



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

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

MATTER OF G-L-

DATE: DEC. 13, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a Peking opera performer, 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, concluding that the record did not establish, as required, that the Petitioner intended to work in her area of expertise upon entering the United States.

On appeal, the Petitioner submits additional evidence and asserts that she will continue to perform with the [REDACTED]. Subsequently, we issued a notice of intent to dismiss (NOID), advising that we were unable to confirm that the center operates a viable performing troupe. We also raised concerns about two references letters in the record. The Petitioner responded.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

- (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 two options for satisfying this classification’s initial evidence requirements. First, a petitioner can demonstrate a one-time achievement that is a major, internationally recognized award. Alternatively, 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).¹ This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Finally, the regulation at 8 C.F.R. § 204.5(h)(5) explains the prospective job requirements for this classification:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue 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.

II. ANALYSIS

The Director did not question that the Petitioner had satisfied the evidentiary requirements at 8 C.F.R. § 204.5(h)(3). The Petitioner has a lengthy performance career, having earned several awards between 1987 and 2009. 8 C.F.R. § 204.5(h)(3)(i). She is also the subject of several articles in major media, including one as recently as 2010. 8 C.F.R. § 204.5(h)(3)(iii). She has also judged the work of others in her field for [REDACTED] in 2008. 8 C.F.R. § 204.5(h)(3)(iv).

¹ This case discusses 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).

The Director's sole basis for denial was that the Petitioner would engage in teaching opera in the United States, which is not within her area of expertise as a performer. The record, however, contains an offer for her to continue performing. In addition, her references attest to her experience teaching. Nevertheless, the offer is from [REDACTED]. In our NOID, we raised concerns about that organization and two letters in the record. The Petitioner responded with programs and new letters. While the Petitioner is correct that she did not present the questionable letters in support of this petition,² for the reasons discussed below, we have been unable to confirm that the entity offering her employment is an operational troupe presenting sufficient performances to support their offer. Finally, the Petitioner's new statement that she also intends to start her own company in response to our concerns constitutes an impermissible material change designed to address an identified deficiency.

A. Reference Letters

The record contains letters that appear to bear the signatures of [REDACTED] artistic director of the [REDACTED] and [REDACTED] president of the [REDACTED]. [REDACTED] attests to the Petitioner's membership in the [REDACTED] and [REDACTED] contends that she has contributed in the field of Peking opera. Accordingly, these letters are material to the membership and contributions criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (v). U.S. Citizenship and Immigration Services (USCIS) conducted an overseas investigation, where an officer spoke with those who authored letters supporting the petition. [REDACTED] indicated that he had never signed a reference letter on the Petitioner's behalf. [REDACTED] advised that he was the deputy president rather than the president of the [REDACTED] and that he did not sign the letter in the record.

In response, the Petitioner notes that she did not submit these letters in support of the instant petition. We acknowledge that she provided them in support of her previous petition, [REDACTED]. While the prior submission of those letters raises some concern about her overall credibility, we accept that she resolved any inconsistencies regarding her membership in the [REDACTED] with other independent and objective evidence.

B. Intent to Continue Working in Her Area of Expertise

1. Prior Assertions

Initially, the Petitioner affirmed that she intended to open her own school and teach Peking opera at existing U.S. schools as well as organizing activities promoting cultural exchange. Subsequently, she presented two letters from [REDACTED] president of the [REDACTED]. He contends that his organization presents various Peking Opera programs to audiences in [REDACTED] including at [REDACTED] as well as touring, and expresses

² The Petitioner provided the two letters in support of an earlier petition, [REDACTED]. The Director of the Nebraska Service Center denied that petition and we upheld that decision on appeal.

his interest in having the Petitioner perform and teach with the company. Attached to his August 2016 letter is a list of 21 parts he is offering to the Petitioner. As stated in our NOID, we were unable to locate online any promotions or reviews of performances that [REDACTED] has organized. The letterhead lists the entity's address as [REDACTED] in [REDACTED]. We found a listing for that company on the website [REDACTED] indicating that it operates a beauty shop at [REDACTED]. There is also a listing for an entity with that name running an opera nonprofit located on the [REDACTED] floor of [REDACTED]. A USCIS officer visited both locations, finding that they are residences. An individual residing at [REDACTED] affirmed that one woman lives in apartment [REDACTED] and there is no business there. The officer was also unable to confirm an opera company at the [REDACTED] address.

In response, [REDACTED] acknowledges that both locations are residences and explains that they were mailing addresses only. He asserts that [REDACTED] rehearses at high schools for a reduced rental amount, but he does not include any agreements or evidence of rent payments. In support of his letter, he attaches programs for this entity's events dated 2007, 2008, 2009, 2010, 2012, and 2013, no more than two in any one year and all predating [REDACTED] offer by more than two years.⁵ The Petitioner also provides programs from events that other companies have sponsored, highlighting performers that, according to [REDACTED] have also been affiliated with [REDACTED]. Notably, while [REDACTED] expressly stated in his previous letters that his organization presented to an audience at [REDACTED] the program for that event names only the [REDACTED]. Even if performers who previously worked with [REDACTED] later did so with other troupes, that does not demonstrate that [REDACTED] is currently operational and sponsors enough shows to justify its offer to the Petitioner. While our NOID noted the lack of published promotions or reviews, the Petitioner does not provide such evidence in response. The new evidence does not corroborate [REDACTED] assertion that his troupe will cast the Petitioner in 21 different roles.

2. New Plan for Continued Work in the United States

The Petitioner's latest assertion is that, in addition to cooperating with [REDACTED] and the [REDACTED] she will "set up [her] own art company for [her] to carry out [her] Peking opera performing activities." She proposes to "organize [her] solo Peking opera concert in [REDACTED] etc. and tour [her] performance in other areas of the country." She also plans to "contact TV and radio companies for the production and recording of my solo Peking opera singing and performance for their broadcast." She notes her finances overseas, attaches documentation of account balances, and affirms she would use them to stand up her own company.

³ According to the site, it uses [REDACTED] semantic technology to deliver deep insights via data-driven articles, visualizations, and research tools. See [http://www.\[REDACTED\]](http://www.[REDACTED]) (accessed July 18, 2017, and October 10, 2017, and incorporated into the record of proceedings).

⁴ See [http://www.\[REDACTED\]](http://www.[REDACTED]) accessed October 10, 2017, and incorporated into the record of proceedings.

⁵ [REDACTED] 2014 and 2015 Forms 990-EZ, Short Form Return of Organization Exempt from Income Tax, publicly available from [REDACTED] list only three events in each of those years.

The record does not demonstrate with clear evidence that the Petitioner will continue to work in her area of expertise, as required by 8 C.F.R. § 204.5(h)(5). The Petitioner has changed her explanation of what she will do in the United States multiple times, first asserting that she would teach, then proposing to work with [REDACTED] and now to start her own performing troupe. Her new statement constitutes a material change in response to an identified deficiency. Accordingly, we need not consider it. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). For these reasons, her new statement does not satisfy the requirements at 8 C.F.R. § 204.5(h)(5).

C. Sustained Acclaim

Where a Petitioner has satisfied at least three criteria, we then consider the totality of the material provided in a final merits determination and assess whether 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. The Petitioner filed the petition in February 2015. Her most recent national award was in 2009.⁶ The most recent media in the record dates from February 2014, but is not about the Petitioner. It is a promotional piece for [REDACTED] plays that mentions the Petitioner in one sentence as the leader of the show for one date. The articles specifically about her such that they satisfy 8 C.F.R. § 204.5(h)(3)(iii) end in 2010. The competitions she has judged for [REDACTED] took place in 2008. She did judge another competition in 2014, but that was for a provincial television station. In addition to the fact that the articles she authored are not scholarly such that they satisfy 8 C.F.R. § 204.5(h)(3)(vi), her last article is from 2012. Regarding her performances, she appeared on television in 2013 and received a 2014 invitation from [REDACTED] to perform at a cultural exchange program in the United Kingdom. The record contains no information about the significance of this venue. Her level of performance and activity in 2015 when she filed the petition was not consistent with sustained acclaim. While the Petitioner previously attained recognition as a performer, the record does not show that she has sustained that acclaim through the date of filing. Accordingly, she has not established her eligibility for the classification sought.

III. CONCLUSION

The Petitioner is not eligible because she has not submitted consistent and credible evidence regarding her intent upon entering the United States. In addition, she has not demonstrated that she has sustained any acclaim she previously attained in her field.

ORDER: The appeal is dismissed.

Cite as *Matter of G-L-*, ID# 481315 (AAO Dec. 13, 2017)

⁶ She won a provincial award in [REDACTED] in 2012.