



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

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

MATTER OF C-V-B-

DATE: JULY 12, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a dancer and choreographer, 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 not satisfied any of the initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits 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 dancer and choreographer who has performed in music videos and at musical events with acclaimed artists. 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 did not meet any of the regulatory criteria. On appeal, the Petitioner contests five criteria: awards under 8 C.F.R. § 204.5(h)(3)(i), 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), high salary under 8 C.F.R. § 204.5(h)(3)(ix), and commercial successes under 8 C.F.R. § 204.5(h)(3)(x).¹ We have reviewed all of the evidence in the record, and it does not support a finding that the Petitioner satisfies at least three criteria.

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 Petitioner contends that her nomination for a [REDACTED] at the 2016 [REDACTED] [REDACTED] meets this criterion. Specifically, the Petitioner claims that "[i]n the context

¹ While the Petitioner previously claimed eligibility for the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), she does not continue to do so on appeal, nor does the record support a finding that she meets it. Accordingly, we will not further address this criterion in our decision.

of major award ceremonies [Oscar, Grammy, Tony], a small number of performances and productions are selected for nomination to receive major prizes. In other words, the official nomination is an award for excellence at the top of the category.” The regulation at 8 C.F.R. § 204.5(h)(3) mentions “a major, international[ly] recognized award,” and the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “receipt of lesser nationally or internationally recognized prizes or awards.” Neither regulation refers to a nomination for a prize or an award as acceptable evidence for satisfying the respective requirements. Further, the Petitioner has not demonstrated that nominations for the [REDACTED] are nationally or internationally recognized by showing, for instance, that the nominees receive national or international level press coverage. In this case, while being nominated is a personal honor for the Petitioner, it falls short of showing “receipt” of a nationally or internationally recognized prize or award, as required by 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 record contains letters and other evidence of her involvement in raising money for various charitable organizations, such as the [REDACTED] and the [REDACTED] a non-profit organization for girls rescued from sex trafficking.³ In addition, the Petitioner has participated at festivals, such as [REDACTED] the [REDACTED] and [REDACTED]. Further, she has provided dance class classes to students at the [REDACTED]. The regulation requires the Petitioner to submit evidence of her original “contributions of major significance in the field.” While this evidence demonstrates her humanitarian work, the Petitioner has not shown how she has influenced or impacted her field of expertise at a level that is consistent with original contributions of major significance in the field.

The Petitioner also submitted recommendation letters that praised her for her skills, talents, and abilities.⁸ For instance, [REDACTED] an internationally recognized artist, described the Petitioner’s skills as “unique,” her talents as “unparalleled,” and her abilities as “extraordinary.” Moreover, [REDACTED] choreographer for [REDACTED] music video, [REDACTED] stated that the Petitioner’s “top tier skills, extraordinary talents, and unique artistic vision would be welcome in any of [REDACTED] future productions.” The letters, however, do not explain how her skills and talents, as well as her performances in their music videos, 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 influence the field; in this case, the Petitioner has not made such a showing. In addition, the

² See letter from [REDACTED] director for the [REDACTED]

³ See letter from [REDACTED] founder and executive director for the [REDACTED]

⁴ See letter from [REDACTED] director for [REDACTED]

⁵ See letter from [REDACTED] president for [REDACTED]

⁶ See letter from [REDACTED] choreographer for [REDACTED]

⁷ See letter from [REDACTED] dean and instructor for [REDACTED]

⁸ While we discuss only a sampling of these letters, we have reviewed and considered each one.

Petitioner has not established 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 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.D.C. 1990). Here, 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 above, the Petitioner has displayed her work at artistic venues. The record also reflects that she performed as one of the dancers for [REDACTED] at the [REDACTED]. Accordingly, the Petitioner satisfies 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).

The Petitioner contends that she has performed in leading or critical roles "for shows and artists of distinguished reputation[s]." She provided evidence showing that she was a dancer in music videos for various artists, including as [REDACTED] and [REDACTED]. In addition, the Petitioner appeared in a [REDACTED] documentary and performed as a supporting dancer for award shows, such as the [REDACTED] and the [REDACTED].

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. Although the Petitioner performed as one of the lead dancers in the music videos, she did not demonstrate how her performance in a music video or documentary constitutes a leading role for a distinguished organization or establishment overall. Further, the Petitioner has not shown how her capacity as a supporting dancer to the featured artists in music videos establishes that she was responsible for the successes of organizations or establishments to show that her role was critical for those entities. Likewise, the Petitioner has not established how her role as a backup dancer on award shows reflects

⁹ See letter from [REDACTED] choreographer for [REDACTED]

a leading or critical role for organizations or establishments. Accordingly, the Petitioner does not meet 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 record contains evidence of her remuneration for her performances at events. Specifically, the Petitioner provided contracts showing pre-determined compensation and times. For instance, the Petitioner earned: \$162 for 4 hours of rehearsal and \$316 for a 5-minute show to perform with [REDACTED] \$495 for a 10 minute show at the [REDACTED] concert, and \$565 for 6 hours to dance for [REDACTED]. In addition, the Petitioner presented a check reflecting that she netted \$864 while working with [REDACTED]. The Petitioner also offered evidence regarding the yearly salaries of dancers and choreographers, such as screenshots from the U.S. Bureau of Labor Statistics, [REDACTED] and [REDACTED] which widely range from \$19,000 to \$129,000. However, the Petitioner 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 short term, isolated contracts represent significantly high remuneration for services compared to others in her field. Accordingly, the Petitioner did not establish that she meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales. 8 C.F.R. § 204.5(h)(3)(x).

As evidence of commercial successes, the Petitioner submitted viewership statistics for other artists and television programs. For instance, [REDACTED] music video garnered over [REDACTED] hits, and [REDACTED] music video, [REDACTED] received [REDACTED] hits. Moreover, the Petitioner provided documentation showing television ratings, such as [REDACTED] documentary, [REDACTED] received [REDACTED] viewers, and the 2011 [REDACTED] on [REDACTED] averaged between [REDACTED] and [REDACTED] people. However, the Petitioner has not established that in her capacity as a supporting or background dancer, she was responsible for the “commercial successes” of the music videos or television programs.

In addition, the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires commercial successes in the form of “receipts” or “sales.” The Petitioner’s submission of [REDACTED] views and television ratings does not meet this criterion. Although the Petitioner indicates that the provisions of the regulation at 8 C.F.R. § 204.5(h)(4) is a “catch-all provision” and “[t]he reference to cassette sales is obsolete and there is no mention of on-line downloads and streaming,” the Petitioner must demonstrate that the commercial successes criterion does not apply to her occupation in order to contemplate comparable evidence, which she has not shown. Even if we would consider downloads and viewership statistics,

¹⁰ In response to the Director’s request for evidence, the Petitioner submitted additional contracts that were signed after she filed her petition.

they relate to other artists, such as [REDACTED] and [REDACTED]. Therefore, the Petitioner has not established that she satisfies this criterion, including through the submission of comparable evidence.

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 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 C-V-B-*, ID# 406110 (AAO July 12, 2017)