



U.S. Citizenship
and Immigration
Services

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

MATTER OF A-K-K-

DATE: APR. 8, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a photographer, seeks classification as an alien 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 petition, concluding that the record did not establish, as required, that the Petitioner has a one-time achievement (a major, internationally recognized award) or met at least three of the required evidentiary criteria.

On appeal, the Petitioner submits additional evidence and maintains that she satisfies four of the evidentiary 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 has not established that she has received a major, internationally recognized award, and so must show that she satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In her decision, the Director found that the Petitioner met only the display criterion under 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains that she also satisfies the requirements of the criteria relating to media about her, contributions of major significance, and leading or critical role. We will analyze the evidence submitted under each of these criteria below.

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)

The Director’s decision found the evidence to be insufficient to establish that any of the magazine and Internet articles that were about the Petitioner and her work qualified as professional or major trade publications or other major media. The Petitioner provided several articles pertaining to her 2015 debut, solo photographic exhibition [REDACTED] which took place at [REDACTED] in [REDACTED]. An article published in the digital and print editions of *VEOIR* magazine discusses themes the Petitioner explores in the exhibition’s photographs of the model [REDACTED] such as the demise

of human civilization and the destruction of the planet. A press release from the webpage www.loeildelaphotographie.com, a news and events aggregator, states that the Petitioner's exhibit is "a radical denunciation of society and its behavior." A press release on the webpage www.from-paris.com indicates that the exhibition will take place during [REDACTED] and is comprised of 25 works in which the Petitioner "denounces in a radical way the modes of behavior" of our society. This press release also states that [REDACTED] presents the works "of emerging and confirmed artists."

As noted by the Director, the comparative data regarding the circulation and viewership figures of the above publications does not establish that these publications qualify as professional or major trade publications or other major. The Petitioner provided a media kit from *VEOIR* magazine which indicates it is a biannual fashion magazine based in New York. It claims its first issue "gained 3000+ followers on Facebook and 1,000+ followers on Instagram," and that it is "estimated to print 5000+ copies." The record lacks evidence, however, to corroborate the circulation figures provided by *VEOIR*'s publisher or to demonstrate the significance of the figures.

Regarding the website www.loeildelaphotographie.com, information submitted from the webpage www.similarweb.com indicates that it had 179,000 total visits in the first six months of 2018, ranking it 23,016 in France. Regarding the website www.from-paris.com, information from the webpage www.siteworthtraffic.com indicates that it had 210,605 total annual visits, and its "Global Traffic Rank is 1,779,020." The comparative data regarding the circulation and viewership figures of www.loeildelaphotographie.com and www.from-paris.com do not establish that these publications qualify as professional or major trade publications or other major. Further, we note that the press releases published on those sites do not provide the author's name, as required by the plain language of this criterion.

The Petitioner also submitted articles that mention her work on photo shoots of vintage dress collections by the designer [REDACTED] in 2012 during [REDACTED] at the [REDACTED] store [REDACTED] in 2012, and in 2016. The articles were published on webpages such as www.vogue.ru and www.buro247.ru. However, these articles are not about the Petitioner, but about the dress collections.¹ For the reasons stated above, the Petitioner has not established eligibility under 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 this criterion, 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 Director determined that the record did not establish that the Petitioner meets this criterion. The Petitioner

¹ In addition, regarding the webpage www.buro247.com, the website metrics from www.similarweb.com do not provide comparative analyses, and, therefore, do not establish that this webpage qualifies as a professional or major trade publication or other major media.

submitted several testimonial letters in support of the petition. We determine that the submitted letters and other documentary evidence do not satisfy this criterion.

The letters submitted by the Petitioner generally praise her work and highlight what the authors describe as her unique use of the [REDACTED] camera and medium format photography. For example, [REDACTED] a production designer, states she became acquainted with the Petitioner's work through the Petitioner's project [REDACTED] which focuses on the homeless population in [REDACTED]. She calls the Petitioner's use of a medium format [REDACTED] camera "an original and unique contribution to the photography world."

[REDACTED] a professor of set and costume design at the [REDACTED] in Russia, states that in 2016 she invited the Petitioner to teach a "master class" on the use of medium format photography in the fashion industry. She credits the Petitioner with the "introduction of medium format photography . . . for fashion publication editorials and covers." She claims that few photographers choose to work with the camera required for the technique, because it "is large, requires skill in handling, and it takes photographs slowly." She states that the class was "an invaluable experience" for the students and "should be replicated in other areas to increase the awareness of this important and underutilized format." However, [REDACTED] and [REDACTED] did not demonstrate how the Petitioner's medium format photography significantly impacted or influenced the field. The Petitioner did not show, for example, that the overall field considers her work to be of major significance.²

[REDACTED] a fashion coordinator with [REDACTED] states that the Petitioner has worked with the magazine on a number of projects. She describes her as "a fashion photographer and a fine-art photographer" with "incredible scope." She notes that the Petitioner has worked for "some of the top international brands and fashion magazines in Russia and abroad, for whom she has contributed beautiful magazine covers, photo editorials, advertisements, and photographic accompaniments." She credits the Petitioner's skillful use of medium format photography for "a striking effect of realism" in her photographs. While she praised the Petitioner's work, [REDACTED] did not identify original contributions or show how the field has been greatly impacted or influenced by the work.

The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of contributions that rise to a level consistent with major significance. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.³ Letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.⁴ Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

² 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>; 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).

³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁴ *Id.* at 9. See also *Kazarian*, 580 F.3d at 1036, *aff'd* in part 596 F.3d at 1115 (holding that letters that repeat the regulatory

In addition, while the record indicates that the Petitioner's photographs have been used in advertisements for companies such as [REDACTED] telecommunications and the [REDACTED] and have appeared on the covers and in editorials of fashion magazines such as *Vogue Russia*, *Marie Claire Russia*, *Interview Russia*, *OK!*, *Aeroflot Style*, and *Officiel*, it does not establish that having her work displayed in this manner constitutes a contribution to the field of photography.⁵

The record also shows that the Petitioner has had success more recently as a fine art photographer, which is supported by the evidence of local media coverage of her solo exhibition [REDACTED] in [REDACTED]. While having that exhibition displayed at [REDACTED] is notable, as mentioned previously, the press release from the webpage www.from-paris.com indicates the venue presents the works of emerging artists along with those of established artists. This evidence does not demonstrate, therefore, the venue's recognition or reputation in the field of photography, and thus that the display of the Petitioner's work there is considered to be a contribution of major significance. Further, her work has been offered for sale by [REDACTED] online art gallery, but this evidence does not demonstrate that her work has influenced the broader field of photography.

The Petitioner argues on appeal that invitations for her to teach at the [REDACTED] and the [REDACTED] in [REDACTED] are "a sign of the industry reputation that [the Petitioner] carries for her significant contribution . . . [in] bringing medium format photography into the industry." As discussed previously, while it appears from the evidence that the Petitioner is one of a few fashion photographers using the [REDACTED] camera and medium format photography in her work, the significance of her use of this technique in the field has not been established. For instance, [REDACTED] indicates that replication of the Petitioner's technique will "increase the awareness of this . . . underutilized format," indicating that her methods, while unique, have not been influential in the field. Further, regarding the Petitioner's position with the [REDACTED] a 2016 press release for the school's opening event lists her as an instructor, but does not mention her contributions in the field.⁶ While the originality of the Petitioner's artistic work as a photographer is not in question, the record does not establish that it has impacted the work of others in the field. Based on the above, the Petitioner has not established that the evidence satisfies this criterion.

language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

⁵ On appeal, the Petitioner provides media kits dated 2018 for the fashion magazines *Marie Claire* and *Vogue Russia* to show their reach.

⁶ This press release, published on the website www.posta-magazine.ru, indicates that the school's staff will include film/theater stars, famous photographers, sports coaches, and professional teachers. It includes a photograph of the Petitioner among those of its staff.

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 294.5(h)(3)(vii)

The Director determined that the Petitioner satisfied the requirements of this criterion. Upon review of the record, specifically the evidence regarding the Petitioner's exhibition [REDACTED] we agree with the Director's finding.

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 Director determined that the Petitioner did not establish eligibility for this criterion. On appeal, the Petitioner states that she has served in a critical role for [REDACTED] telecommunications and *Marie Claire Russia* magazine. She indicates that she has performed in a leading role in an episode of the television series [REDACTED] and in [REDACTED] fundraising efforts through her project [REDACTED]. The scope of this evidentiary criterion focuses on the relative importance of the Petitioner's role for distinguished organizations. In general, a leading role is evidenced from the role itself, and a critical role is one in which the petitioner contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.

In support of this criterion, the Petitioner provided a letter from the marketing director of [REDACTED] an event production company in [REDACTED] who states that in 2013 the Petitioner won the company's contest to work on an advertising campaign for its client [REDACTED] a Russian telecommunications company.⁷ The marketing director indicates that the Petitioner worked on a photoshoot with the popular singer [REDACTED] to promote [REDACTED] new 4G technology, that [REDACTED] was "very happy with the end result," and that the campaign was "important for [REDACTED] to get a much larger contract with [REDACTED]. Although the Petitioner argues that this letter is evidence that she played a critical role for [REDACTED], the representative's statement that [REDACTED] was "very happy" with the campaign does not indicate the Petitioner served in a critical role for [REDACTED]. In addition, the record does not document the manner in which [REDACTED] marketing director is authorized to represent or speak on behalf of [REDACTED] nor does it contain evidence from any individual who appears to be in a position to represent [REDACTED].

In addition, the Petitioner states on appeal that she played a critical role for the fashion magazine *Marie Claire Russia* in providing photography for [REDACTED] the feature article in its tenth anniversary edition. The Petitioner offered the previously discussed letter from [REDACTED] stating that the Petitioner provided "the magnificent photos of the men profiled" in the article. She states that "[w]e only rarely have the honor of working with [the Petitioner], as she is always in high demand," and she notes that the magazine's "journalists and models request [the Petitioner] by name as the photographer for their editorials and articles."

Although [REDACTED] and the marketing director of [REDACTED] speak highly of the Petitioner's work for their organizations, their letters do not establish that she was responsible for the companies' success or standing to a degree consistent with the meaning of having performed in a "critical" role for them.

⁷ We note that the marketing director's name is not legible because an ink stamp was placed over it.

The letters show that her work was consistent with that of a professional photographer, and they describe her as having achieved results that met or exceeded those companies' expectations. While a company's staff may consider the Petitioner's achievements to be of great benefit to the company, the focus of this criterion, based on the plain language of the regulation, is the Petitioner's role itself. The letters do not establish that her role as a photographer has been a critical role for those companies. For example, while [REDACTED] marketing director indicates that the Petitioner's work on the [REDACTED] campaign was "important for us to get a much larger contract with [REDACTED] and [REDACTED]" [REDACTED] indicates that the Petitioner was a favorite photographer of her staff, their letters do not distinguish her position from those of the companies' other photographers, or demonstrate that she contributed in a way that was of significant importance to the outcome of the organization or establishment's activities. In addition, as noted by the Director, the fact that she may have played a critical role in specific magazine editions or advertising campaigns is not sufficient to satisfy this criterion's requirements. We also note that the record does not provide any background information or documentation regarding [REDACTED] to establish that it is an organization with a distinguished reputation.

The Petitioner also maintains that she performed a leading role in episode four, season five of [REDACTED]. The record contains articles from *Wikipedia* and the website www.vokrug.tv, indicating that in 2016 she was the photographer for that episode. We note that *Wikipedia* is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. *See* General Disclaimer, *Wikipedia*, https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *see also* *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008). Although the Petitioner indicates that she performed in a leading role as the photographer for that episode, the evidence indicates that the models played the leading roles in the show, not the Petitioner. Regardless, the plain language of the criterion requires evidence that the Petitioner has performed in a leading or critical role "for organizations or establishments that have a distinguished reputation." The Petitioner did not identify an organization or establishment for which her role in this television episode was leading or critical.

Further, the Petitioner states on appeal that she played a leading role in the fundraising efforts of [REDACTED] through her project [REDACTED] which focuses on the homeless population in [REDACTED]. The record contains a letter from [REDACTED] CEO of [REDACTED] described as a social service agency, who states that her company is interested in partnering with the Petitioner to showcase her [REDACTED] project to raise funds for the homeless. This letter does not indicate how the Petitioner has performed in a leading role for the organization. Finally, we note that the evidence submitted does not establish that [REDACTED] has a distinguished reputation in the field. In light of the above, the Petitioner did not establish that she meets this criterion.

III. CONCLUSION

The Petitioner is not eligible because she has not submitted the required initial evidence of either a 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). Thus, we need not 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 level of expertise 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).

For the foregoing reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-K-K-*, ID# 2648379 (AAO Apr. 8, 2019)