



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

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

MATTER OF K-L-

DATE: JULY 12, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a Chinese classical dancer, 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 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 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 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 Chinese classical dancer and tours with the [REDACTED]. Because she has not indicated or established that she has received a major, internationally recognized award, the Petitioner 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 awards criterion under 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the Petitioner indicates that she is contesting three criteria: published material under 8 C.F.R. § 204.5(h)(3)(iii), original contributions under 8 C.F.R. § 204.5(h)(3)(v), and artistic display under 8 C.F.R. § 204.5(h)(3)(vii). We have reviewed all of the evidence in the record and, for the reasons discussed below, we find it does not support a finding that the Petitioner satisfies at least three criteria. In addition, the Petitioner argues that other principal dancers from the [REDACTED] have been granted extraordinary ability status, which is further proof of her eligibility. However, the Petitioner’s extraordinary ability petition is reviewed on its own merits.¹

¹ Further, we are not bound by decisions of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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 Director determined that the Petitioner met this criterion. The record reflects that the Petitioner received: (1) the bronze award at 2012 [REDACTED] and (2) an honorable mention award at the 2014 [REDACTED]. Based on a review of the record, we will withdraw the Director's findings for this criterion.

The Petitioner submitted screenshots from the [REDACTED] that references [REDACTED] 2012 [REDACTED]. The screenshots provide background information regarding the competition, such as its history, judging composition, and performing benefits. In addition, she presented screenshots from the [REDACTED] that mention [REDACTED] the founder and artistic director of the [REDACTED]. Further, the Petitioner offered screenshots from [REDACTED] and [REDACTED] relating to a general overview of the television station, noting that it hosts a classical dance competition.

In order to meet this regulatory criterion, the Petitioner must demonstrate that she received nationally or internationally recognized prizes or awards for excellence in her field of endeavor. The Petitioner's documentation, however, does not establish that [REDACTED] awards are tantamount to nationally or internationally recognized awards for excellence in her field. Rather, the supporting evidence relates to the television station and the sponsorship of the competition. Because the Petitioner did not demonstrate that she satisfies this criterion, we withdraw the Director's findings.

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 found that although the Petitioner submitted articles relating to her and her work in the [REDACTED] and [REDACTED] the Petitioner did not establish that they are professional or major trade publications or other major media. Specifically, the Director determined that the Petitioner did not provide objective evidence to support the publications' data and circulation claims.² In support of the appeal, the Petitioner provides two articles regarding the [REDACTED] that were posted on [REDACTED] and [REDACTED].

² USCIS need not rely on the self-promotional material of the publisher. See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of major media).

³ The Petitioner does not contest the Director's findings or offer evidence on appeal regarding [REDACTED] and [REDACTED] nor does the record reflect that they are major publications.

The articles, however, do not establish that the [REDACTED] is a major medium. Although both articles cite to the [REDACTED] own statistics, the articles do not verify those figures but instead discount the publication's claims regarding its popularity. For instance, the [REDACTED] article indicates that "[t]he paper is available for a dollar at 70 vendors around [REDACTED] though it isn't usually a big seller." In addition, the article interviewed several vendors who stated that they sell very few copies of it. For example, one vendor stated that "[h]e sells about one copy a week, if that, which is far less than the sixty or so copies he sells of the [REDACTED]. For these reasons, the Petitioner did not establish that the [REDACTED] qualifies as a major medium. Accordingly, the Petitioner has not demonstrated that he 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 the Director engaged in a merits determination by looking beyond the criterion when he found that her recommendation letters did not show she has made original contributions of major significance in the field. We do not agree with the Petitioner's interpretation. Here, the Director reviewed the Petitioner's recommendation letters and decided that they "do not contain detailed and probative information that specifically addresses how [the Petitioner has] made original contributions of major significance in the field." On appeal, the Petitioner does not explain how the Director's decision "look[ed] beyond the criterion" or otherwise mandated a higher standard or other requirements.

Regarding her recommendation letters, they generally praise the Petitioner's artistic skills and refer to her "unique" and "diverse" talents. In addition, the letters describe her shows with the [REDACTED]. The letters, however, do not explain how her skills and talents and performances 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, although the Petitioner provided playbills and programs of her shows, she has not explained how her performances have impacted 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).

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).

As discussed, the Petitioner has performed at various exhibitions, such as the [REDACTED] in [REDACTED] Canada, as part of the [REDACTED]. Thus, the Petitioner has demonstrated that she meets this criterion.

B. Summary

As explained above, 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

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.

Matter of K-L-

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 K-L-*, ID# 405119 (AAO July 12, 2017)