



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

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

MATTER OF P-A-

DATE: APR. 10, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a sculptor, 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, concluding that the Petitioner had satisfied only one of the initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits documentation and a brief, stating that she meets at least three criteria.

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 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 it fulfills the required number of criteria, is 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, we will determine whether the totality of the record shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor.

II. ANALYSIS

The Petitioner is a sculptor who has displayed her artwork at exhibitions and events in various countries. Because 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). In denying the petition, the Director found that the Petitioner met only the display criterion at 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains that she also meets the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), and the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v).¹ We have reviewed all of the evidence in the record, and it does not support a finding that the Petitioner meets at least three criteria.

¹ Although she previously claimed eligibility for the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), on appeal the Petitioner states that she "concedes that the evidence she submitted did not satisfy this criterion." Accordingly, we will not address this criterion in this decision.

A. Evidentiary Criteria

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner offered a [REDACTED] from the [REDACTED]. She did not, however, support the record with evidence that her certificate is nationally or internationally recognized for excellence in the field. The Petitioner's receipt of a prize or award is insufficient to meet the plain language of this regulatory criterion without documentation establishing its national or international recognition for excellence by the field.

In addition, the Petitioner provided screenshots indicating that she was on the shortlist of over 24 artists being considered for the 2011 [REDACTED]. She did not, however, establish that she received an award or prize from the competition, and did not demonstrate that it is nationally or internationally recognized for excellence.

Further, the Petitioner presented a certificate from the [REDACTED] reflecting that she received an [REDACTED] for her work, [REDACTED]. The record contains a letter from [REDACTED] secretary general for [REDACTED] who described the selection criteria, jury composition, and [REDACTED] reputation. [REDACTED] also indicated that the Petitioner's art piece received an honorable mention due to its "outstanding artistic quality" and its selection to the academy's permanent collection. The Petitioner did not offer independent, objective evidence showing that an honorable mention by [REDACTED] is a nationally or internationally recognized prize or award for excellence.

Finally, the Petitioner submitted a certificate from the [REDACTED] indicating that her sketch and model have been approved by the selection committee, along with a partial letter reflecting that "[t]he international jury selected your sculpture as the [blank] winner from among the 20 works created by artists who participated in the [REDACTED]. A letter from [REDACTED] art critic and panelist at [REDACTED] states the Petitioner received an award but does not identify what award she won. The Petitioner did provide a [REDACTED] newspaper article indicating that she "received [REDACTED] prize" at [REDACTED]. Although [REDACTED] stated that [REDACTED] "is a major international art award that attracts global competition," [REDACTED] is a symposium and it is unclear as to whether he meant that acceptance to present work at [REDACTED] is a major award or that a prize from [REDACTED] is a major award. Regardless, the Petitioner has not offered sufficient documentation to establish that her [REDACTED] prize constitutes a nationally or internationally recognized prize or award for excellence in the field. Accordingly, the Petitioner has not shown that she meets this criterion.

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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, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner submitted a transcript of her [REDACTED] interview, entitled [REDACTED] [REDACTED] which was published on [REDACTED] and she provided documentation showing that it constitutes major media. Accordingly, the Petitioner has demonstrated that she meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner contends that she presented certificates of honor to support her claim of original contributions of major significance in the field. A review of the record reflects that she submitted honor awards that: confirm her artwork was accepted and exhibited by the [REDACTED] [REDACTED] acknowledge her partnership at the [REDACTED] and recognize her artwork at the [REDACTED]. In addition, she provided a [REDACTED] for her attendance at the [REDACTED]. Furthermore, the Petitioner offered the previously discussed [REDACTED] from the [REDACTED]. Although the certificates indicate her participation and acknowledge her artwork at exhibitions and events, they do not demonstrate that she has made original contributions of major significance in the field. The Petitioner did not show, for example, how her artwork and participation at these events impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

The record also contains recommendation letters from her peers. In general, the letters highly praise the Petitioner's artistic skills and refer to her "unique" and "diverse" talents. In addition, the letters describe the various events and venues where her art has been displayed, and several mention her current employment with [REDACTED] where she works on projects in the company's studio. The letters, however, do not explain how her skills and talents, exhibitions, and employment are considered original contributions of major significance in the field. Having a diverse or unique skill set is not in-and-of-itself a contribution of major significance, unless a petitioner shows that she has used those skills to impact or influence the field; in this case, the Petitioner has not made such a showing. In addition, the letters do not explain how her exhibitions and employment have impacted the field in significant manner.

Ultimately, letters that repeat the regulatory language but do not explain how a petitioner's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the

relevant regulatory language.” 596 F.3d at 1122. The letters considered above primarily contain attestations of the Petitioner’s status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). Without supporting evidence, the Petitioner has not met her burden of showing that she has made original contributions of major significance in the field.

Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.
8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner documented the display of her work at artistic exhibitions. For instance, her work was shown at the [REDACTED]. Thus, the Director concluded that she satisfied this criterion, and the Petitioner’s documentation supports that finding.

B. Summary

As explained above, the record only satisfies two of the regulatory criteria, 8 C.F.R. § 204.5(h)(3)(iii) and (vii). As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of evidence in the context of whether it demonstrates that the individual “has sustained national or international acclaim” such that she is one of that small percentage who have risen to the very top of the field of endeavor, and that 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. 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.

C. O-1 Nonimmigrant Status

We note the record 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

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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

For the foregoing reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of P-A-*, ID# 268194 (AAO Apr. 10, 2017)