



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

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

MATTER OF S-Z-

DATE: JULY 11, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a saxophonist and a yoga and meditation instructor, 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 Form I-140, Immigrant Petition for Alien Worker, 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 additional 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)(1)(A) of the Act makes visas available to qualified 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). Alternately, 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, 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) (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 Petitioner is a saxophonist who has performed in jazz clubs in the United States and around the world and has taught yoga and meditation classes for musicians for the [REDACTED] at [REDACTED]. 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 satisfied the display criterion under 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner maintains that she also meets the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), original contributions under 8 C.F.R. § 204.5(h)(3)(v), leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii), and high salary under 8 C.F.R. § 204.5(h)(3)(ix).¹ We have reviewed all of the evidence in the record, and conclude that it 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).

¹ While the Petitioner previously claimed eligibility for awards under 8 C.F.R. § 204.5(h)(3)(i), published material under 8 C.F.R. § 204.5(h)(3)(iii), and judging under 8 C.F.R. § 204.5(h)(3)(iv), she indicates in her brief that she does not wish to appeal the determinations for these criteria, and the record does not support a finding that she meets them.

The Petitioner contends that her associations with [REDACTED] the [REDACTED] and [REDACTED] meet this criterion. Regarding [REDACTED] it is an academic institution where the Petitioner was enrolled as a student rather than an association in which the Petitioner was a member. The Petitioner provided letters from [REDACTED] director of student wellness and health promotion at [REDACTED] and [REDACTED] president of [REDACTED] including an updated letter from [REDACTED] on appeal. Although they discuss the Petitioner's personal and academic accomplishments and praise her involvement in [REDACTED] wellness program while attending the school, they do not indicate that she acquired "membership" with [REDACTED] based on her outstanding achievements, as judged by recognized national or international experts.

As it pertains to [REDACTED] the Petitioner submitted her membership card and a letter from [REDACTED] senior director of operations, who stated that [REDACTED] is a performing rights organization that serves to compensate its songwriters and publishers for having their music performed in public. In addition, the Petitioner presented screenshots from [REDACTED] website reflecting that it is "primarily interested in working with professional writers, or those who are pursuing their career professionally." The Petitioner, however, has not established that the organization requires outstanding achievements of its members, nor has she demonstrated that membership with [REDACTED] is judged by recognized national or international experts.

Regarding [REDACTED] the Petitioner presented a letter from its owner, [REDACTED] who stated that he offered to employ her to play with her band once a week at his club. The Petitioner has not shown that she is a member of [REDACTED] rather that she has been employed by [REDACTED]. Moreover, the Petitioner has not established that [REDACTED] requires outstanding achievements, as judged by recognized national or international experts, consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(ii). For these reasons, the Petitioner has not demonstrated that she satisfies 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 indicates that her recommendations letters attest to her original contributions of major significance.² For instance, [REDACTED] professor of jazz studies at [REDACTED] discussed the Petitioner's "rare combination of artistic genius" and "unique blend of eastern passive meditation." Further, [REDACTED] president of [REDACTED] referenced the Petitioner's "rare" talent and indicated that she "recognized [the Petitioner's] artistic contribution to the field of music as a unique gift that should be cherished in the US," and she sees the Petitioner's "contribution in being a beacon of strength, inner balance and beauty for the environment of musicians in the US." Neither [REDACTED] nor [REDACTED] describes how the Petitioner's skills and talents have impacted the field beyond their own personal experiences and encounters with her. Moreover, having a diverse or unique skill set is not in-and-of-itself a

² While we discuss only a sampling of these letters, we have reviewed and considered each one.

contribution of major significance, unless a petitioner shows that she has used those skills to influence the field; in this case, the Petitioner has not made such a showing.

In addition, [REDACTED] a psychotherapist in expressive therapy at the [REDACTED] [REDACTED] indicated that the Petitioner has been assisting him a study for the therapy of patients suffering mental illnesses, and she “has already proven to be able to make a significant contribution to this specific field of expertise.” [REDACTED] however, does not identify what contributions the Petitioner has made and how they are of major significance in the field. Instead, [REDACTED] stated that he is “expecting much improvements [*sic*] in this field by the contributions and the forward thinking methods that [the Petitioner] has shared with me,” and that he predicts that the Petitioner’s “potential contribution in the future to be not only in direct work with individual patients but also in research and team-work that is so necessary at this stage of this growing field of knowledge.” A petitioner cannot establish eligibility under this criterion based on the expectation of future significance. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Given the descriptions in terms of future applicability and determinations that may occur at a later date, the actual impact on the field has yet to be determined.

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 U.S. Citizenship and Immigration Services’ (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.C. Dist. 1990).

The Petitioner also states that she “has [REDACTED] CDs (20 professional recordings) released with reputable record labels,” “has performed at more than [REDACTED] public concerts,” and “has been featured alongside countless Grammy winners.” She did not explain or demonstrate, however, how her recordings, concerts, or performances have impacted or influenced the field in a significant manner. *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). In sum, 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 Director determined that the Petitioner satisfied this criterion as a musician. The record reflects that the Petitioner has displayed her work on stage at artistic events. For example, the Petitioner was

a featured saxophone soloist at [REDACTED] in [REDACTED] Massachusetts, as part of [REDACTED]. Accordingly, we find that the Petitioner 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).

Although the Director found that [REDACTED] has a distinguished reputation, he determined that the Petitioner did not demonstrate that she performed in a leading or critical role for the institution. On appeal, the Petitioner contends that she has performed in a leading or critical role for [REDACTED] as a jazz teacher “using yoga and other meditation methods to create a mindful, accepting environment in which [REDACTED] students can feel free creatively and emotionally.” In support of her claim, the Petitioner references the most recent letter from [REDACTED] who indicates that she “has positively impacted our college by focusing her time in developing new methods and concepts intending to improve the lives of the students.” Further, [REDACTED] states that he has “received wide acknowledgement of her contribution to the [REDACTED] community at large,” and “[h]er work has enhanced both [REDACTED] students and the community’s mental and physical wellbeing.” In addition, [REDACTED] offered that the Petitioner’s classes have grown and her sessions have been “well-received” and “have gotten high regards.”

In general, a leading role is evidenced from the role itself, and a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. The Petitioner’s recommendation letters do not demonstrate how teaching yoga classes, as well as developing programs for the [REDACTED] represents a leadership role for the college, nor does the record include evidence indicating where her role fits in the hierarchy of the organization. Furthermore, the Petitioner did not demonstrate that her role was critical, such as by providing documentation indicating that she was responsible for the success or standing of [REDACTED]. Although the Petitioner’s recommendation letters indicate that her classes have been “well-received,” she did not show, for instance, that overall student enrollment increased at [REDACTED] due to her teaching and program development. For these reasons, we concur with the Director’s finding that the Petitioner does not satisfy this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner claims that she meets this criterion based on her earnings as a yoga instructor. The Petitioner references the letter from [REDACTED] who indicated that she was paid \$50 per meditation class and \$75 per yoga class, which is supported by invoices and paychecks, for teaching [REDACTED] at [REDACTED]. In addition, the Petitioner presented a letter from [REDACTED] executive director for [REDACTED] who stated that the Petitioner has been offered to teach yoga for the Shira Yoga class series at [REDACTED] at a rate of \$150 per hour. [REDACTED] however, did not provide specific information, such as how many hours per week the Petitioner will instruct or how long the class series will last. The record also contains yearly salaries of yoga instructors, such as screenshots from the U.S. Department of Labor and

widely ranging from \$17,000 to \$108,000. The Petitioner, however, has not provided evidence of her cumulative annual wages to provide a basis for comparison against the data. Moreover, she has not sufficiently shown how the submitted yearly and hourly wage data demonstrates that her per class rate at [redacted] or class series rate at [redacted] represents significantly high remuneration for services compared to others in her field. Accordingly, the Petitioner did not establish that she fulfills this criterion.

B. Summary

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. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that 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.

C. O-1 Nonimmigrant Status

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 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, at *2 (E.D. La. 2000).

III. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of S-Z-*, ID# 374266 (AAO July 11, 2017)