



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF A-Z-

DATE: JULY 24, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a dance coach and choreographer, seeks classification 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 Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had a one time achievement or met at least three of the ten evidentiary criteria under this classification.

On appeal, the Petitioner submits additional evidence and asserts that she satisfies at least three 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 Petitioner is a dance coach and choreographer. Because she not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Upon a review of the record in its entirety, we concur with the Director’s finding that she has served as a judge of the work of others in an allied field, thus satisfying the criterion at 8 C.F.R. § 204.5(h)(iv).

### A. 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)*

In her decision, the Director found that none of the certificates for awards at dance competitions that were submitted by the Petitioner demonstrated her eligibility under this criterion, because they were issued to dance teams or other individuals, not the Petitioner. On appeal, the Petitioner asserts that because she acted as the choreographer, coach and mentor for the teams and individuals who won these awards, she should also receive credit for the awards. However, the plain language of this criterion indicates that it requires documentation of *the Petitioner’s* receipt of prizes or awards. The awards were given to individual dancers and dance groups for their performance, not to the Petitioner for her role as a choreographer. Despite the Petitioner’s assertion that the award certificates specifically identify her as the creative director of [REDACTED] only one does

so, awarding first place to [REDACTED] at the [REDACTED] [REDACTED]. Even if we were to consider this award as belonging to both the Petitioner and her dance group, the evidence does not establish that this award is nationally or internationally recognized. The remaining certificates which name her were given in appreciation of her and her school's participation in various festivals. These certificates do not qualify as prizes or awards for excellence as a choreographer. Therefore, the Petitioner does not satisfy the requirements of this criterion.

*Documentation of the individual'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 submitted a certificate which indicates that the [REDACTED] dance school, under the direction of the Petitioner, is a member of the [REDACTED]. Notably, the certificate does not indicate that the Petitioner is herself a member of [REDACTED]. The evidence submitted from [REDACTED] website indicates that there are three types of membership: "main" and "temporary," both of which are for organizations' only, and "contact person" for individuals. A letter from the President of [REDACTED] submitted on appeal, confirms that it is the dance school, not the Petitioner, which is a member of [REDACTED]. Therefore, this evidence does not establish that the Petitioner is a member of an association in her field.

In addition, even if the Petitioner was a member of [REDACTED] the evidence does not establish that the association requires outstanding achievements of its individual members. The organization's website also indicates the requirements for membership, which for organizations with "main" status includes fulfilling "all financial and administrative formalities for membership," and for "contact person" amounts to only an application and "financial obligations." While the letter from [REDACTED] submitted on appeal indicates several criteria for "main" membership, including "significant achievement in the field of choreography," there is no indication of any additional requirements for admission as a "contact person." Accordingly, we concur with the Director's decision that the Petitioner does not satisfy this criterion.

*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)*

In her decision, the Director found that the evidence did not sufficiently demonstrate that the radio and television interviews of the petitioner qualified under this criterion as "other major media." On appeal, the Petitioner submits a letter from the [REDACTED] which confirms that the two radio stations which broadcast interviews of the Petitioner, [REDACTED] and [REDACTED], "are major Russian radio stations, which have millions of listeners each day." Another letter from the Executive Manager of the [REDACTED]

confirms that Europe Plus is the largest radio station in the Russian Federation, and that is one of the largest. This evidence serves to confirm the previously submitted information and establishes that the Petitioner was interviewed by major Russian radio stations and discussed her work as the creative director and choreographer of her dance school. Accordingly, she meets the requirements of 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)*

This criterion requires that an individual's artistic work be on display at artistic exhibitions or showcases. While the Director concluded otherwise, the record contains sufficient evidence which demonstrates that the Petitioner meets this criterion through her work as a choreographer for and the ensemble. In her brief, the Petitioner notes that the online version of Encyclopedia defines choreography as "the art of creating and arranging dances." Substantial evidence confirms that she acted in that role for these groups, including the above-mentioned certificates of appreciation as well as radio interviews and other media, and that these groups performed at various festivals, competitions and concerts. As such, the Petitioner meets 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 while the evidence establishes the Petitioner's leading role for it does not establish that the has a distinguished reputation. In her decision, the Director noted the certificates of appreciation in the record from various government officials and event organizers, but indicated that there was no "clear and convincing evidence" that the Petitioner had performed in a leading or critical role for an organization having a distinguished reputation. However, "clear and convincing" is a higher burden of proof than that required in these proceedings. In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). In other words, to be eligible under this criterion, the Petitioner must show that it is more likely than not that the organization for which she serves in a leading role, , has a distinguished reputation. In addition to the certificates of appreciation noted by the Director, on appeal the Petitioner calls attention to the numerous awards and prizes received by the school at several festivals and competitions, including the in 2015, and the in 2015. Upon review, we find that the evidence of these awards establishes, by a preponderance of the evidence, that has a distinguished reputation. Accordingly, the Petitioner meets this criterion.

## B. Final Merits Determination

Since the Petitioner has provided documentation that meets at least three of the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will now evaluate whether she has demonstrated,

by a preponderance of the evidence, that she has sustained national or international acclaim and is one of the small percentage at the very top of the field of choreography, and that her achievements have been recognized in the field through extensive documentation.

The evidence establishes that the Petitioner has successfully opened, directed and served as head choreographer for a dance school in the [REDACTED] area, which primarily serves children and amateur adult dancers. The Petitioner and her dance school have achieved a certain level of acclaim in the [REDACTED] area, as evidenced by the Petitioner being interviewed on popular radio stations as well as other local media. And the Petitioner's students have won awards at national and international dance competitions held in various Russian cities. In addition, she has served as a panelist for several Russian talent competitions, at least some of which do not appear to be limited to dancers. However, the evidence does not indicate that the Petitioner has achieved sustained national or international acclaim as a choreographer, or that she ranks at the very top of the field.

For example, the record does not establish that her work as a choreographer has received critical acclaim from other choreographers or experts in the dance field. Also, the media attention she has received, from mass media rather than professional outlets, has mainly focused on her work as the director of [REDACTED] with the subject of those interviews mainly concerning the school's operations and history, upcoming events and programs, and recent competitions rather than her work as a choreographer. In addition, the Petitioner states in those interviews that she employs several other teachers and choreographers at the dance school. While she has established that she plays a leading role for [REDACTED] as its founder and director, this evidence serves to deemphasize the extent to which that role involves choreography, the field in which she claims eligibility.

Furthermore, while the Petitioner's students have received awards as a group and as individuals, these awards do not generally credit her for any contribution to the winning outcome, and the Petitioner has not submitted evidence of having personally received any awards for her choreography work. Also, while the Petitioner briefly discusses her previous career as a dancer in the course of some of the interviews, the evidence does not indicate that she had any experience as a choreographer prior to establishing her dance school in 2010. Finally, the evidence regarding the Petitioner's activities as a judge indicates that she critiqued the performance of amateurs, some of whom appear to not have been dancers, choreographers or others in an allied field. The Petitioner has not established that judging local, amateur, or student competitions is indicative of "that small percentage of individuals that have risen to the very top of their field of endeavor." See, e.g., *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

The totality of this evidence indicates that while the Petitioner has established a successful dance school, serving mainly children in the [REDACTED] area, she has not achieved sustained national or international acclaim as a choreographer, and is not among the very small percentage of choreographers at the top of her field.

*Matter of A-Z-*

### III. CONCLUSION

Upon review of the entire record, and for all of the reasons stated in the sections above, we find that the Petitioner has not established that she is an individual of extraordinary ability in the field of choreography, and is therefore not eligible for the immigration benefit sought.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-Z-*, ID# 1367839 (AAO July 24, 2018)