



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

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

MATTER OF U-B-

DATE: NOV. 29, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an actress, 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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had only shown that she met one of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that she meets 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 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). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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 actress. As she has not 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 had only met one of these criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner asserts that she meets the criteria for published material at 8 C.F.R. § 204.5(h)(3)(iii) and display at 8 C.F.R. § 204.5(h)(3)(vii).<sup>1</sup> Upon review, we conclude that the evidence in the record does not support a finding that she meets the plain language requirements of at least three criteria.

*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 Director held that the Petitioner did not meet this criterion because the articles in the record did not discuss her standing or ranking in the field or the significant impact she has had on the field. On appeal, the Petitioner states that this goes beyond the regulatory requirements. We agree. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material about her, relating to her work in the field. However, as will be discussed below, the Petitioner has not submitted sufficient evidence to meet the requirements of this criterion.

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<sup>1</sup> In the initial filing, the Petitioner also claimed to meet the following criteria: awards under 8 C.F.R. § 204.5(h)(3)(i); leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii); and high salary under 8 C.F.R. § 204.5(h)(3)(ix). As the Petitioner has not raised these issues on appeal, we will not consider them here.

The Petitioner initially submitted eight examples of published material, along with various other articles. We note that the majority of the publications in the record lack the date or the name of the author, which are required under the criterion. Additionally, many of the submitted examples are newspaper clippings that do not identify the source of the material. While this information is handwritten in the record, the Petitioner did not submit corroborating evidence to meet her burden of proof. As noted above, we consider the evidence in the record for its relevance, probative value and credibility. *Matter of Chawathe*, 25 I&N Dec. at 376; *see also* section 291 of the Act, 8 U.S.C. § 1361. In his decision, the Director also held that the evidence in the record did not demonstrate that the publications in which the published material appeared constituted major media.

On appeal, the Petitioner specifically cites three articles to establish eligibility. She contends that one article entitled, [REDACTED] satisfies the criterion's requirements. However, the record contains only a newspaper clipping of this article, which lacks the date of publication as required by the criterion. Additionally, although she is quoted in it, the article is not about the Petitioner, as she herself indicates in her appeal brief, stating "[t]he purpose of the article was to discuss the subject matter of the film which was sexual abuse, homosexuality and prostitution in the Indian community . . . ." We also note that the clipping in the record does not identify the publication in which it appeared, and the Petitioner did not submit any evidence to corroborate her claim that it appeared in the Sunday Times.

The second article the Petitioner contends establishes eligibility is [REDACTED] which appeared on www.broadwayworld.com. She provides circulation data for the website. However, this article was published after the petition was filed, and therefore, does not establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

Finally, the Petitioner claims that an article entitled [REDACTED] which appeared in the India West newspaper, satisfies the regulatory criterion. In his decision, the Director found the record did not establish that any of the publications, including India West, constituted major media. The record contains circulation data for the newspaper, which indicates it is focused on the Indian American community and available in California in the area around [REDACTED]. On appeal, the Petitioner does not submit any additional evidence to overcome the Director's finding, with which we agree. Therefore, the Petitioner has not established 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 record reflects that the Petitioner participated as a judge for the [REDACTED] and the [REDACTED]. We conclude therefore that the Petitioner meets the requirements of this criterion.

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*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 held that the Petitioner had not met this criterion because it is limited to the visual arts and not the performing arts. On appeal, the record reflects that she performed as a lead character in films that were screened at the LA Femme Film Festival, the Durban International Film Festival, and the Cannes Film Festival. We also note that the record contains sufficient evidence demonstrating that the Petitioner displayed her work as a theatre actress in [REDACTED] and other performances in South Africa. Therefore, the Petitioner has established that she meets this criterion.

### III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying one-time achievement, or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), or comparable evidence establishing his eligibility. Thus, we do not need to fully address the totality of the materials in a final merits determination. *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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of U-B-*, ID# 1753621 (AAO Nov. 29, 2018)