



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

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

MATTER OF M-B-T-A-S-

DATE: AUG. 22, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a ballet company, seeks to classify the Beneficiary as an alien of extraordinary ability. *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 petition, concluding that the record did not establish, as required, that the Beneficiary has received a major, internationally recognized award or met the requirements of at least three of ten evidentiary criteria.

On appeal, the Petitioner submits additional evidence and asserts that the Director misinterpreted the criterion relating to media about the Beneficiary, and ignored evidence of an award the Beneficiary received. The Petitioner further asserts that Beneficiary meets four of the evidentiary 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying 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).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that U.S. Citizenship and Immigration Services (USCIS) examines “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”). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Director found that the Beneficiary, a ballet dancer and instructor, met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to the artistic display of his work. On appeal, the Petitioner asserts that the Beneficiary also meets the evidentiary criteria concerning prizes and awards, media about him and his work, and his role for organizations with a distinguished reputation. After reviewing all of the evidence in the record, we agree that it establishes that the Beneficiary’s work has been displayed at artistic exhibitions, but do not find that he meets the requisite three evidentiary criteria.

Documentation of the individual’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 notes that the Director did not discuss the evidence submitted under this criterion in his decision, and resubmits evidence in the form of a letter from the [REDACTED]. The letter indicates that the Beneficiary received two prizes from this organization: the [REDACTED] 2007 and [REDACTED] 2010. The letter further states that these prizes were awarded in a ballet competition, which other biographic materials in the record indicate is the Egyptian national ballet competition. However, no documentation of the prizes, such as a copy of a certificate and/or photograph of a medal or trophy, was submitted, and the absence of this primary evidence is not explained in the letter or elsewhere in

the record. In addition, the record does not include evidence in support of the national or international recognition of these prizes, or any other evidence regarding the competitions at which they were won, such as the number of competitors, awards given, and any media coverage of the competition or awards. Without further evidence regarding these prizes and any recognition they may have, we cannot find that this evidence establishes that the Beneficiary meets this criterion.

The Petitioner also asserts on appeal that the advisory opinion it obtained for purposes of the previous nonimmigrant petition for O-1 visa status for the Beneficiary should be considered as a prize or award. However, this determination by the [REDACTED] was not made in the course of any sort of competition or selection; it is an opinion letter created for purposes of the nonimmigrant visa petition only, and it is limited to the Beneficiary's eligibility for O-1 visa status. Therefore, we do not find that it is a prize or award which qualifies under this criterion. Accordingly, this criterion has not been met.

Published material about the individual 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 submitted several materials under this criterion, including an interview of the Beneficiary that appeared in the January/February 2015 issue of [REDACTED], a review of the Petitioner's performance of [REDACTED] posted on the website [REDACTED] an article about the [REDACTED] (no author provided) from [REDACTED] and other similar local publications. The Director, while mentioning only two articles, stated that these materials did not qualify under this criterion because they were not "primarily about the petitioner." While the Petitioner correctly asserts on appeal that the regulation does not include the word "primarily," in order for material to be about the Beneficiary and his work, they must focus on him to some extent. Articles that do not pertain to the 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 about a show are not about the actor). In all but one case, the material is about a performance by a ballet company, or a review of a particular performance, in which the Beneficiary is mentioned as one of the company members or performers. These materials do not qualify as being about the Beneficiary and his work as a dancer.

The brief interview of the Beneficiary that appears in [REDACTED] has him and his work as a ballet dancer as its only focus. However, the evidence does not establish that this material qualifies as a professional publication or as major media. We note that the cover describes the publication as [REDACTED] but this single promotional statement is insufficient to meet the requirements of this criterion. The record lacks evidence demonstrating that the magazine qualifies as a professional or trade magazine. Similarly, the Petitioner has not established that the evidence from other sources of published material are professional or trade in nature, or qualify as major media. Their titles indicate a focus on local sections of the [REDACTED] metropolitan

area. For these reasons, we find that the submitted evidence does not meet the requirements of this criterion.

Evidence that the individual 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)

Generally, a critical role is one in which an individual is responsible for the success or standing of the organization or establishment. In addressing this criterion on appeal, the Petitioner refers to the letter submitted by its Artistic Director, [REDACTED]. She does not assert that the role played by the Beneficiary is a leading one for its organization, but claims that it is critical since the company's programming is set one year in advance, and the loss of the Beneficiary would cause a "substantial disruption in our activities." However, the Petitioner does not explain how this differentiates the Beneficiary from other dancers and staff members who are also part of its planned programs. Although dancers in general are critical to the operation of a dance company, the evidence does not demonstrate that the Beneficiary in particular is responsible for the Petitioner's standing or success. [REDACTED] also indicates that the Beneficiary is a highly regarded dance instructor for the Petitioner, such that "students compete to be included in his classes." Without further evidence regarding the staff, classes, and students, the Petitioner has not established that the Beneficiary plays a critical role for the Petitioner as an instructor.

Several letters submitted from the Beneficiary's previous employers and colleagues, including those with the [REDACTED] (VA) Ballet and the [REDACTED] indicate that he played a lead dance role in several performances¹. For example, [REDACTED] who has danced with both of these companies along with the Beneficiary and serves as the Artistic Director of the [REDACTED] states that the Beneficiary performed leading roles in [REDACTED]. [REDACTED] Artistic Director for the [REDACTED] confirms that the Beneficiary toured with the [REDACTED] as a soloist and performed the lead role in [REDACTED] during the company's tour of Spain in October 2010. Also, [REDACTED] co-founder of the [REDACTED] states that the Beneficiary played [REDACTED] in his production of [REDACTED].

The Beneficiary's role as a dancer with the [REDACTED] in Virginia is confirmed by its Co-Director, [REDACTED] who indicates that he "has performed to sold-out audiences consistently during the 2014 [REDACTED] season." And [REDACTED] Artistic Director of the [REDACTED] in [REDACTED], Maryland, states that the Beneficiary became a faculty member in August 2015 and proved to be a reliable and professional teacher. She adds that the Beneficiary was hired in January 2016 to perform a role in the company's production of [REDACTED].

¹ Although not all of the letters which were submitted are mentioned here, all were thoroughly reviewed. Not all of the writers of these letters specifically address a leading or critical role played by the Beneficiary.

Programs and media materials confirm some of these and other leading dance roles that the Beneficiary has performed. However, the Petitioner has not established that playing a lead role in a performance establishes that the Beneficiary played a leading role for those ballet companies overall. While these letters praise the Beneficiary for his work ethic, versatility, and energy, they do not establish that he was responsible for the success or standing of the organizations or establishments. Accordingly, the Petitioner has not established that the Beneficiary meets this criterion.²

III. CONCLUSION

The evidence does not establish that the Beneficiary received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in its entirety, and conclude that it does not support a finding that the Beneficiary has established the level of expertise required for the classification sought. For these reasons, the Petitioner has not shown that the Beneficiary qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of M-B-T-A-S-*, ID# 1288983 (AAO Aug. 22, 2018)

² Since the Petitioner has not established that the Beneficiary has played a leading or critical role for the organizations that he has been associated with, we need not address whether any of those organizations have a distinguished reputation.