



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

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

MATTER OF B-

DATE: DEC. 14, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an artist, 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 met at least three of the ten regulatory criteria.

On appeal, the Petitioner submits additional evidence, asserting that she meets the necessary number of criteria and that she has demonstrated her eligibility for the classification.

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 Petitioner is an artist and representational painter who conducts collaborative shows with her twin sister. 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 ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the initial evidence requirements.

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).

A. Evidentiary Criteria²

In denying the petition, the Director found that the Petitioner met two criteria: published material under 8 C.F.R. § 204.5(h)(3)(iii) and display under 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains that she also meets the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v). Upon a review of all of the evidence in the record, we conclude that it does not support a finding that the Petitioner satisfies at least three criteria.

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 Director determined that the Petitioner met this criterion. The record supports this conclusion, because it contains articles about the Petitioner published in the [REDACTED] and [REDACTED] that discuss her artistic work, as well as evidence indicating that the publications are major media. Thus, the Petitioner satisfies this regulatory 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 has made original contributions of major significance in the field through her video paintings and exhibitions. The Director acknowledged the relevant evidence, but found that it was not sufficient to demonstrate that her work constituted original contributions of major significance in the field.

On appeal, the Petitioner maintains that a number of art professors, critics, curators, and other professionals in the field have offered testimony regarding her contributions of major significance. She maintains that the sheer volume of these testimonials, coupled with evidence of her artwork sales, exhibitions, and critical reviews of her work, satisfy the requirements of this criterion.

The documentation, however, is insufficient to demonstrate that she meets this criterion. For example, she has submitted copies of online reviews of her work. Although the reviews favorably describe her paintings and commend her unique style, they do not provide specific examples of how her work has substantially impacted the visual arts field, has influenced the work of other artists, or otherwise equates to original contributions of major significance in the field.

² We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

A review by [REDACTED] an art gallery owner and dealer, ranks the Petitioner and her sister as one of [REDACTED] noting that their work “takes the viewer on a unique internal journey.” While this acknowledgement of their work is commendable, it is not necessarily indicative of original contributions of major significance. The plain language of the criterion requires more than attestations of talent and originality; the Petitioner must have demonstrably impacted her field in order to establish eligibility.

To establish her impact on the field, the Petitioner submits evidence of the successful sale of her artwork, such as invoices demonstrating the sale of her paintings to multiple members of the public. The record also contains a letter from [REDACTED] Director of the [REDACTED] in [REDACTED] Massachusetts, who affirms that after exhibiting her work, the gallery experienced “a packed opening, sales, and wide-eyed intrigue by every visitor.” Although the record indicates that the Petitioner sold numerous paintings, the Petitioner has not established that having one’s artwork purchased by others equates to original contributions of major significance in the field. Rather, it demonstrates only that she has the ability to earn a living as an artist.³ This criterion requires that the Petitioner’s contributions be “of major significance in the field,” which means that her impact must be beyond the galleries with which she is affiliated or her art buyers. *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 demonstrate her impact in the field as a whole).

The Petitioner has also provided over 20 reference letters from critics and colleagues in the field.⁴ These letters praise her talents as a video painter and complement her paintings. For example, the letter from [REDACTED] of [REDACTED] describes her work as “beatiful and arresting,” whereas the letter from [REDACTED] her colleague at [REDACTED] describes her work as “rich and multi-layered.” Numerous letters also discuss the artistic restrictions in her native Iran and the manner in which her artistic expression has flourished in the United States. The reference letters briefly discuss her artistic skills and cultural activities, but they do not provide specific examples of how her work has significantly impacted the field at large or otherwise constitutes original contributions of major significance. Vague, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient to satisfy this criterion. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d at 1115.

Numerous letters also attest to the Petitioner’s growing acclaim in the field, and describe her as an aspiring artist. For example, a letter from [REDACTED] indicates that the Petitioner “would be able to establish herself as a top artist here.” A letter from [REDACTED] publisher of [REDACTED]

³ The record contains insufficient evidence to establish the Petitioner’s eligibility under the criterion for high salary or other remuneration in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

⁴ While we discuss only a sampling of these letters, we have reviewed and considered each one.

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describes her as an artist “who is rising to the top of her field.” Similarly, a professor at states that the Petitioner and her sister “are in the position of becoming super stars in the art world if they are given the chance.” Although these letters discuss the impact of her artwork prospectively, they do not demonstrate the influence that the Petitioner’s work has already had on the field. The plain meaning of the regulatory language requires the Petitioner to have already made her original contribution of major significance prior to filing her petition.

On appeal, the Petitioner submits a new letter from which states that she “unequivocally believes” that the Petitioner and her sister “are artists at the top of their field of endeavor” and that “they continue to have room to expand their influence and produce additional extraordinary work if given the chance.” The Petitioner also submits evidence of sales and invitations to exhibitions that postdates her filing of the petition; however, we find this evidence unpersuasive. A petitioner must establish his or her eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm’r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that U.S. Citizenship and Immigration Services cannot “consider facts that come into being only subsequent to the filing of a petition.” *Izummi*, 22 I&N Dec. at 176. For all of the reasons discussed above, the Petitioner has not established that her original artwork rises to the level of a contribution of major significance in the field. She has therefore not satisfied this criterion.

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).

Under this criterion, the Petitioner must establish that her work was on display, and that the venues were artistic exhibitions or showcases. The Director concluded that the Petitioner satisfied this criterion. The record supports this finding because it confirms that she has displayed her paintings at artistic exhibitions in the United States, Iran, and China, and she has displayed her work in other artistic performances, such as the inaugural performance of ‘ ’ an interactive exhibition at the in Massachusetts. Accordingly, we agree with the Director’s determination.

B. Intent upon Entry

The Petitioner did not offer sufficient evidence to establish that she will continue to work in her area of extraordinary ability. *See* section 203(b)(1)(A)(iii) of the Act. Although she has submitted a letter from confirming she is presently employed as a part-time lecturer in the she has not shown that this position is in the area of her claimed extraordinary ability. She has also not established that she will otherwise be working in the field of visual arts in the United States. Without additional corroboration, the Petitioner has not

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demonstrated her intent “to continue work in her area of expertise” pursuant to 8 C.F.R. § 204.5(h)(5).

III. CONCLUSION

The Petitioner has not shown her eligibility for the classification because she 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). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. In addition, she has not demonstrated her intent to continue working in her claimed area of expertise.

ORDER: The appeal is dismissed.

Cite as *Matter of B-*, ID# 841003 (AAO Dec. 14, 2017)