



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

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

MATTER OF N-H-INC.

DATE: NOV. 19, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a community dance and fitness center, seeks classification for the Beneficiary, a dancer and choreographer, 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 asserts that the critical role of a choreographer in Bollywood dance and film, the genre in which the Beneficiary specializes, was not considered by the Director. In addition, the Petitioner asserts that its submission of comparable evidence under 8 C.F.R. §204.5(h)(4) was not addressed in the Director's decision.

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). 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

The Beneficiary is a dancer and choreographer specializing in what he identifies as a Bollywood fusion style of dance. Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, he must satisfy at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Beneficiary met two of these criteria, relating to display of the Beneficiary’s work at artistic exhibitions, and his leading or critical role for associations with a distinguished reputation. On appeal, the Petitioner asserts that the Beneficiary, through the submission of comparable evidence, also meets the evidentiary criteria relating to membership in associations requiring outstanding achievements, and authorship of scholarly articles. After reviewing all of the evidence in the record, we agree with the Director and find that the Petitioner has not established the Beneficiary’s eligibility as an individual of extraordinary ability.

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 initially asserted the Beneficiary's qualification under this criterion based upon three annual grants it received from the city of [REDACTED] and a scholarship granted to the Beneficiary by the [REDACTED]. On appeal, the Petitioner does not challenge the Director's finding that the Beneficiary does not meet this criterion. After review, we agree that the evidence does not establish that these awards are nationally or internationally recognized.

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 does not claim that the Beneficiary is a member of any particular association in his field. Instead, it initially submitted a letter from [REDACTED] a highly decorated Indian contemporary dancer and choreographer, who states that "there are no associations or organizations requiring outstanding achievements for Indian contemporary dance." Based upon this statement, the Petitioner asserts that the submission of comparable evidence under 8 C.F.R. § 204.5(h)(4) should be allowed. That regulation allows for the submission of comparable evidence if the listed criteria do not readily apply to the Beneficiary's occupation.¹ As an initial matter, [REDACTED] statement that qualifying associations do not exist for "Indian contemporary dance" is insufficient to establish that this particular criterion does not readily apply to the Beneficiary's occupation of "lead dancer and choreographer," as identified on the Form I-140. Further, the comparable evidence regulation does not focus on a single criterion, but requires that the Petitioner explain why it has not submitted evidence that would satisfy at least three of the listed criteria.² The Petitioner has not provided such an explanation, and we note that it initially claimed the Beneficiary's eligibility under seven of the ten criteria. Accordingly, the Petitioner has not demonstrated that it may submit comparable evidence under 8 C.F.R. § 204.5(h)(4).

Regardless, the Petitioner has not demonstrated that the submitted evidence is "comparable" to that required under 8 C.F.R. § 204.5(h)(3). In its brief accompanying the initial filing, the Petitioner indicates that it is submitting two types of comparable evidence: the "breadth and depth" of the Beneficiary's work as a dancer and choreographer, and recommendation letters from experts in the field. However, the memo and change to the AFM previously referred to specifically indicates that "claims that USCIS should accept witness letters as comparable evidence are not persuasive." In addition, the Petitioner does not provide an explanation of the reasons it considers reference letters to be comparable to membership in an association which requires outstanding achievements of its members. When discussing and summarizing the letters, and their value as comparable evidence, in its initial brief, the Petitioner states only that "One way to properly evaluate the contribution and

¹ 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* (December 22, 2010).

² *Id.* The Policy Memo further provides that "[g]eneral assertions that any of the ten objective criteria described in 8 C.F.R. § 204.5(h)(3) do not readily apply are not probative and should be discounted."

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ability of an individual in the field is to examine the opinions of those at the top of the field.” This statement presents no comparison of these letters to membership in an association, and its reference to “the contribution and ability of an individual in the field” suggests instead their consideration as evidence under the criterion at 8 C.F.R. § 204.5(h)(3)(v).

As for the totality of the Beneficiary’s work in his field, the Petitioner refers to a section of its initial brief which provides an overview of the Beneficiary’s career and refers to webpages and reference letters as supporting evidence. Again, the brief offers no comparison of this evidence to that which would be submitted in support of membership in an association requiring outstanding achievement of its members. Accordingly, the record does not establish that the Beneficiary meets this criterion, through either direct or comparable evidence.

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)

As noted by the Director in his decision, the record includes several newspaper clippings about the Beneficiary and his work but these documents are not complete articles and do not identify the date, author or newspaper in which they were published. As such, these materials do not qualify under this criterion. Other evidence includes several articles, most from the website of Indo American News (IAN), that discuss performances by the Petitioner’s dancers, mentioning the Beneficiary as the choreographer, or appearances by the Beneficiary to lead Bollywood-style dances. These articles focus primarily on the events at which these performances or appearances occurred, and not about the Beneficiary and his work. Articles that do not pertain to the Beneficiary 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). In addition, information submitted about IAN, published on its website, indicates that it is “the first and oldest South Asian publication in Texas” and that 7,000 copies are published every week. Absent comparative publication evidence, we cannot determine that IAN qualifies as other major media under this criterion. Further, an article reproduced on the website rediff.com, dated [REDACTED] 2002, is about the Beneficiary and his work as a choreographer, but the record does not include evidence to establish that rediff.com is a qualifying publication under this criterion. Upon review, we concur with the Director that the Beneficiary does not meet this criterion.

Evidence of the individual’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Director found that the evidence does not support the Petitioner’s claim that the Beneficiary served on a judging panel at the [REDACTED] in India. While two reference letters confirm that he acted as a choreographer and trainer at [REDACTED] there is no indication that he participated as a judge, either on a panel or individually. Further, the Petitioner does not challenge

the Director's determination on appeal. Accordingly, we find that the Beneficiary does not meet this criterion.

Evidence of the individual'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)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field. For example, a Petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The Petitioner submitted several reference letters, and asserted in its response to the RFE that the Beneficiary "has created a plethora of original content in the field." While we agree that the evidence establishes the Beneficiary's creation of original artistic content in movies and dance productions, not every such creation qualifies as a contribution of major significance in the field. The Petitioner submitted copies of webpages from www.imdb.com which show that the Beneficiary served as one of several choreographers for the Bollywood films³ [REDACTED] and [REDACTED] and also submitted a letter from [REDACTED] of [REDACTED] who confirms that he choreographed commercials for three brands. However, this evidence does not establish that the Beneficiary's work in these projects, or others, have made an impact in the field.

The Petitioner also submitted several reference letters from experts in the entertainment industry. [REDACTED] Artistic Director of the [REDACTED] in [REDACTED] describes the Beneficiary's work choreographing several plays in collaboration with her, including a musical rock opera "mega production" called [REDACTED]. This work is verified by [REDACTED], Managing Trustee of the [REDACTED], who worked on [REDACTED] with the Beneficiary and states that it "travelled nationwide to huge audiences with critical acclaim." While an unidentified newspaper clipping provides a partial review of the Beneficiary's role in this production, neither it nor other evidence in the record indicates that it influenced other choreographers or is considered to be of major significance.

[REDACTED] also describes the Beneficiary's work with [REDACTED], stating that he has worked with its dancers for 13 years, creating "special movement exercises" and conducting master classes in movement studies and choreography. This evidence indicates that he has made significant contribution to [REDACTED] but does not establish that that impact extended to the greater field.

[REDACTED] Managing Director [REDACTED] confirms that the Beneficiary has produced and choreographed nine performances at the [REDACTED] public arena, and that these shows have been attended by thousands and "are some of the highest caliber we have on our program." While this evidence shows that the Beneficiary has enjoyed success in bringing dance performances

³ Although other evidence in the record indicates he also served as a choreographer for the film [REDACTED] the evidence from imdb.com doesn't list him or anyone else as a choreographer for that film.

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to the [REDACTED] area, it does not demonstrate that these shows have made an impact on the field of choreography.

Upon review, we agree with the Director and find that the Beneficiary does not meet this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

In response to the Director's request for evidence (RFE), the Petitioner stated that "We submit that this criterion was promulgated primarily with academics, scholars and researchers in mind," and referred to the same evidence as described in the criterion relating to membership in associations requiring outstanding achievements as comparable evidence under 8 C.F.R. § 204.5(h)(4). However, the assertion that a criterion does not apply to the Beneficiary's occupation is not sufficient to meet the requirement for submission of comparable evidence, and the Petitioner's assertion on appeal that those in his profession "do not write scholarly articles for professional or major trade publications" lacks evidentiary support. As previously explained, the comparable evidence regulation does not focus on a single criterion, but requires that the Petitioner explain why it has not submitted evidence that would satisfy at least three of the listed criteria. Again, the Petitioner has not provided such an explanation.

Also, the Petitioner has not explained how reference letters and information from webpages about his roles in movies are comparable to evidence of the publication of scholarly articles. Therefore, we find that the Beneficiary does not meet 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)

The Director found that the Beneficiary meets this criterion. Upon review of the entirety of the record, we agree that based upon the display of the Beneficiary's work in movies and dance productions performed at public venues, he meets 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)

The Beneficiary has submitted evidence that he is the Petitioner's founder and artistic director, and that due to his work in this role, the Petitioner has received competitive grants for several years from the city of [REDACTED] to perform well-received public dance productions. As such, we agree that the Beneficiary meets this criterion.

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Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x)

The Petitioner previously claimed this criterion based upon the Beneficiary's work as an actor in the commercially successful film [REDACTED]. We initially note that this work does not appear to be in his claimed field of dance and choreography, as there is no indication that he performed in either capacity in this film. In addition, as noted by the Director, the evidence does not establish the significance of the Beneficiary's role in the film, such that its commercial success could be attributed to him. The Petitioner does not challenge the Director's decision on appeal, and we find that the record does not demonstrate the Beneficiary's qualification under this criterion.

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 he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of N-H-Inc.*, ID# 1754023 (AAO Nov. 19, 2018)