



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

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

MATTER OF D-R-T-

DATE: JAN. 26, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an Irish dance teacher, 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 two of the initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner provides new evidence, as well as previously submitted documentation, and 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). 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).

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 an Irish dance teacher employed at the [REDACTED]. 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 ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met the criteria for judging under 8 C.F.R. § 204.5(h)(3)(iv), and original contributions of major significance under 8 C.F.R. § 204.5(h)(v).

On appeal, the Petitioner contends that she meets five additional criteria: awards under 8 C.F.R. § 204.5(h)(3)(i), memberships under 8 C.F.R. § 204.5(h)(3)(ii), published material under 8 C.F.R. § 204.5(h)(3)(iii), leading or critical roles under § 204.5(h)(3)(viii), and high salary under 8 C.F.R. § 204.5(h)(3)(ix). We have reviewed all of the evidence in the record, and conclude it does not support a finding that the Petitioner satisfies 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).

On appeal, the Petitioner contends that when an Irish dancer wins a world championship, the coach effectively has also won the championship. Although her students may have received awards, in order to meet the plain language of this regulatory criterion, the Petitioner must demonstrate her own

receipt of nationally or internationally recognized prizes or awards for excellence in her field of endeavor. In this case, the Petitioner did not provide documentation to establish 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).

The Petitioner states that she meets this criterion based on her membership with the [REDACTED] [REDACTED] also known as [REDACTED]. As evidence of her membership, she provided a letter from [REDACTED] office manager of [REDACTED] confirming that the Petitioner has been a member since 1988, and has subsequently obtained adjudicator status.

On appeal, the Petitioner contends that the criterion does not mandate that an association require outstanding achievements as a condition for membership. She asserts instead that an organization must require individuals, after becoming members, to perform outstanding achievements. Here, she indicates that, upon becoming a member of [REDACTED] “the required outstanding achievement is your students winning Irish Dance Competitions or finishing close thereto.”

We do not find support for the Petitioner’s interpretation of the regulatory provision. By its plain language, this criterion refers to associations whose membership is limited to those with outstanding achievements as judged by national or international experts. In addition, we note that the record does not support the Petitioner’s assertion that [REDACTED] “requires” its existing members to win or place at competitions. For the reasons discussed below, we find that the Petitioner’s membership in [REDACTED] does not satisfy this criterion.

According to the submitted screenshots regarding the [REDACTED] history, the commission developed an examination system for those wishing to become qualified teachers of Irish dancing. The Petitioner submitted a document from [REDACTED] outlining the procedures for taking the teacher’s examination. In the first section under qualifications for entry, it states that the “examination is open to persons who are 20 years of age or over at the date of application and are acceptable to [REDACTED] as candidates.” In section two under competency and suitability, it states that “an applicant must submit with his or her application a recommendation by any registered teacher or adjudicator testifying that the certifier knows the applicant, is satisfied that he or she can perform the required dances for the practical dancing test to a reasonably good standard and knows of no reason why the applicant should not be suitable and acceptable as a registered teacher.” This standard does not appear to represent a level consistent with outstanding achievements. The documentation indicates that in order to become a member, an applicant must pass a test but it does not indicate that it requires outstanding achievements from their members.

Further, the [REDACTED] test rules state that the examining authority will determine the results of the testing. According to the association’s mission statement, membership of the examination authority

includes the [REDACTED] chairperson, eight examiners elected at the [REDACTED] and three members of [REDACTED] elected at the [REDACTED] who are neither current or candidate examiners. The Petitioner, however, did not demonstrate that the members of the examining authority are nationally or internationally recognized, outside of being members themselves in [REDACTED]. For these reasons, the Petitioner does not meet 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 contends it meets this criterion by the five articles and one radio show published in [REDACTED] and [REDACTED].

Upon review of the five articles, all of the articles are mainly about different Irish dancers that mention the Petitioner as their instructor, and the radio show focuses on the growing popularity of Irish dance in the United States rather than specifically discussing the Petitioner. For example, an article published in the [REDACTED] is about a child who performs Irish dancing and the article mentions that she has become a stronger dancer since the arrival of the Petitioner to the [REDACTED] school. Three other articles are about students from the [REDACTED] school that attended the world championships and each mention that the Petitioner has helped with the success of these students. In addition, the article from the [REDACTED] quotes the Petitioner regarding her observations about Irish dancing in the United States but it is not about the Petitioner and her work in the field. While the articles briefly describe the Petitioner's background and her important role as a teacher at the [REDACTED] school, it is not published material about her but instead about the students and the [REDACTED] school program. 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).

Further, some articles also appear to be marketing materials. For example, an employee of the Trinity school authored the material in the [REDACTED] which provides information about the history of the school and how to attend a free class. Thus, this evidence is not reflective of published material about the Petitioner and her work.

Moreover, the Petitioner did not demonstrate that the articles were published in professional or major trade publications or other major media. On appeal, the Petitioner states that "normally, a professional or major trade publication would not be considered major media while a newspaper would always be considered major media. Newspapers publish in print and online. Dwindling circulation does not affect their status as major media, it just means people are unwilling to pay for

¹ The abbreviation [REDACTED] is often known as an [REDACTED] but the documentation does not provide the definition in this case.

the printed version.” We do not find support for the Petitioner’s interpretation that it is the category of media (newspapers), rather than the publication itself, which must have “major” status. Here, the Petitioner did not submit independent, objective evidence establishing that the articles were published in newspapers that constitute major media such as circulation numbers and comparable evidence to other major publications in the U.S. For these reasons, the Petitioner did not show that she meets 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 Director found that the Petitioner participated as a judge of the work of others. The record shows that the Petitioner served as an adjudicator at events for [REDACTED]. Accordingly, we agree with the Director’s determination, and the Petitioner demonstrated that she meets 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 Director found that the Petitioner established that she made artistic contributions of major significance in the field without specifying the basis for that determination. Upon review of the documentation, we disagree with the Director and will withdraw this portion of the decision.

The Petitioner stated that she meets this criterion because she has spent 41 years involved in Irish dancing from “my own competitive dancing days to teaching my own school successfully, passing my adjudicators exam, conducting workshops and choreographing material for other schools of dance, instructing dance camps, choreographing routines to showcase abroad in festivals, taking young teachers and training them at my own studio to successfully pass their [REDACTED] exams, along with my full-time job of training dancers.”

As evidence under this criterion, the record contains letters of recommendation that explain the Petitioner’s work.² Several of the letters are from dance schools where the Petitioner has worked, indicating that upon her arrival, students excelled in the program. For example, a letter from [REDACTED] teacher of the [REDACTED] stated that the Petitioner is the principal instructor for the dance camps,” where she trained beginner students and advanced dancers. She also stated that “with the help from [the Petitioner] I now have many pupils who have won major titles including [REDACTED] and [REDACTED]. Also, a letter from [REDACTED] principal and founding teacher of the [REDACTED] stated that the Petitioner joined the school in 2004 as a choreographer and teacher and “within six months, our dancers had begun to challenge for not only regional, but national honours; we had two dancers in the two three of the [REDACTED]

² While we discuss only a sampling of these letters, we have reviewed and considered each letter present in the record.

_____ and the number of children who qualified throughout regional competition for the _____ had quadrupled, from one to four.” Although the letters claim that the Petitioner’s coaching helped students achieve higher results in competitions, the letters do not provide specific information or evidence as to whether she was the head coach and how often she coached the students that won competitions. The record does not adequately document the attested increase in success by the noted schools, nor does it sufficiently demonstrate whether such increase can be attributed to the Petitioner.

Upon review of the letters, they generally praise the Petitioner’s choreography and teaching skills. For example, a letter from _____ from the _____ stated that the Petitioner “had been called upon by schools of dancing, to choreograph and train some of their dancers,” and also indicated that “these schools have had great success under her tutelage and their dancing teachers had a great mentor in [the Petitioner].” In addition, _____ from the _____ explained that the Petitioner has been a workshop teacher for the past two years and “in that short amount of time, my dancers have achieved tremendous success under her tutelage.” _____, president of the _____ noted the Petitioner’s “[c]horeography is unique and original and second to none,” and that her “choreography is at the top of the competitive world of Irish dance.” Further, a letter from _____ principal teacher of the _____ stated that “over the past 15 years, [the Petitioner] has worked with many students in the school and many of them have gone on to sit their _____ and successfully become qualified teachers.” Although all the authors indicate that the Petitioner is a choreographer and instructor, they did not identify or explain a contribution she made of major significance.

Teaching individual students that excel in championships is not in-and-of-itself a contribution of major significance, unless a petitioner shows that she has used her skills to impact or influence the field; in this case, the Petitioner has not made such a showing. Further, the letters do not explain how a petitioner’s contributions have 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, 1122. The letters considered above primarily contain attestations of the Petitioner’s status in the field without providing specific examples of contributions she has made that rise to a level consistent with major significance in the field. U.S. Citizenship and Immigration Services need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Without supporting evidence, the Petitioner has not met her burden of showing that she has made original contributions of major significance in the field.

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).

On appeal, the Petitioner contends that she has performed in a leading or critical role for _____ as an Irish Dance master. Upon review, we find the record sufficiently demonstrates that the Petitioner has played a critical role for _____. As discussed above, the record includes newspaper articles about the success of individual _____ students. While the articles are not about the Petitioner, they

reference her as the school's head coach and choreographer. In addition, the record includes a letter from [REDACTED] the founder and artistic director of [REDACTED] a resolution adopted by the city council for the city of [REDACTED], an executive office proclamation from the city of [REDACTED] and letters from [REDACTED] elected state officials. All of these documents discuss the reputation and success of [REDACTED] and note the work of the Petitioner as an important coach and choreographer that has influenced the success of the school.

For the reasons discussed above, the Petitioner met 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 includes a letter from [REDACTED] listing the Petitioner's compensation as \$75,000 per year, including earnings from teaching workshops at other schools. On appeal, the Petitioner contends that her ability to generate fees through workshops to pay a portion of her compensation is evidence that she commands a higher remuneration for services than an Irish dance teacher who does not perform workshops. The Petitioner also submitted a statement indicating that there are "very few" workshop dance teachers and "to the best of my knowledge and belief" listed 48 workshop teachers.

Although the Petitioner contends a small percentage of Irish dance teachers receive remuneration from teaching workshops, the record does not provide corroborating evidence for this assertion. In addition, the Petitioner did not provide documentation to compare her salary from other Irish dance instructors. Thus, the record does not establish whether her salary is high relative to others performing similar work. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." The petitioner's submission of documentary evidence reflecting her earnings is insufficient to meet the plain language of the regulation without documentary evidence comparing her salary to high salaries in the field, so as to establish that the petitioner has commanded a high salary

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

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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 D-R-T-*, ID# 791676 (AAO Jan. 26, 2018)