



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

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

MATTER OF A-B-

DATE: JULY 12, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a performing 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 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 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 singer, dancer, and actress, who has performed in concerts, productions, and plays. 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 met only the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii).¹

On appeal, the Petitioner specifically contests two criteria: awards under 8 C.F.R. § 204.5(h)(3)(i) and judging under 8 C.F.R. § 204.5(h)(3)(iv). In addition, the Petitioner discusses evidence that relates to the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), published material under 8 C.F.R. § 204.5(h)(3)(iii), and artistic display under 8 C.F.R. § 204.5(h)(3)(vii). 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.²

¹ At the initial filing of the petition and in response to the Director’s request for evidence (RFE), the Petitioner did not specify which criteria she claimed to meet. Accordingly, the Director reviewed the Petitioner’s documentation and determined to which criteria the evidence best pertained.

² Although the Petitioner suggests that she should appear before us to further discuss her documentation, we decline her request for oral argument. 8 C.F.R. § 103.3(b).

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 she meets this criterion based on her award granted by the [REDACTED]. The record indicates that the Petitioner submitted a certificate reflecting that she received second place in the college junior level division at the [REDACTED]. She also provided screenshots from [REDACTED] website stating that the association "is the largest professional association of [REDACTED] in the world with nearly 7,000 members," and students of members have the opportunity to compete at national singing competitions, such as the [REDACTED] the [REDACTED] and the [REDACTED]. 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. Here, she did not establish that her [REDACTED] award is recognized nationally or internationally as an award for excellence in the field.

In addition, the Petitioner argues that she satisfies this criterion based on her receipt of [REDACTED] by [REDACTED]. The Petitioner submitted a screenshot from [REDACTED] announcing that it named the film, [REDACTED] as the [REDACTED] and listing the cast members, including the Petitioner. However, the Petitioner did not establish that the award is nationally or internationally recognized for excellence consistent with this regulatory criterion.

Although not contested on appeal, the Director mentioned other awards that he concluded did not satisfy this regulatory criterion. The record indicates that the Petitioner provided a photograph of an [REDACTED] trophy for third place at [REDACTED] and a photograph of a [REDACTED] medal for [REDACTED] in a musical theater performance. Neither photograph lists the Petitioner as the recipient, nor did the Petitioner present supporting evidence showing her receipt of the awards. Moreover, the Petitioner did not demonstrate that they are nationally or internationally recognized prizes or awards for excellence in the field. In addition, the Petitioner presented scholarship and academic awards, such as the [REDACTED] for excellence in the study of Italian at [REDACTED] that are not indicative of nationally or internationally recognized prizes or awards for excellence in her field of performing artistry. For these reasons, the Petitioner did not show that she satisfies this criterion.

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).

In her cover letters at the initial filing of the petition and in response to the Director's RFE, the Petitioner discussed how she was working towards becoming a member of the [REDACTED]. On appeal, the Petitioner asserts that she will "shortly become a member of the highly selective [REDACTED] which is

the most [REDACTED] in the [REDACTED]. 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). In the case here, the Petitioner has not shown that she was or is a member of [REDACTED] nor has she demonstrated with supporting evidence that membership with this union requires outstanding achievements, as judged by recognized national or international experts. Accordingly, the Petitioner has not shown that she meets this criterion.

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 Petitioner argues that she provided articles written in various newspapers regarding her three [REDACTED] shows. In order to meet this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media. The record contains screenshots from various websites, such as [REDACTED] and [REDACTED]. The screenshots, however, either list her as a cast member for productions without specifically discussing her or announce the details of upcoming shows that do not mention her. Articles that do not pertain to a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Moreover, the Petitioner did not establish that the websites are professional or major trade publications or other major media. Therefore, the Petitioner has not shown that she satisfies 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 indicates that she submitted evidence showing that she been teaching various performing arts at [REDACTED]. Further, the Petitioner states that her “[h]igh level of professionalism and skill were the reasons [she] was hired to work at [REDACTED] marking [sic] me as someone fully able to judge the work of others within the various fields of the performing arts.” The record includes the Petitioner’s course teaching transcripts and brochures and pamphlets for [REDACTED].

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence 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.” Serving as an instructor in a classroom setting and evaluating students in an informal capacity as part of one’s job duties does not equate to participation as a judge of the work of others in the field. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually, as specified by the regulatory

criterion. Without supporting evidence showing that she participated as a judge, the Petitioner has not established that she meets 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).

The record reflects that the Petitioner has displayed her work on stage at concerts and theaters. For example, the Petitioner was an actress in the short film, [REDACTED] which was featured 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 Director determined that the Petitioner met this criterion because “[i]t appears that the [Petitioner] played a supporting role that was determined to be critical to the production of [REDACTED].” Based on a review of the record, we must withdraw the Director’s decision for this criterion. 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 provided recommendation letters from individuals involved with her plays and shows and supported the record with programs and playbills. Regarding her performance in [REDACTED] the Petitioner has not shown that her character role was leading or critical to an organization or establishment that has a distinguished reputation. Although her role was leading in the film, the Petitioner did not demonstrate how her performance in a movie demonstrates her role for an organization or establishment. Moreover, even if the Petitioner demonstrated that the production itself constituted an organization or establishment, she did not establish that [REDACTED] enjoys a distinguished reputation.

Similarly, the record also contains evidence of the Petitioner’s roles in other plays and shows, such as [REDACTED] and [REDACTED]. These roles, as stated in her brief, were “supporting roles,” and were not indicative of leading roles. Moreover, the Petitioner did not corroborate the record demonstrating that they were critical roles, such as showing that her performances were important to the organizations’ successes. Further, the Petitioner did not establish the distinguished reputations of the relevant organizations or establishments.

In addition, the Petitioner refers to her performances in music videos for [REDACTED] and [REDACTED] as well as singing with [REDACTED]. Here, the Petitioner did not demonstrate how her performances in music videos and singing with another artist indicate a leading or critical role for an organization or establishment. Regarding the music videos, the documentation reflects that the Petitioner appeared as an extra, and she did not show that her role was a leading or critical one. Further, although the Petitioner provides a playlist of [REDACTED] songs on [REDACTED] the Petitioner did not demonstrate that any of her collaborated songs were produced or posted to the playlist.

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Because the Petitioner did not establish that she meets this criterion, we withdraw the Director's determination on this issue.

III. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of A-B-*, ID# 407091 (AAO July 12, 2017)