



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

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

MATTER OF B-H-D-B-

DATE: NOV. 19, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a film director and producer, 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 satisfied two of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner offers previously submitted documentation and a brief, contending that she 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). 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 Petitioner is currently a student in the United States who has directed and produced movies in Brazil. Because she 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 two of the initial evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv) and artistic display under 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner maintains that she fulfills four additional criteria. 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.

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 Petitioner contends that her receipt of “Best Documentary” from the [REDACTED] [REDACTED] meets this criterion. In order to satisfy this criterion, a petitioner must demonstrate that her prizes or awards are nationally or internationally recognized for excellence in

the field.¹ At the outset, the Petitioner did not submit certified English language translations for each of her foreign language documents. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* The record reflects that both at the initial filing and in response to the Director's request for evidence that the Petitioner presented a single certificate of translation; however she did not establish which documents, if any, to which the certifications pertain.² Because the Petitioner did not offer properly certified English language translations identifying the corresponding foreign language documents, we cannot meaningfully determine whether the translated material is accurate and thus supports her claims.

The Petitioner provided an uncertified translation of a certificate purportedly indicating that she received the "Award of Best Documentary" from the [REDACTED] Beyond submitting an uncertified translation of the certificate, the Petitioner did not present any supporting evidence documenting her receipt of the award.³

As to the recognition of the award, the Petitioner argues that the [REDACTED] supports the festival, and the [REDACTED] selects the winners in each category. She offers previously submitted and uncertified translations of screenshots from Wikipedia regarding [REDACTED] and [REDACTED] a screenshot announcing the second film festival in 2011, and screenshots indicating the winners from the first festival in 2010. Further, she presents a screenshot from ancine.gov.br, in English, which states that [REDACTED] mission is to create equal conditions of competition among economic agents operating in the Brazilian audiovisual sector and therefore to stimulate the development of a strong and sustainable audiovisual industry." We note that the uncertified English translation from Wikipedia claims that [REDACTED] "is a non-profit association that encourages its members to see, discuss and reflect on the cinema."

Although the uncertified translations have no probative value, they do not support the Petitioner's claims on appeal. The screenshots do not indicate that [REDACTED] supports the festival and [REDACTED] selects the winners. Furthermore, the Petitioner did not establish that the festival awards are nationally or internationally recognized for excellence in the field.⁴

For these reasons, the Petitioner did not demonstrate that she satisfies this criterion.

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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

² We note that both certifications omit the name(s) of the document(s). For instance, the certifications state that they "certify that the translation of [REDACTED] are true and accurate to the best of my abilities." Further, the translator has the same last name as the Petitioner, indicating a familial relationship.

³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.

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 argues that she fulfills this criterion based on her [REDACTED]. In addition, she claims that a candidate “needs to be invited [from] someone (member/president) that already belong[s]” and “submit[s] his/her resume with the work already done for the field (published books, published materials, article in[] the field, film exhibited, workshop or any other work that will be equivalent to one of these already signed.” To satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.⁵

The Petitioner presents previously submitted uncertified translations of the following documents: a diploma from the [REDACTED] claiming that she is an “effective member”; a letter from [REDACTED] president, stating that the Petitioner was elected “ninth chair” in [REDACTED] and the minutes from [REDACTED] meeting indicating her presence. Because she did not provide certified translations of the documents, the Petitioner did not demonstrate her membership with [REDACTED].⁶

Moreover, the record contains an uncertified translation of [REDACTED] constitution. Specifically, the document reflects that the election of effective members require “[o]nly Brazilians permanently resident in the [REDACTED] who have published literary or scientific works of recognized value, or who are personalities of great expression in the cultural life of the State.” The Petitioner, however, did not demonstrate that publishing “works of recognized value” or having personalities “of great expression” is consistent with outstanding achievements as required by this regulatory criterion. In addition, the Petitioner did not establish that recognized national or international experts judge the outstanding achievements of [REDACTED] members.⁷

Accordingly, 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).

Although the Director determined that the Petitioner fulfilled this criterion, we disagree. The Petitioner must show that she has not only been invited to judge the work of others, but also that she

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.

⁶ See 8 C.F.R. § 103.2(b)(3).

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

actually participated in the judging of the work of others in the same or allied field of specialization.⁸ The record reflects that the Petitioner provided an uncertified translation of a “Declaration” from the [REDACTED] of Basic Education claiming that she “composed the judging committee” for the “first Edition of the Film Festival of the [REDACTED] in 2010. Despite that the Petitioner did not present a certified translation⁹, the declaration does not show that she judged the film festival. Rather, the documentation indicates that she composed the judging committee. The Petitioner did not show that she actually participated in the judging of the festival or that she “composed” or organized the jury members on the committee. Without certified translations and supporting evidence clarifying her role, the Petitioner did not demonstrate that she participated as a judge at the film festival.¹⁰

Furthermore, the record contains an uncertified translation of a certificate acknowledging the Petitioner’s “participation as jury in beauty contest [REDACTED]” However, the Petitioner did not demonstrate that judging a beauty contest is in the same or allied field of film producing and directing.

For these reasons, the Petitioner did not establish that she satisfies this criterion. Accordingly, we withdraw the Director’s finding for this issue.

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 Petitioner contends that she “ministered” a workshop in [REDACTED] creating [REDACTED] Moreover, she claims that [REDACTED] helped professionals to create new content and new adventures.” In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she 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 offers the previously submitted uncertified translation of a “Certificate of Merit” from [REDACTED] “[f]or the realization of the 1 audiovisual production workshop.” In addition, the record contains an uncertified translation of a contract between the [REDACTED] Regional Administration in [REDACTED] and the Petitioner to conduct a workshop at [REDACTED] Notwithstanding the uncertified translations¹¹, while the documentation indicates that the Petitioner conducted a workshop, she did not demonstrate how it significantly impacted or influenced the field in a major way. The Petitioner did not show, for example, that the overall field considers the

⁸ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8.

⁹ See 8 C.F.R. § 103.2(b)(3).

¹⁰ *Id.*

¹¹ See 8 C.F.R. § 103.2(b)(3).

workshop to be of major significance.¹² Moreover, the Petitioner did not explain how the documentation supports her assertions relating to [REDACTED]. The evidence makes no mention of [REDACTED] nor does it reflect how [REDACTED] helped professionals to create new content and new adventures. Further, the Petitioner did not demonstrate that [REDACTED] has been majorly significant in the field.

Accordingly, the Petitioner did not establish that she meets 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).

Although the Director determined that the Petitioner fulfilled this criterion, we disagree. In order to meet this criterion, the Petitioner must show that the venues where her work was displayed were artistic exhibitions or showcases.¹³ The record contains an uncertified translation of a declaration from [REDACTED] stating that the Petitioner participated as a producer for the movie, [REDACTED] which was “exhibited in the Cinema at [REDACTED].” Moreover, the record reflects an uncertified translation of a declaration from [REDACTED] indicating that her movie, [REDACTED] “was exhibited for more than 100 people.” Because the Petitioner did not provide certified translations, she did not establish that the material is accurate and supports her claims.¹⁴ Further, [REDACTED] declaration does not identify the venue where she displayed her movie.

Moreover, the record contains an uncertified translation for a “Certificate of Registration or Endorsement” by the [REDACTED] for the unpublished works, [REDACTED]. The Petitioner submitted a “Documentation of Registration” from the [REDACTED] for the screenplay, [REDACTED]. The document, however, does not demonstrate that her work was displayed at artistic exhibitions or showcases. Similarly, the Petitioner provided copies of her films and shows, such as [REDACTED], and [REDACTED]. Although the evidence reflects evidence of her work, it does not show that it was displayed at artistic venues.

For these reasons, the Petitioner did not establish that she satisfies this criterion, and we withdraw the Director’s findings for this issue.

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 Petitioner contends that she satisfies this criterion based on her role as an actress in a commercial for [REDACTED] and a soap opera for [REDACTED]. As it relates to a leading role, then

¹² See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; see also *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

¹³ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

¹⁴ See 8 C.F.R. § 103.2(b)(3).

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.¹⁵ 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.¹⁶

The Petitioner is seeking classification as an individual of extraordinary ability in the field of film producing and directing rather than as an actress. Regardless, the Petitioner presents previously submitted uncertified translations of contracts with [REDACTED] to perform one time for three hours on a soap opera.¹⁷ In addition, the Petitioner submits a contract with [REDACTED] to appear once in a commercial. Here, the Petitioner did not show how her role as an actress in limited appearances reflect her leading or critical role for [REDACTED] and [REDACTED] overall. She did not, for example, provide evidence establishing how her roles on the soap opera and in the commercial are leading to the businesses. Moreover, the Petitioner did not demonstrate how her roles contributed in a way that is of significant importance to the outcome of the organizations or establishments' activities.¹⁸

Accordingly, the Petitioner did not show that she meets this criterion.

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.

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 "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 of her artistic accomplishments is 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).

¹⁵ *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

¹⁶ *Id.*

¹⁷ *See* 8 C.F.R. § 103.2(b)(3).

¹⁸ *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

Matter of B-H-D-B-

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 B-H-D-B-*, ID# 1727261 (AAO Nov. 19, 2018)