



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

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

MATTER OF M-I-

DATE: DEC. 19, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an actress, 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 although the Petitioner satisfied four of the initial evidentiary criteria, she did not show sustained national or international acclaim and demonstrate that she is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits additional documentation and a brief asserting that she has sustained the required acclaim and has risen to the very top of her field. In addition, she points to inconsistencies in the Director's decision, stating that it acknowledges that she has satisfied "the requirements of four of the regulatory criteria, re-examines this evidence in the Final Merits Determination section to then claim that [the Petitioner] has not met the criteria, and finally states that 'USCIS will not conduct a final merits determination' after having done precisely that for several pages."

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). If that petitioner does not submit this evidence, then 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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

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 four of the initial evidentiary criteria: published material under 8 C.F.R. § 204.5(h)(3)(iii), judging under 8 C.F.R. § 204.5(h)(3)(iv), display of her work at artistic exhibitions under 8 C.F.R. § 204.5(h)(3)(vii), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). On appeal, the Petitioner maintains that she also meets the nationally or internationally recognized awards criterion at 8 C.F.R. § 204.5(h)(3)(i). We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of 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 record indicates that the Petitioner cofounded a theater company, [REDACTED] and that its [REDACTED] production premiered at the [REDACTED] in 2011.<sup>1</sup> She further asserts: "That year, [REDACTED] won the highest honor at the [REDACTED] Best Production, thanks to her efforts both on stage and behind-the-scenes." In addition, the Petitioner explains that the [REDACTED] "recognizes outstanding work that has appeared on its own stages with the Annual [REDACTED]. The record includes a "2011 [REDACTED] announcement in *AustralianStage.com* (under [REDACTED] news) listing [REDACTED] as "Best Production." The Petitioner also provides a congratulatory certificate from the [REDACTED] indicating that this award "consists of: four weeks use of in kind rehearsal space and \$2000 toward a development, or \$4000 towards a production that is included in the [REDACTED] seasons, 1 full page ad in a 2012 [REDACTED] to promote your company or an upcoming production." We note that the congratulatory certificate and information in *AustralianStage.com* do not specifically identify the Petitioner as an award recipient.

On appeal, the Petitioner contends that coverage of the [REDACTED] in *AustralianStage.com* renders [REDACTED] "Best Production" award a nationally recognized prize in Australia. The Petitioner, however, has not provided sufficient documentation regarding the aforementioned website's readership to demonstrate that coverage in its [REDACTED] news section is indicative of national recognition.<sup>2</sup> In addition, the article in *AustralianStage.com* does not discuss the "Best Production" award's level of recognition in Australia. Furthermore, the record indicates that [REDACTED] nominees were limited to those productions that appeared on the [REDACTED] stage. For these reasons, the evidence is not sufficient to show that this theatre's "Best Production" award constitutes a nationally or internationally recognized award for excellence in the field.

In addition, the Petitioner asserts that [REDACTED] received a significant monetary grant from the Department of Culture and the Arts (DCA) (West Australia) in 2013 to tour [REDACTED] around West Australia. She presents a webpage from DCA indicating that the organization's purpose "is to foster the cultural development of Western Australia through the provision of quality services and funding

---

<sup>1</sup> The [REDACTED] is an "independent live theatre venue" in [REDACTED] Australia with a main space that "seats up to 73" people. See [https://\[REDACTED\]/artists/venue-info/](https://[REDACTED]/artists/venue-info/), accessed on December 12, 2018, copy incorporated into the record of proceedings.

<sup>2</sup> The record includes information from *AustralianStage.com*'s advertising webpage asserting that "[t]ogether with Australian Stage Jobs, the sites attract over 80,000 visitors per month." The Petitioner, however, has not established that this combined monthly number of visitors is sufficient to demonstrate that *AustralianStage.com*'s coverage is indicative of national recognition. We will further address this evidence under the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii).

programs, and the implementation of Government policies and initiatives,” but this webpage does not mention the Petitioner, [REDACTED], or their receipt of any project funding. The record also includes an article, entitled [REDACTED] stating that DCA provided funding of \$90,000 to “allow [REDACTED] to tour their production of [REDACTED] to regional centres as part of the [REDACTED] project.” The name of the publication in which this article appeared was not identified, nor does the article mention the Petitioner. Furthermore, the Petitioner has not provided sufficient documentation to demonstrate that such press coverage is indicative of national or international recognition. Finally, the article and DCA webpage do not discuss the [REDACTED] project grant’s level of recognition in Australia or internationally. The evidence therefore is not sufficient to show that such regional arts funding constitutes a nationally or internationally recognized prize or award for excellence in the field. Accordingly, 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 Director found that that the Petitioner had demonstrated her eligibility under this criterion. For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary evidence showing that she meets the requirements of this criterion. Accordingly, the Director’s determination on this issue will be withdrawn.

The Petitioner presented articles in *The West Australian* entitled [REDACTED] and [REDACTED]<sup>3</sup> but these articles are not about the Petitioner. While the aforementioned articles offered reviews or information relating to theatrical productions or projects in which she participated, they are about the shows or events and not the Petitioner. This regulatory criterion requires “published material about the alien.” Articles that are not about her do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at \*1, \*7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). For example, [REDACTED] is a theatrical review of [REDACTED] and is about that production rather than about the Petitioner. Similarly, [REDACTED] is about actor [REDACTED] and only mentions the Petitioner in passing.

The record includes a blog in *HuffingtonPost.com* entitled [REDACTED]. This blog guide lists [REDACTED] (a show featuring the Petitioner) among more than 25 other production summaries, but she is not identified in the posting. While the record establishes that *HuffingtonPost.com* is a form of major media, the aforementioned material is not about the Petitioner. Similarly, the Petitioner presents information retrieved from the

---

<sup>3</sup> With regard to the online article entitled [REDACTED] a duplicate version in the record of this May 2015 article by [REDACTED] appeared in print under the title [REDACTED]

*New York Times* “Find a Show” web portal for [REDACTED] This search result listing the aforementioned production’s plot description, ticket information, show times, and reader reviews does not mention the Petitioner and therefore it does not constitute published material about her.

The Petitioner submitted announcements in *BroadwayWorld.com*’s “Off-Broadway” platform entitled [REDACTED] and [REDACTED] but these promotions’ authors were not identified as required by this criterion. The former promotional announcement only briefly mentions the Petitioner and the latter one is about the [REDACTED] production instead of the Petitioner. In addition, she provided information from *BroadwayWorld.com*’s advertising webpage asserting that its website delivers “more than 4.5 million visitors per month.” USCIS, however, need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff’d* 317 Fed. Appx. 680 (C.A.9). The evidence is not sufficient to show that the readership or number of online views for *BroadwayWorld.com* elevates it to major media relative to other publications.

The record contains a review of [REDACTED] but the Petitioner is not mentioned in this online review. In addition, she provides a blog post from the website of *Time Out New York* containing a compilation of reviews relating to the 2016 [REDACTED] This blog post offers a review of [REDACTED] and includes a brief discussion of the Petitioner relating to her work. The record, however, does not establish whether this blog is produced by *Time Out New York* as opposed to being an open-source site through which anyone can post a blog entry. While the Petitioner provided information from *Time Out New York*’s advertising webpage asserting that this entertainment guide has a weekly readership of 330,000, this self-promotional material is not sufficient to demonstrate that the blog publication qualifies as a form of major media.

The Petitioner provided an article in *Cool Hunting* entitled [REDACTED] but this article includes no mention of the Petitioner. Furthermore, the information from *Cool Hunting*’s media kit is not sufficient to establish that this publication is a form of major media.

The record includes articles about the Petitioner in *The Wire Mag*, [REDACTED], *Sunday Times*, [REDACTED], *NYTheatreGuide.com*, [REDACTED], *Australian Stage*, [REDACTED],<sup>4</sup> *Eastern Reporter*, [REDACTED], *Melville Times*, [REDACTED], *Express Magazine*, [REDACTED], *Guardian Express*, [REDACTED], *Robb Entertainment Magazine*, [REDACTED], and *Jwire.com*, [REDACTED]. Although the Petitioner provided information about the

---

<sup>4</sup> The record includes information from *AustralianStage.com*’s advertising webpage asserting that “[t]ogether with Australian Stage Jobs, the sites attract over 80,000 visitors per month,” but this self-promotional information is not sufficient to show that the website’s level of monthly visitors elevates it to major media relative to other publications.

*Matter of M-I-*

aforementioned publications from their websites, without additional documentation this self-promotional material is not sufficient to show that they qualify as major media. Finally, none of the remaining articles submitted for this criterion were about the Petitioner and in major media. Based on the foregoing, she has not demonstrated that she meets 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 record supports the Director's finding that the Petitioner meets this criterion. For example, the Petitioner provided evidence indicating that she published two theatrical reviews for *NY Theatre Guide*.

*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 Petitioner submitted documentation reflecting that she performed in stage productions at venues such as the [REDACTED] and [REDACTED]. As such, the record supports the Director's determination that she fulfills 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 found that that the Petitioner had demonstrated her eligibility under this criterion. For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary evidence showing that she meets the requirements of this criterion. Accordingly, the Director's determination on this issue will be withdrawn.

The Petitioner contends that she satisfies this criterion based on her role as executive producer and artistic director of [REDACTED] her production company. The record includes a letter from [REDACTED] an actress, acting coach, and director, indicating that she worked with the Petitioner on [REDACTED] a web series in which the Petitioner stars. [REDACTED] states: "Produced by [the Petitioner's] own production company, [REDACTED], the comedy series has garnered significant attention on the internet. Indeed, some episodes boast over 17,000 views on YouTube – an extremely impressive number for an independently marketed web series." In addition, [REDACTED] asserts that the Petitioner has performed in a "leading and critical role as [REDACTED] cofounder, executive producer, and artistic director."

While the record shows that the Petitioner has performed in a leading or critical role for [REDACTED] the evidence is not sufficient to demonstrate that her company has a distinguished reputation in theatre, film, or web series production. For example, the Petitioner has not shown that the published material relating to [REDACTED] plays sets it apart from others in the industry or otherwise reflects its

distinguished reputation. Similarly, the record does not demonstrate that the stature of [REDACTED] awards and nominations elevate the company to having a distinguished reputation.<sup>5</sup> With regard to [REDACTED] awards, they have already been discussed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Further, while [REDACTED] series [REDACTED] had two entries among the hundreds of nominees at [REDACTED] the record does not establish the significance of these nominations or the caliber of the competition.<sup>6</sup> Accordingly, the evidence is not sufficient to establish that [REDACTED] is a production company with a distinguished reputation.

In addition, the Petitioner contends that she has performed in a leading or critical role as an actress for the [REDACTED] (a British site-specific theater company), [REDACTED] (New York), and [REDACTED] (New York). As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.<sup>7</sup> Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.<sup>8</sup>

With respect to the Petitioner's acting performances for the [REDACTED] this organization's artistic director, [REDACTED] states that she cast the Petitioner in [REDACTED] and the one-woman show [REDACTED] asserts that [REDACTED] "would not have been successful without [the Petitioner's] incomparable talents." However, the Petitioner did not show how her acting role in these two productions reflects her leading or critical role for the overall production company. Furthermore, while the record includes information about the [REDACTED] from its profile on Tumblr.com (a social networking website) and promotional material and succinct reviews relating to [REDACTED] and [REDACTED] this documentation is not sufficient to demonstrate that [REDACTED] has earned a distinguished reputation.

In addition, [REDACTED] Associate Director for [REDACTED] asserts that he cast the Petitioner "in a special [REDACTED] production of [REDACTED] and that "she delivered an enchanting performance that contributed to the overall success of this renowned show." [REDACTED] further indicates that he also cast the Petitioner "as a leading physical theater performer for a secret virtual reality project called [REDACTED] which had a 6-week run at [REDACTED] in New York." Again, the Petitioner has not shown how her acting role in these specific productions demonstrates a leading or critical role for the overall theater company. We also note that the record

---

<sup>5</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

<sup>6</sup> For instance, the Petitioner provided information from the [REDACTED] organizer stating that "preference is given to nominees who attend our event."

<sup>7</sup> See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 10 (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

<sup>8</sup> *Id.*

includes a *New York Times* theatre review of [REDACTED] dated April 2011, but the Petitioner is not listed as a cast member. Another *New York Times* article (December 2016), entitled [REDACTED] recommends “four immersive productions” in New York for New Year’s Eve, including [REDACTED]. This second article does not mention the Petitioner or her [REDACTED] performance in that production. While the aforementioned articles briefly identify [REDACTED] as a British site-specific theater company, their limited discussion of that company is not sufficient to demonstrate that it has a distinguished reputation in the theatre industry.

Furthermore, [REDACTED] Artistic Director for [REDACTED] states that he welcomed the Petitioner “as a Company Member of [REDACTED] the moment I saw her audition.” [REDACTED] lists the Petitioner’s acting credits for other theatre companies and two television programs, but does not explain how her role as a member of [REDACTED] was leading or critical for his company. In addition, the Petitioner provides promotional material from [REDACTED] but this documentation is insufficient to establish that the company has a distinguished reputation.

With regard to the Petitioner’s role for [REDACTED] the company’s founder and chief executive officer, states that the Petitioner “served in a leading or critical role for [REDACTED] by starring in several of our short films, among them [REDACTED].” [REDACTED] adds that the Petitioner’s “leadership and technical mastery significantly elevated the quality of each of these productions, and her interpretation of the material was thought-provoking and thoroughly original.” The Petitioner, however, has not shown how her acting role in these productions demonstrates a leading or critical role for the overall production company. Additionally, she submits information about [REDACTED] from its website, but this evidence is not sufficient to establish that the production company has earned a distinguished reputation.

Finally, while the record demonstrates that the Petitioner has performed script read-throughs for [REDACTED] television series, the evidence does not demonstrate that this role was leading or critical for an organization or establishment. [REDACTED] Casting Director for [REDACTED] indicates that she “hired [the Petitioner] to read for [REDACTED] auditions and script read-throughs with the cast.” In addition, actor [REDACTED], an Emmy and Tony Award-winning actor and [REDACTED] cast member, states that he “first came to know [the Petitioner] through [REDACTED] to which she frequently contributes as an actor for our table reads with the cast, including my co-star [REDACTED] . . . [The Petitioner] always delivers effortlessly powerful performances that heighten the overall quality of the table read.” The Petitioner has not specifically identified an organization or establishment for which her [REDACTED] role should be evaluated. Moreover, although her recommendation letters from [REDACTED] and [REDACTED] praised her talents, they did not contain detailed and probative information that specifically addressed how her role was leading or critical.<sup>9</sup> The letters, for instance, do not demonstrate how this role was leading compared to the other roles on the television show such as its principal actors and casting director, nor do they show that she was responsible for [REDACTED] high ratings or was

---

<sup>9</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.



otherwise credited for the success of the series or for an overall organization. For the above reasons, the Petitioner has not established that she meets this regulatory criterion.

#### B. O-1 Nonimmigrant Status

We note that 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 Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). 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 (E.D. La. 2000).

### 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 acclaim and recognition required for the classification sought.

In the appeal brief, the Petitioner contends that her performances in [REDACTED] and [REDACTED] at the [REDACTED] demonstrate the prominence of her work and her acclaim in the field. She provides an August 2013 article in the *New York Times* stating that the [REDACTED] “fields about 850 applications a year and has always winnowed them by jury.” This article notes that in 2013 the festival included “a diverse mix of 185 shows” in “spaces scattered across [REDACTED] at the [REDACTED].” A quote in the article from the [REDACTED] producing artistic director indicated that her festival adjudicators “will decline someone who doesn’t need this opportunity. There are a lot of recognizable names that have come across my desk, and it’s certainly not that the work wasn’t good, but if you have opportunity elsewhere, then you probably don’t need one of our slots.” Without extensive evidence recognizing the Petitioner’s achievements distinguishing her stage performances from others in her field, she has not shown that she has risen to the very top of the field.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the

*Matter of M-I-*

“extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r. 1994). Here, the Petitioner has not shown that the significance and recognition of her work are indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

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 M-I-*, ID# 1823447 (AAO Dec. 19, 2018)