



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

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

MATTER OF A-T-A-

DATE: DEC. 19, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner seeks classification of the Beneficiary, a curator and historian of [REDACTED] 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not shown that the Beneficiary met any of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that she meets six criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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 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 of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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) (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). 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).

II. ANALYSIS

The Beneficiary is a curator and historian of [REDACTED]. As the Petitioner has not established that the Beneficiary has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that the Beneficiary meets the following criteria: membership at 8 C.F.R. § 204.5(h)(3)(ii), judging at 8 C.F.R. § 204.5(h)(3)(iv), original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), display at 8 C.F.R. § 204.5(h)(3)(vii), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). Upon review, we conclude that the evidence in the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The record contains a letter of appointment, dated April 2017, from [REDACTED] acknowledging the Beneficiary's membership in the [REDACTED]. This letter announces the Beneficiary's appointment as [REDACTED] of [REDACTED] due to her "outstanding achievement during the past five years," her "assignment as Head of the [REDACTED]" and her "prominent reputation in the field of [REDACTED]." The record, however, does not include

supporting documentation (such as bylaws or admission standards) showing that [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts in the field. Accordingly, the Petitioner has not established that the Beneficiary meet this regulatory criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner offers a letter from [REDACTED] an Art Historian at the [REDACTED] in [REDACTED] Italy, attesting to the Beneficiary's role in judging artists from 2006 to 2013. In another letter, [REDACTED] the publisher of the magazine [REDACTED] states that the Beneficiary has been in charge of judging and selecting artists to mentor and exhibit, which has resulted in successful exhibitions programs. [REDACTED] also asserts that the Beneficiary "evaluated which national and international exhibitions are most important and where they have to be presented in the magazine." We conclude therefore that the Beneficiary meets the requirements of 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 asserts that the Beneficiary, "one of the world's foremost experts [in] [REDACTED] [REDACTED] . . . "discovered a complete period of art history was unknown to the American public, so she undertook to correct this matter by working discretely with the major holder of the art to secure donation of a major gift of [REDACTED] to American museums to fill this gap." The Petitioner contends that the Beneficiary's original artistic contribution is her discovery of the gap in [REDACTED] in American museums and in her efforts to facilitate this donation.

The record contains a letter from [REDACTED] who indicates that he is the "owner of the renowned Art Collection [REDACTED] and the founder of the [REDACTED] Foundation." He states that he authorizes the Beneficiary to donate a part of his collection to a U.S. institution of her choice and that "[t]his donation offer . . . is tied to [the Beneficiary's] presence within the U.S. over the period of years to prepare, organize, manage, execute, and complete the art transfer from contract over permanent loan status to donation status, to accompany the resulting exhibitions of the collection within the USA, write the respective catalogs and to educate institutions' and museums' staff." In addition, [REDACTED] asserts that "[t]here are only very few experts of [REDACTED] worldwide, and [the Beneficiary] is the only expert in this field able to perform the above mentioned tasks and authorized to transfer my collection to the USA, and to help a U.S. institution to present the art to the American public." On appeal, the Petitioner submits a "Certificate of Achievement" [REDACTED] presented to the Petitioner in March 2015 for her "contributions of major significance to the field of [REDACTED]"¹

¹ The Petitioner does not claim that this "Certificate of Achievement" renders the Beneficiary eligible under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Regardless of this fact, the record does not establish that this certificate is a

As an initial matter, the record does not contain sufficient evidence to support that there is a gap of [REDACTED] in the United States. The Beneficiary's affidavit and the letter from [REDACTED] attest to this, but the record does not contain sufficient independent, objective evidence to support that conclusion. In her letter, [REDACTED] at [REDACTED] indicates, "Largely unknown in the United States, artists from the [REDACTED] would strongly complement our holdings and allow a more nuanced view of the art from the interwar period." This indicates that the [REDACTED] possesses some [REDACTED] and that the donation will complement this genre of artwork that is already at the museum rather than filling a gap of nonexistent art.

Furthermore, the Beneficiary's qualifying contributions must have already been realized rather than being potential, future contributions. Eligibility must be established at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1), (12). While the Beneficiary claims to have made this discovery of a gap in [REDACTED] she has not yet implemented her plan to carry out the donation of this artwork. The record does not show that she has made similar contributions in the field by carrying out the donations of underrepresented art to demonstrate that she has made original contributions of major significance in the field.

Finally, even if we were to consider the Beneficiary's discovery of a gap in [REDACTED] as her contribution, the record does not establish that this is of major significance in the field. [REDACTED] states that three artists in particular from the [REDACTED] are of "significant importance" for their collection as "they are underrepresented or not yet represented in our collection." This reflects that the gift of artwork from the [REDACTED] to [REDACTED] would add to collection already there, benefitting the museum, but the does not detail how it is of major significance to the field as a whole.

The record does not demonstrate that the Beneficiary has original contributions of major significance in the field that have already been realized. Furthermore, the evidence does not indicate that the Beneficiary has previous experience preparing, organizing, managing, executing, and completing an art transfer that is shown to have major significance in the field. Therefore, we conclude that the record does not establish the Beneficiary meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner submits an essay about the work of artist [REDACTED] in [REDACTED]. The record, however, does not establish that this art catalogue is a professional or major trade publication or other form of major media. Accordingly, the Beneficiary has not met this criterion.

nationally or internationally recognized prize or award for excellence in the field.

Matter of A-T-A-

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 asserts that “as an art historian rather than an artist, the Beneficiary has displayed her work in the field by setting up exhibits, co-producing catalogs, consulting with art magazines, co-owning a gallery, introducing art programs.” The record contains a transcription of the leaflet from an exhibition in 2006 for the [REDACTED] in [REDACTED] stating that the Beneficiary will provide the introduction preceding a ballet ensemble. The record also contains transcriptions of invitation postcards announcing an exhibit at [REDACTED] in [REDACTED] listing the Beneficiary’s email address for contact information. This evidence does not provide details about the exhibit or about the Beneficiary’s role. While the Beneficiary has been a consultant for [REDACTED] magazine, as discussed above, the record does not sufficiently establish that her work has been on display at artistic exhibitions or showcases. In addition, we find that the record does not contain sufficient details about the gallery that the Beneficiary co-owns and what level of artistic work can be attributed to her in that regard.

The record includes a copy of the acknowledgements page from the book [REDACTED] in which the Beneficiary is thanked for coordinating the book. It is unclear what the Beneficiary’s coordination of this book entailed. The evidence does not reflect that the examples discussed by the Petitioner amount to a display of her work in the field. The Petitioner therefore has not established that the Beneficiary meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

A leading role should be apparent by its position in the overall organizational hierarchy and through the role’s matching duties. A critical role should be apparent from the Beneficiary’s impact on the organization or the establishment’s activities. The Beneficiary’s performance in this role should establish whether the role was critical for the organization or establishment as a whole.

The Petitioner contends that the Beneficiary’s commission to facilitate the major donation on behalf of [REDACTED] for [REDACTED] demonstrates that she has performed a leading or critical role. The Petitioner references a letter from [REDACTED] for [REDACTED] in which she expresses her gratitude for “[the Beneficiary’s] willingness to share her expertise in the selection of artwork, as well as her assistance in locating the necessary funding for the eventual transport of artworks from Germany to the United States.” This criterion requires that the Beneficiary “has performed in a leading or critical role” for an organization with a distinguished reputation. Here, the Petitioner asserts that the Beneficiary will carry out a leading role by facilitating the donation of this artwork from the [REDACTED] collection. The expectation that she will perform this function does not demonstrate that the Beneficiary has already performed a leading or critical role for an organization with a distinguished reputation. Therefore, she does not meet this criterion.

III. CONCLUSION

The Beneficiary is not eligible because the Petitioner has not submitted the required initial evidence of either a qualifying 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 do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20.² Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Beneficiary has the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of A-T-A-*, ID# 737937 (AAO Dec. 19, 2017)

² In addition, as the Petitioner has not established the Beneficiary's extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether she is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii).