED] for [REDACTED] and [REDACTED] are not evidence of the Petitioner's receipt of nationally or internationally recognized awards for her excellence in choreography or performance, or evidence of her acclaim at the very top of the field.

At the [REDACTED] in 2013, the Petitioner received an [REDACTED] for choreographing [REDACTED]. The Petitioner provided a hand-written award certificate, and an article entitled [REDACTED] Announces [REDACTED] that was posted at [REDACTED]. The aforementioned article listed the Petitioner's name, and indicated that out of "185 entries" in the festival more than 30 received [REDACTED]. There are no readership statistics for the article or other evidence showing that inclusion on a list of numerous [REDACTED] winners at [REDACTED] is commensurate with national or international recognition, and being one of the small percentage who has risen to the very top of the field.

In addition, the Petitioner submitted information about [REDACTED] from various other websites, but none of the articles mention her [REDACTED] in choreography or explain its significance

(b)(6)

Matter of A-L-P-

in the performing arts. The burden is on the Petitioner to demonstrate the level of recognition and achievement associated with her particular award. An August 2014 article in [REDACTED] announced the upcoming 2014 [REDACTED] but noted that “quantity does always equal quality” in terms of the festival’s participating performers. In addition, the Petitioner submitted articles and blogs promoting or mentioning the festival from the websites of the [REDACTED] and [REDACTED]. The article available on [REDACTED] website, [REDACTED] listed [REDACTED] and explained the fringe festival concept: “Fringes are generally distinguished by short, unconventional performances, low-cost tickets and a large share of ticket sales returned to artists. Many open their stages to amateurs as well as seasoned acts.” A quote in the [REDACTED] from [REDACTED] producing artistic director indicated that her festival adjudicators “will decline someone who doesn’t need this opportunity. There are a lot of recognizable names that have come across my desk, and it’s certainly not that the work wasn’t good, but if you have opportunity elsewhere, then you probably don’t need one of our slots.” While the preceding articles offer information about the [REDACTED] festival, they do not mention the Petitioner’s [REDACTED] in choreography or establish that her award has been recognized at a level commensurate with a nationally or internationally recognized award for excellence in the performing arts.

At the 2012 [REDACTED] the Petitioner received the [REDACTED] award for [REDACTED]. She submitted the award ceremony event program, a photograph of her with the award, and information about the [REDACTED] from the organizer’s website at [REDACTED]. In addition, while the Petitioner provided articles from [REDACTED] and [REDACTED] mentioning or promoting the [REDACTED] and its award gala, there is no objective documentation reflecting their online readership. The submitted articles describe [REDACTED] as [REDACTED] but there is no documentary evidence demonstrating that the award ceremony has a significant national or international following. The Petitioner has not established that her [REDACTED] award has commanded a level of recognition indicative of a nationally or internationally recognized prize or award for excellence in the field. Nor has she demonstrated that the award elevates her to the very top of the performing arts field.

With respect to published material about the Petitioner, the Director determined that only one article met the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which provides: “Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material” The record contains a blog post from [REDACTED] written by [REDACTED] about the Petitioner entitled [REDACTED] but the date of the blog post was not identified as required by the plain language of the regulatory criterion. The Petitioner also submitted a [REDACTED] media release stating that the publication “has 46 million monthly U.S. unique visitors” and that its website “has over 50,000 bloggers – from politicians, students and celebrities to academics, parents and policy experts – who contribute in real time on the subjects they are most passionate about.” While the [REDACTED] is a form of major media, there are no readership statistics for [REDACTED].

(b)(6)

Matter of A-L-P-

blog showing that her coverage of the Petitioner is an indicator of sustained national or international acclaim in the performing arts. Furthermore, we cannot conclude that a single blog article written about the Petitioner over the span of her career sets her apart from almost all other actresses, dancers, and choreographers in the performing arts field.

None of the remaining articles submitted under 8 C.F.R. § 204.5(h)(3)(iii) were about the Petitioner and in major media. She provided various online reviews of [REDACTED] but they do not discuss the Petitioner. For example, the movie reviews of [REDACTED] in [REDACTED] and the [REDACTED] focus on [REDACTED] and the acting cast. In addition, the Petitioner offered reviews of various theatrical productions in which she participated, but they are about the shows and not the Petitioner. The plain language of the regulatory criterion, however, requires “published material about the alien.” Articles that are not about the Petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). Accordingly, the articles provided under 8 C.F.R. § 204.5(h)(3)(iii) do not exhibit national or international acclaim for the Petitioner, or elevate her to the very top of the field.

Regarding the Petitioner’s participation as judge of the work of others under 8 C.F.R. § 204.5(h)(3)(iv), she submitted a March 2009 adjudicator “Contract for Service” for the [REDACTED] (Canada) reflecting compensation of “\$175 per session.” In addition, she provided a list of 11 schools that participated in the [REDACTED] and an adjudicator schedule reflecting that she evaluated dance students ages 6 - 18. There is no supporting evidence demonstrating the national or international reputation of this local youth dance festival. The Petitioner has not established that adjudicating student dancers from 11 [REDACTED] schools is indicative of her national or international acclaim as a choreographer or performer.

The Petitioner offered two adjudication agreements with the organizers of the [REDACTED] dance tour competition for two locations in [REDACTED] reflecting “a fee of \$30/hr.” The Petitioner also provided a February 2015 letter from the director of [REDACTED] stating that she “has previously been hired for contract work” and “fully completed her obligation.” The aforementioned adjudication agreements, purportedly from a representative of [REDACTED] were unsigned and thus of limited evidentiary value. Competition information submitted from the [REDACTED] website stated: “Every dancer receives an award and walks away feeling like a winner regardless of overall placement Each location is planned with family scheduling in mind.” Without evidence showing the national or international stature of the [REDACTED] youth dance competitions in [REDACTED] or documentation reflecting the Petitioner was chosen because of her renown in the field, we cannot conclude that her service as an adjudicator was reflective of sustained national or international acclaim at the very top of the field.

The record included a letter to the Petitioner from the owners of [REDACTED] dated March 9, 2007, but the letter was not signed. The letter stated: “[W]e are very excited to confirm that you have been selected to adjudicate at the upcoming [REDACTED] competition. The competition will take place Fri. May 12th, through Sunday May 14th, 2006, held at [REDACTED] Ontario.” The date of the letter, March 9, 2007,

(b)(6)

Matter of A-L-P-

is not consistent with the mention of an “upcoming” competition in May 2006. Despite the Director having informed the Petitioner of this inconsistency in the decision, she has not resolved the issue with independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Regardless, as there is no documentary evidence showing the prestige of the [REDACTED] competition, the Petitioner has not established that her participation as an adjudicator was commensurate with national or international acclaim at the very top of the field.

With respect to display of the Petitioner’s work at artistic exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii), she did not contest any of the Director’s findings for the criterion in her appeal. The Petitioner previously submitted documentation of her performances or choreography at venues such as the [REDACTED] at [REDACTED] and [REDACTED]

While the submitted documentation shows that the Petitioner acted, danced, or choreographed for various stage performances, there is no documentary evidence demonstrating that her work resulted in sustained national or international acclaim or recognition. For example, starring in or choreographing a commercially successful Broadway show generally offers a higher level of distinction than performances in off-Broadway or community theater productions. Without evidence distinguishing the Petitioner’s stage appearances and choreography from almost all others in her field, she has not shown that she has risen to the very top of the performing arts field.

Regarding the Petitioner’s performance in a leading or critical role for organizations with a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(viii), the appeal brief mentions her role as a choreographer for [REDACTED] production company, [REDACTED] which produced the Oscar winning short film [REDACTED] and its feature length version [REDACTED]. While the Petitioner choreographed the same bowling alley dance sequence used in both films and [REDACTED] attested that her work was critical to [REDACTED] success, we cannot conclude that her work on this one dance scene was indicative of sustained national or international acclaim as a choreographer. The letters of support from [REDACTED] and [REDACTED] cofounder and producer, do not state that the Petitioner has worked on any other projects for their company. Although the Petitioner may have performed in an important role during filming of the dance sequence, she has not established that her role was leading or critical to [REDACTED] beyond that project.

The Petitioner’s appellate submission includes organizational charts for [REDACTED] and [REDACTED] but the charts were apparently prepared by the Petitioner in support of her appeal. There is no evidence that the charts were created or distributed by representatives of the aforementioned organizations. Regardless, the charts alone are not sufficient to demonstrate that the Petitioner’s roles for the organizations were leading or critical, and that the organizations had a distinguished reputation.

She also submits various letters of support from her teachers, employers, and project collaborators. For example, [REDACTED] a teacher and director at the [REDACTED] in New York, mentions that the Petitioner “has been a student for several terms now in [his] acting classes” and that he directed her lead acting in the play [REDACTED] in 2015 at the [REDACTED]. In addition, [REDACTED] a member

Matter of A-L-P-

of the Board of Directors of [REDACTED] describes the Petitioner's leading role in [REDACTED] during the 2015 season. Furthermore, [REDACTED] executive and artistic director at [REDACTED] and [REDACTED] a theatre and opera director at [REDACTED] both discuss her work as a choreographer in 2015 for [REDACTED] "an exploratory lab production funded by the [REDACTED] Lastly, [REDACTED] an actor and television executive, states that he co-starred with the Petitioner in [REDACTED] at the [REDACTED] in 2015, and offers praise for her recent work on [REDACTED] The Petitioner's acting in [REDACTED] and choreography for [REDACTED] post-date the filing the Form I-140, Immigrant Petition for Alien Worker, on October 14, 2014. Eligibility must 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'I Comm'r 1971). Accordingly, we cannot consider any acting or choreography roles performed after October 14, 2014, the date the petition was filed, as evidence to establish the Petitioner's eligibility at the time of filing. Regardless, her activities with the aforementioned productions do not establish that she worked in a leading or critical role for [REDACTED] and [REDACTED] in a manner similar to that of their boards of directors, faculty, or managerial staff.

[REDACTED] headmaster at the [REDACTED] boarding school, indicates that the Petitioner has choreographed four productions for his school "for anywhere from 20-30 students" and that "her dances are always creative, memorable, and exciting." While the Petitioner may have played an essential role for the school's productions of [REDACTED] and [REDACTED] there is no evidence demonstrating that her position as choreographer was leading or critical for the [REDACTED] such as those who serve on its faculty and administration. Furthermore, there is no supporting documentation showing that the school or its theatrical productions have a distinguished reputation in the performing arts.

[REDACTED] an actress, writer, producer, and performing arts educator, notes that she hired the Petitioner to choreograph a performance piece at the [REDACTED] in [REDACTED] in February 2016. Again, as the Petitioner's work occurred after the date the Form I-140 was filed, her role as choreographer for [REDACTED] performance in 2016 does not establish eligibility at the time of filing.

The Petitioner previously claimed that she performed in a leading or critical role for [REDACTED] [REDACTED] and at least 20 other organizations. In his decision, the Director mentioned several of the preceding organizations and determined that the record did not indicate that the Petitioner's role for them was leading or critical. In the appeal brief, the Petitioner mentions only her role for [REDACTED] and does not offer any arguments concerning the other organizations, her role for them, and their reputations. The documentation of record does not differentiate the Petitioner's role from the other actors, dancers, choreographers, educators, organizers, managers, and staff so as to demonstrate her leading role, and does not reflect that she contributed to the organizations in a way that was significant to their success or standing, so as to demonstrate her critical role. The submitted evidence for the Petitioner's roles and organizations does not substantiate her sustained national or international acclaim, and is not indicative of her status as being among the very top of the field.

In summary, the Petitioner's achievements in the aggregate confirm that she is a talented dancer, actress, and choreographer. She has worked on a number of productions and gained the respect of her educators, employers, cast members, and artistic collaborators, who believe she is capable of contributing to the U.S. theatre and film industries, and to the performing arts field. Her achievements at this stage of her career, however, do not demonstrate that she has sustained national or international acclaim or is already one of the small percentage at the very top of her field of endeavor.

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.

The burden is on the Petitioner to show 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of A-L-P-*, ID# 10864 (AAO Sept. 15, 2016)