



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF M-K-

DATE: APR. 11, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a movie producer, director, and screenwriter, 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 a brief and asserts that she has satisfied all regulatory requirements and qualifies for the requested classification.

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

I. LAW

Section 203(b)(1)(A) of the Act states:

Aliens with extraordinary ability. -- An alien is described in this subparagraph 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 evidence that meets at least three of the criteria 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, a director, producer, and screenwriter who focuses primarily on documentary features, indicates that she intends to continue the same work in the United States. On appeal, she maintains that she won a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3) and alternatively satisfies at least three of the ten alternative criteria. We have reviewed all of the evidence in the record, and determined that it does not support a finding that the Petitioner has a one-time achievement or has presented documents satisfying at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. One-Time Achievement

Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The House Report specifically cited to the Nobel Prize as an example of a one-time achievement; other examples which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example Congress provided, is reported in the top media internationally regardless of

the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, Congress' example clearly shows that the award must be global in scope and internationally recognized in the field as one of the top awards.

On appeal, the Petitioner asserts that her receipt of a "Certificate of Honor" from the [REDACTED] in [REDACTED] 2015 constitutes her one-time achievement. Her submitted documentation indicates that she received this certificate for her work as producer and director of the documentary film [REDACTED]

According to the record, the [REDACTED] is the business counterpart to the [REDACTED] and is one of the largest film markets in the world. It essentially offers a networking opportunity for film professionals while simultaneously providing registrants the benefits of a festival badge.¹ The record does not explain the nature of the Petitioner's Certificate of Honor, nor does it establish that this certificate constitutes a major, internationally recognized award. While the Petitioner submits evidence demonstrating that the [REDACTED] "operates in tandem" with the well-known [REDACTED] the festival and its awards appear completely distinct from the [REDACTED]

It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). As such, she must offer sufficient evidence demonstrating that her 2015 Certificate of Honor qualifies as "a major, international[ly] recognized award." See 8 C.F.R. § 204.5(h)(3). The Petitioner has submitted no documentation, such as media reports or other credible evidence, discussing these certificates or confirming that they are major awards that enjoy international recognition. She has not presented, for example, evidence that certificates of honor such as hers are widely reported by international media comparable to other major, globally recognized awards such as an Academy Award or an Olympic medal. Without corroborating evidence verifying the certificate's status and international recognition, the Petitioner has not demonstrated that her Certificate of Honor qualifies as a one-time achievement.

B. Evidentiary Criteria²

As the Petitioner has not established her receipt of a major, internationally recognized award, to meet the initial evidence requirements, she must satisfy at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). She has not made such a showing.

In denying the Petition, the Director found that that the Petitioner met the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(x). On appeal, the Petitioner maintains that she also meets the lesser awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv), and the original

¹ See [http://www.\[REDACTED\]](http://www.[REDACTED]) (last visited Mar. 7, 2018).

² We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

contributions criterion under 8 C.F.R. § 204.5(h)(3)(iii)(v).³ We have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Petitioner meets the plain language requirements of at least three 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 received numerous awards for her work in the film industry, a number for which she claims she does not have documentation. She submits evidence that she won the "Prize of the Organizer" for her film [REDACTED] during the [REDACTED] in [REDACTED] as well as evidence demonstrating her receipt of a Certificate of Appreciation from [REDACTED] for her "valuable contribution" in 2007. However, the record lacks evidence explaining the nature of these awards or detailing their competitive selection process, and we thus cannot determine whether she received these awards for excellence in her field of endeavor. Moreover, the Petitioner has not submitted evidence demonstrating that such awards receive national or international recognition in the field of cinematography.

She also submits documentation that her film [REDACTED] received an award for Best International Social Documentary from the [REDACTED] in 2009. While the record contains a letter from [REDACTED] confirming that this award was given to the Petitioner for her outstanding achievement, the record does not demonstrate that this award has garnered national or international recognition in the field cinematography.

Regarding the Petitioner's receipt of a Certificate of Honor from the [REDACTED] we note that the documentation submitted indicates that such a certificate is a "special gratitude award." She provided what appears to be a summary of the [REDACTED] website which states that "the Festival selects the most successful projects artistically" and that "[t]hese projects are selected as they get a lot of interest by a great number of producers and distributors." As noted previously, the Petitioner must demonstrate that her prizes or awards are nationally or internationally recognized for excellence in the field. Here, the record does not support a finding that certificates of honor presented as a special gratitude award by the [REDACTED] receive national or international recognition for excellence in the field

Finally, she offers documentation that she received the "Best Human Artist" award from the [REDACTED] in 2015. The record contains a letter from [REDACTED] which explains that it is a non-profit, non-political association, and which states that it awarded the Best Human Artist award to the Petitioner in recognition of her cinematography and her promotion of human rights and freedom. It states that it organizes an awards and appreciation ceremony every four years to honor artists that have addressed the promotion of human values and human rights in their work. Thus, while this award honors the Petitioner for her contributions to the promotion of

³ In his decision, the Director determined that the Petitioner did not meet the membership criterion. See 8 C.F.R. § 204.5(h)(3)(ii). The record supports his conclusion, and the Petitioner has not challenged this finding on appeal.

human rights, it does not on its face constitute an award for excellence in the field of cinematography. Nor does the evidence establish that this award is nationally or internationally recognized for excellence in the field. For the reasons discussed above, the Petitioner has not established 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 claims eligibility under this criterion based upon the submission of translated articles and webpages from foreign language newspapers and online publications including [REDACTED] and [REDACTED] which discuss her various film achievements. While the articles appear to be about the Petitioner's work, the Director determined that she offered insufficient evidence to show that these publications qualify as major media, professional publications, or major trade publications. We agree.

The Petitioner has not established the circulation data of any of the above resources to compare with the circulation statistics of other newspapers or websites, and she has consequently not established that any of the publications from materials submitted are forms of major media. See *Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012). Although she cites to [REDACTED] website on appeal in support of the contention that this publication "enjoys a wide-enough readership that it can be said to have attained a wide-ranging appeal to all persons," this does not establish that [REDACTED] is a professional or major trade publication or other form of major media. Similarly, the Petitioner did not provide evidence establishing the foreign language newspapers qualify as professional or major trade publications or other major media.⁴

⁴ We note the Petitioner's submission of Wikipedia entries for some of the publications, including [REDACTED]. As correctly noted by the Director, there are no assurances about the reliability of the content from *Wikipedia*, an open, user-edited internet site. See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer (last visited on Mar. 7, 2018). Any documentation submitted from *Wikipedia* in support of circulation and distribution data therefore carries minimal evidentiary weight.

The Petitioner also submitted translated transcripts of interviews that were available on YouTube.⁵ The interviews were conducted in Albania and the record contains a "Certificate of Transcript" for each that attests to the accuracy of the transcription, but not the translation. Evidence in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports her claims. Furthermore, as with the print journals, the record lacks evidence establishing that the source of the interviews qualify as major media.

In summary, the evidence provided does not show that the newspaper or online articles appeared in professional or major trade publications, or other major media. As such, we find that the Petitioner has not met this 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 claims that she served as a panelist for the 2013 [REDACTED]. In support of this assertion, she submits two letters from [REDACTED] who states that she invited the Petitioner to serve on the jury of this festival because "she is a very professional artist." She also submitted a photograph of her seated at a table, which is captioned with [REDACTED] and "www.facebook.com [REDACTED]" and photographs of her standing in front of a banner that reads [REDACTED].

The evidence the Petitioner submits reflecting her selection as a judge for the 2013 [REDACTED] falls short of qualifying under this criterion. First, both letters state that she was "invited" to serve as a panelist. The evidence, however, must show the Petitioner participated as a judge; not that she was merely selected or invited to participate. The photographs submitted likewise do not establish that she served in the claimed capacity as a panelist, and we note that both photographs contain unexplained references (i.e., [REDACTED] and [REDACTED]) that do not appear to relate to the 2013 [REDACTED]. Finally, even if it was established that she served as a panelist (or on the jury, as stated in the second letter), her role in this capacity is unclear as the record contains no evidence demonstrating that she directly judged the work of others in the same or an allied field. For these reasons, the Petitioner has not met the requirements of this criterion.

⁵ www.youtube.com

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 claims that she founded [REDACTED] a film festival held annually in New York City that displays films from producers of Albanian descent. In response to the RFE, she argues that this constitutes a “unique” contribution of major significance to the field of cinematography, and asserts that “no other Albanian artist in Kosovo, Albania or elsewhere has established a film festival abroad.” The Petitioner, however, does not demonstrate what effect the [REDACTED] has had on the field.

For example, while the record contains transcripts of interviews appearing on youtube.com where the Petitioner discusses the festival, there is no documentary evidence demonstrating that the [REDACTED] is widely viewed by members of the cinematography field as an original contribution of major significance. Likewise, the record contains no evidence that critics, performers, or audiences consider its creation a contribution of major significance. While her founding of the festival may in fact be unique and the first of its kind, there is no evidence showing that the festival has significantly impacted the field of cinematography as a whole or otherwise equates to an original contribution of major significance in the field.

Although the record contains letters from other artists who commend her creation of the [REDACTED] these letters fall short of establishing its widespread impact on the field as a whole. For example, a letter from [REDACTED] a composer and classical pianist, states that the [REDACTED] “has served as a doorway to jump start careers by encouraging and forging successful paths for Albanian filmmakers around the globe.” The Petitioner did not provide accompanying evidence to corroborate the claims and this letter lacks specificity of how the Petitioner’s achievements have affected the field. Moreover, while [REDACTED] commends her work as a documentary filmmaker, there is no evidence that her cinematographic methods are otherwise original or are being used or reproduced within her field. While the Petitioner has earned the admiration of her references, there is no evidence demonstrating the extent of her influence on other cinematographers, nor does it show that the field has significantly changed as a result of her work.

Contributions of major significance connotes that the Petitioner’s work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also* *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 135-136 (D.D.C. Dec. 16, 2013). As discussed above, the Petitioner has not shown that her work has been of major significance in the field. For these reasons, she has not met 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).

Under this criterion, the Petitioner must establish that her work was on display, and that the venues were artistic exhibitions or showcases. The Director concluded that the Petitioner satisfied this criterion. The record supports this finding because it confirms that she has displayed her films at

various film festivals such as the [REDACTED] and the [REDACTED]. Accordingly, we agree with the Director's determination.

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 occasionally references the leading or critical role criterion throughout the record, claiming that she has played a leading role in cinematography through her creation of the [REDACTED] and as the president of [REDACTED] a movie production company in the United States.

The record, however, does not describe the duties the Petitioner performed for the organizations in her various roles as *founder of the film festival and president of the production company*. Absent independent supporting evidence, the nature of the Petitioner's role within an organization cannot be inferred solely from the job title. The record does not specify how the Petitioner contributed to these organizations in a way that is significant to the organizations' outcome or what role she played in the organization's activities. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, at 135 (D.D.C. Dec. 16, 2013). The regulation also requires that the organization have a distinguished reputation. The Petitioner does not address this prong of the criterion, and the record lacks evidence establishing the reputation of the organizations. In light of the above, the Petitioner has not submitted qualifying evidence that meets the plain language requirements of this criterion.

C. Comparable Evidence

Several of the criteria are written broadly such that they can readily apply to the greatest number of occupations. 56 Fed. Reg. 60897-01, 60898. The regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence if a petitioner is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to her occupation. It is the Petitioner's burden to explain why the regulatory criteria are not readily applicable to her occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Here, the Petitioner requests consideration of comparable evidence, which includes her receipt of a "Woman of the Year" award from the [REDACTED]. The regulatory language precludes the consideration of comparable evidence in this case, however, as there is no indication that eligibility for visa preference in her occupation as a movie producer, director, and screenwriter cannot be established by at least three of the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, the Petitioner mentioned evidence that specifically addressed seven of the ten criteria at 8 C.F.R. § 204.5(h)(3). Where a petitioner is simply unable to meet or submit sufficient documentary evidence of at least three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. As such, the petitioner has not demonstrated that she may rely on comparable evidence.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence that establishes her receipt of a one-time achievement or shows that she meets 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, after reviewing the record in the aggregate, we conclude that it does not sufficiently demonstrate the Petitioner's sustained national or international acclaim or that his achievements have been recognized in the field through extensive documentation. For these reasons, she has not established she qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of M-K-*, ID# 1084128 (AAO Apr. 11, 2018)