



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

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

MATTER OF B-B-H-

DATE: MAR. 6, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a drama director, 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 Beneficiary had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and contends that he meets at least three of the ten 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 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 a drama director of plays in Nepal. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must show that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As discussed below, the record supports a finding that the Petitioner meets three criteria, but it does not demonstrate that he has sustained national or international acclaim or is among the small percentage at the top of his field.

A. Evidentiary Criteria

In denying the petition, the Director found that the Petitioner met the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii). The record supports this finding, as the Petitioner's documentary evidence indicates that he directed plays at theaters, such as the [REDACTED]. In addition, we find that the Petitioner fulfilled the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) as the record shows that he participated as a judge for the [REDACTED] at the “[REDACTED] [REDACTED].” Further, the Petitioner demonstrated that he earned a high salary among other theater directors in Nepal, meeting the criterion at 8 C.F.R. § 204.5(h)(3)(ix). Accordingly, the Petitioner has satisfied three of the ten initial evidentiary criteria, and we will evaluate the totality of the documentary evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown his eligibility.

The Petitioner indicates that “[h]e is a one and only eminent Director of [redacted] television and film.” According to the Petitioner's résumé, he has directed over [redacted] drama plays between 1983 and 2016, including television shows, feature films, and operas. Further, the résumé reflects that he received a bachelor's degree in fine arts and a junior diploma in music.¹ As mentioned above, the Petitioner has judged competitions, has directed dramas at various theaters and venues, and has received a high compensation compared to other Nepalese directors. The record, however, does not demonstrate that his achievements are reflective of a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The Petitioner provided evidence that he received several awards from organizations affiliated with the [redacted] such as two [redacted] awards from the [redacted] two [redacted] awards and one service award from the [redacted] and a [redacted] award from the [redacted]. In addition, the Petitioner won a [redacted] award from the [redacted]. However, the Petitioner did not demonstrate that the field recognizes these as awards for excellence. The distribution of prizes and awards by government entities does not necessarily show that they are nationally or internationally recognized for excellence in the field of endeavor or indicate that he “is one of that small percentage who [has] risen to the very top of the field of endeavor.” *See* 8 C.F.R. § 204.5(h)(2). Here, the record does not document that the competitions included accomplished directors and artists from throughout the Petitioner's field reflecting that he received awards against acclaimed competition. U.S. Citizenship and Immigration Services (USCIS) has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

The Petitioner also presented evidence of his membership with the [redacted] and [redacted]. In addition, the Petitioner is a life member of the [redacted]. However, the Petitioner did not

¹ The Petitioner's résumé does not identify where he obtained his educational credentials, nor did he provide copies of his degree and diploma.

² A letter from [redacted] president of the [redacted] indicates that the life membership is reserved for those

establish that his membership requires outstanding achievements, as judged by recognized national or international experts. Further, as he has not shown, for example, that he is a member of associations that limit membership to directors with renowned endeavors, his membership evidence does not contribute to a finding that he has sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

In addition, although the record includes several newspaper articles, they are reviews of plays without a discussion about the Petitioner. Further, the articles are either undated or cover the period from 2001 to 2004, more than a dozen years prior to the filing of the instant petition. The Petitioner did present one 2001 article from [REDACTED] that constitutes published material about him and his work; however, he did not establish that [REDACTED] is a professional or major trade publication or other major medium. Similarly, the Petitioner offered evidence showing that two authors mentioned him in their books, as well as booklets for plays. Again, the Petitioner did not show that the books are professional or major trade publications or other major media. Here, the Petitioner did not demonstrate that a single newspaper article published about him over 16 years prior to the filing of the petition is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. Even if we were to consider the totality of the other articles that simply list him as the director without any discussion about him, the Petitioner has not shown that his press coverage is indicative of a level of success consistent with being among “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Regarding the Petitioner’s judging service, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22. The record reflects that the Petitioner participated as a judge of the [REDACTED] in 1998. In addition, he served on the judging panel for the [REDACTED] in 2000. Further, he provided evidence reflecting that he also judged several dance and singing competitions between 1985 and 2005. However, the Petitioner did not demonstrate that the competitions are considered prestigious or attract significant attention by the field. Accordingly, the Petitioner did not establish that his two instances of judging regional drama competitions, approximately 20 years ago, are indicative of the required sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act. Without evidence that sets the Petitioner apart from others in his field, such as documentation that he has served as a judge of renowned directors rather than aspiring students or amateurs, the record does not show that his judging places him in that small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2).

“whose service in the Nepali drama performing arts field reflects clean enthusiasm to his expertise and who is a brilliant role model for other theatre Director[s].” In addition, evidence submitted regarding [REDACTED] reflects that life membership includes at least 10 years of theatre contributions, [REDACTED] dramas or films, and five years as a general member.

With respect to his contributions to the field, the Petitioner states that he “submitted letters from pre-eminent members of the theatre and film industry vouching for his significant contributions.” Specifically, the Petitioner asserts that he introduced ‘ [REDACTED] ’ and references a letter from [REDACTED] and his book, [REDACTED]. The record, however, does not reflect that [REDACTED] is an original contribution of the Petitioner. In fact, [REDACTED] makes no mention of ‘ [REDACTED] ’ in his recommendation letter, and according to his book, [REDACTED] was “already established in our ancient theatre though it is given this name by Westerners.” The Petitioner also cites to the book, [REDACTED] by [REDACTED] and his accompanying recommendation letter, as evidence of his ability to “bring dramaturgy and cinematographic modes of performance together.” [REDACTED] did not indicate the originality of this contribution, nor did he explain the impact on the field. The Petitioner did not establish that this claimed skill is an original contribution that is considered of major significance in the field. While the record contains recommendation letters that generally confirm his work in theater and praise him for his work, they do not show that the Petitioner has significantly influenced the field placing him in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Moreover, the Petitioner presented evidence showing that his work was displayed at various venues, such as theaters and street plays. As it is expected that a director, such as the Petitioner, would exhibit his artistic work in front of an audience, we will evaluate the extent to which the display of his work is reflective of acclaim consistent with this classification. The record contains a letter from [REDACTED] who stated that the Petitioner’s “plays were super in the box office on Nepali theatres.” However, the evidence is not sufficient to show, for example, that his plays brought praise from critics, drew notable crowds, raised attendance, or were responsible for the success or standing of the event. The submitted evidence does not distinguish the Petitioner’s plays from others in his field or demonstrate that it reflects a “career of acclaimed work in the field.” H.R. Rep. No. 101-723 at 59.

The record also shows that the Petitioner founded the [REDACTED] and works as a drama director for the [REDACTED]. In addition, the Petitioner indicates that he is on the board of directors for the [REDACTED]. Although the Petitioner provided recommendation letters indicating his responsibilities, such as “spreading the Nepalese drama direction in several villages” for [REDACTED] the Petitioner did not establish that his work at these organizations has been recognized by the field as being significantly important or viewed as unusually influential. The submitted documentation, for instance, does not reflect that the Petitioner has somehow impacted the field through his work at these establishments demonstrating attention at a level commensurate with those at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Although the Petitioner has shown that he earns a high salary among theater directors in Nepal, the record as a whole, including the evidence discussed above, does not establish his eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. As noted above, USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. at 954. While the Petitioner need not establish that there is no one

Matter of B-B-H-

more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established his eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of B-B-H-*, ID# 935324 (AAO Mar. 6, 2018)