



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

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

MATTER OF E-G-

DATE: OCT. 25, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a dancer and choreographer, 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 had not satisfied any of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner offers additional documentation, as well as 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 a dancer and choreographer who has performed in television shows, in movies, and videos. 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 did not meet any of the initial evidentiary criteria.

On appeal, the Petitioner maintains that she fulfills six 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.

A. Evidentiary Criteria

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 contends that she satisfies this criterion based on comparable evidence under the regulation at 8 C.F.R. 204.5(h)(4). Specifically, she asserts that “[q]ualifying for acceptance on a dance team for a top TV show is virtually identical to the membership on an Olympic team because

of the high threshold that each dancer has to go through in order to be accepted.” The record includes letters confirming her participation as a dancer on [REDACTED] and [REDACTED]. In addition, the Petitioner claims that “there are no associations in the dance industry that specifically require outstanding achievements of the dancers to become members of such organizations.”

The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to her occupation.¹ A petitioner should explain why she has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence she has included is “comparable” to that required under 8 C.F.R. § 204.5(h)(3).² Here, the Petitioner has not shown why she cannot offer evidence that meets at least three of the criteria. Although she contends that associations requiring outstanding achievements of their members, as judged by recognized national or international experts, do not exist, she did not provide evidence supporting her claims. General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted.³ The fact that the Petitioner did not submit documentation that fulfills at least three is not evidence that a dancer or choreographer could not do so. As discussed above, the Petitioner maintains to meet five other criteria. Moreover, the Petitioner did not show that dancers or choreographers cannot present evidence relating to the other criteria.

Furthermore, the Petitioner did not demonstrate how auditioning and earning roles on television shows are “truly comparable” to being a member of associations that require outstanding achievements of their members, as judged by recognized national or international experts. As indicated in the letters, the Petitioner auditioned against other dancers competing for roles on the television programs rather than being selected based on her past outstanding achievements by recognized national or international experts.⁴

For the reasons discussed above, the Petitioner did not establish that she is eligible to meet the membership criterion through the submission of comparable evidence.

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).

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

² *Id.*

³ *Id.*

⁴ 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).

The Petitioner maintains that she meets this criterion based on video interviews posted on 11 websites. Although the Petitioner submitted certified transcriptions, the Petitioner did not demonstrate that the interviews were posted on major websites and contained the required author of the material.⁵

In the transcriptions for the interviews posted on antenastars.ro, a1.ro, lamaruta.protv.ro, and aproptv.ro, the names of the authors, hosts, or interviewers are not included. Instead, the transcriptions list the names of the websites, publications, or television shows as the author of the material. For instance, the transcription for the interview posted on aproptv.ro states that the author is “APROPO TV MAGAZINE.” Here, the Petitioner did not identify the “author of the material” as required by this regulatory criterion.

In addition, the Petitioner provided transcriptions of the same interview posted on seven different websites. However, each transcription contains a different author for the same interview. For instance, the transcriptions from okmagazine.ro, huff.ro, vip24.ro, teotrandafir.com, and ziarulring.ro indicate the authors as [REDACTED] and [REDACTED] respectively.⁶ The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner has not explained or rectified the inconsistency of five authors for the same interview. Moreover, she did not establish the actual author of the material.

Further, as evidence of major media, the Petitioner offered screenshots from Similar Web regarding rankings and “traffic overview” for each of the websites. For example, Similar Web reflects that the websites range from a global ranking of 6,132 to 303,672, a country ranking of 32 to 5,902, and total visits of 223,900 to 18,220,000. The Petitioner, however, did not demonstrate the significance of the Internet rankings and viewing statistics or explain how such information reflects status as major media. Specifically, she did not establish that the global rankings indicate major international media. Moreover, even if we considered the two highest country ranked websites, libertatea.ro (32nd ranked) and a1.ro (85th ranked), as national major media, the Petitioner did not identify the authors of the material as discussed above.⁷

Accordingly, the Petitioner did not show that she fulfills 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).

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

⁶ We note that the transcriptions for the interviews posted on libertatea.ro and evzmond.ro list the websites or publications as the author.

⁷ The transcriptions indicate the website and program name as the authors.

The record contains evidence showing that the Petitioner participated as a judge of dancers on a television show. Therefore, the Petitioner demonstrated that she satisfies 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).

As discussed above, the Petitioner displayed her work as a dancer at artistic exhibitions and showcases. Accordingly, the Petitioner established that she 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 Petitioner contends that she satisfies this criterion based on her role as a lead dancer for the television shows: [REDACTED], and [REDACTED]

In addition, she maintains that she meets this criterion as a dancer for the [REDACTED] and choreographer for [REDACTED]. As it relates to a leading role, then 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.⁸ 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.⁹

The record contains contracts between [REDACTED] and the Petitioner for her performances on the above-mentioned television shows. The Petitioner's roles range from choreographic performance for [REDACTED] and [REDACTED] lead ballet dancer for [REDACTED] and [REDACTED] and occasional guest for [REDACTED]

In addition, the Petitioner provided a recommendation letter from [REDACTED] producer and director, who stated that "[a]s a choreographer and as a lead dancer, [the Petitioner] played a vital role in these productions [REDACTED]. Further, she presented letters from [REDACTED] and [REDACTED] who commented that the Petitioner "has great dancing and acting skills," "[her] presence [on [REDACTED] is noticeable," and "[she] immediately stands out as one of the most unique and talented dancers and choreographers."

The Petitioner did not demonstrate how her performances on television shows constitute her roles for "organizations or establishments." On appeal, the Petitioner argues that "by performing in the production process of the show, [she] has performed in a leading or critical role for the organization." However, the Petitioner did not show how her role as a choreograph performer, lead

⁸ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁹ *Id.*

ballet dancer, or occasional guest on television programs reflects her leading or critical role for the overall production companies or television stations. She did not, for example, provide evidence establishing how her roles on [REDACTED] are leading to the television stations [REDACTED] that aired the shows. 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.¹⁰

Even if we considered that television shows qualify as "organizations and establishments," which we do not, the Petitioner did not establish that she performed in a leading or critical role. While she performed as the lead ballet dancer, she did not demonstrate how her role was leading compared to the other roles on the television shows. Moreover, although her recommendation letters praised her talents, they did not contain detailed and probative information that specifically addressed how her roles for the shows were leading or critical.¹¹ The letters, for instance, do not show that she was responsible for high ratings or was credited for the successes of the shows.

In addition, the Petitioner argues that her receipt of a "Diploma of Honor" from [REDACTED] as part of the ballet team on [REDACTED] "provides independent, unsolicited evidence of [her] importance and critical position." The Petitioner, however, did not establish that the diploma represents her leading or critical role for [REDACTED] or the ballet team. She did not show, for instance, that the diploma recognized her leadership position or the critical nature of her role. Further, while the Petitioner presented screenshots from operaisi.ro regarding the history and background of [REDACTED] she did not demonstrate that it enjoys a distinguished reputation. The relative size or longevity of an organization or establishment is not in and of itself a determining factor.¹²

Regarding [REDACTED] the Petitioner offered a letter from [REDACTED] managing partner, who stated that that "her special skills made us chose [sic] her to be the lead choreographer for most of our major events" and "[h]er skills and professionalism were a major asset for the success of our best productions." Similar to her other recommendation discussed above, [REDACTED] letter does not contain specific information detailing how her role for the advertising company was leading or critical. [REDACTED] did not explain how her role compared to the other employees at [REDACTED] to show that her position was leading. Moreover, [REDACTED] did not demonstrate that the Petitioner contributed to the significant importance of [REDACTED] activities. Although the Petitioner submitted screenshots from [REDACTED] website displaying samples of projects, she did not establish that the company has a distinguished reputation.

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

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

¹¹ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

¹² See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The record contains a contract with [REDACTED] paying her “\$4,000 per day for not less than four days time” regarding choreography services for the movie, [REDACTED].¹³ In addition, she submitted copies of the front of four checks from [REDACTED] to the Petitioner for \$4,000 each.¹⁴ The Petitioner argues that “[a]ccording to Foreign Labor Certification Data Center Online Wage Library (FLC wage) wage a Level 4 wage Choreographer will have earned for an 8-hour day: \$25.11 X 8 hours X 4 days = \$803.52.” Moreover, she contends that “[i]f a Level 4 wage Choreographer has worked for 24 hours continuously for 4 days: \$25.11 X 24 hours X 4 days = \$2,410.56.”

In order to satisfy this criterion, the Petitioner must demonstrate that she commands a high salary or other significantly high remuneration for services in relation to others in her field.¹⁵ Although the Petitioner makes projections based on hourly median salaries for choreographers, she was not paid at an hourly rate.¹⁶ Rather, the contract indicates that she earned a limited, one-time project salary. Specifically, her wages covered a set amount of \$4,000 per day for four days totaling \$16,000. Accordingly, calculating hourly wages from the FLC is not the proper comparison of the Petitioner’s salary as she was not paid an hourly rate. In this case, the Petitioner provides a contract showing her remuneration for services. However, she did offer evidence comparing her project wages to others. For instance, the Petitioner did not establish that her \$4,000 per day project earnings for a movie production is significantly high in relation to others who performed the same duties.

Furthermore, even if we considered the yearly wages of choreographers, the median range of salaries in the [REDACTED] California area from the FLC reflects \$26,416 for a Level 1 Wage to \$52,229 for a Level 4 Wage.¹⁷ Here, the Petitioner has not shown that she earned any additional wages to her \$16,000 for the year. Moreover, the Petitioner’s earnings are lower than the yearly wages for entry level employees and are far below the yearly earnings for fully competent employees. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440,

¹³ We note that IMDb credits the Petitioner for performing as an actress in [REDACTED] but makes no reference to her providing choreography services. *See* <https://www.imdb.com>, [REDACTED] accessed on October 24, 2018, and incorporated into the record of proceedings. Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner must address this inconsistency in any future filing.

¹⁴ The record shows that the fourth check indicates “final for choreography.”

¹⁵ *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

¹⁶ While the Petitioner also makes hourly projections for dancers, the Petitioner did not submit evidence of her earnings as a dancer.

¹⁷ The Level 1 wage relates to entry level employees, while the Level 4 wage relates to fully competent employees. *See* Prevailing Wage Determination Policy Guidance, http://fledatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf at page 7, accessed on July 13, 2018, and incorporated into record of proceedings.

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444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

For these reasons, the Petitioner did not establish that she has commanded a high salary or significantly high remuneration for services in relation to others in her field.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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).

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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 E-G-*, ID# 1668798 (AAO Oct. 25, 2018)