



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

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

MATTER OF O-K-

DATE: APR. 9, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a documentary filmmaker, 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 although the Petitioner satisfied four of the initial evidentiary criteria, she did not show sustained national or international acclaim and demonstrate that she is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits additional documentation and a brief asserting deficiencies in the Director's decision and contending that she has sustained the required acclaim and has risen to the very top of her field.

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

Because the Petitioner 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 four of the initial evidentiary criteria: nationally or internationally recognized awards under 8 C.F.R. § 204.5(h)(3)(i), published material under 8 C.F.R. § 204.5(h)(3)(iii), judging under 8 C.F.R. § 204.5(h)(3)(iv), and display of her work at artistic exhibitions under 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains that she also meets the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). 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 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 Director found that that the Petitioner had demonstrated her eligibility under this criterion. For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary

evidence showing that she meets the requirements of this criterion. Accordingly, the Director's determination on this issue will be withdrawn.

The Petitioner presented documentation showing that she won a [REDACTED] in the "Student Media" category for her production [REDACTED] (2014). The record contains information from [REDACTED] website explaining that [REDACTED] Awards are presented in "three distinct annual cycles": "Professional Media," "Independent & Emerging Media," and "Student & Youth Media." On appeal, the Petitioner presents an article, entitled [REDACTED] that lists the eligibility criteria for the 2017 "Student Media" category: "Lead filmmaker(s) must be enrolled in an undergraduate or graduate program at the time of the film's completion. Lead filmmaker(s) must be at least 18 years of age. No commercial distribution at the time of entry. Film must be created while attending program between January 2016 - June 2017." This information and evidence is insufficient to show that the Petitioner's [REDACTED] in "Student Media" filmmaking rises to the level of a nationally or internationally recognized award for excellence in her field.

In addition, the Petitioner submitted evidence indicating that she received a [REDACTED] award for [REDACTED] at the [REDACTED] (2015). The record includes an announcement for [REDACTED] edition of this festival from FilmFreeway.com, a list of entries for the [REDACTED] festival at [www.cultura.trentino.it](http://www.cultura.trentino.it), and a [REDACTED] 2008 article at [www.fides.org](http://www.fides.org) announcing the [REDACTED] festival, but they do not mention the Petitioner's [REDACTED] award or demonstrate its level of recognition in the field of documentary filmmaking.

Furthermore, the Petitioner submitted a letter from [REDACTED] curator of the [REDACTED] in New York, stating that the Petitioner "possesses impressive achievements, including film recognitions such as the [REDACTED] Likewise, the record includes a letter from [REDACTED] the Petitioner's teacher at the [REDACTED] asserting that the Petitioner's [REDACTED] "was a significant accomplishment that our industry highly respects" and that her [REDACTED] involves "immense competition every year" and "demonstrates a phenomenal eye for artistry and an unwavering vision for a masterly finished piece." While [REDACTED] and [REDACTED] mention that the Petitioner received these awards, they do not offer further details regarding her specific awards or their level of recognition in the field. Accordingly, their statements and the information from the above websites are not sufficient to show that the Petitioner's aforementioned awards are nationally or internationally recognized awards for excellence in the field.

The record shows that the Petitioner was a "Bronze Winner" in the "Documentary Feature" category at the 2014 [REDACTED] A description of this film festival from the [REDACTED] website states:

There's a total of 41 categories (15 primary and 26 creative) and 7 award levels. Best Of Show Winner: Will receive and Official [REDACTED] Trophy and a guaranteed spot in our [REDACTED] screening schedule. Diamond Winning Films and Videos: Will receive award certificates and will be guaranteed a spot in our [REDACTED] screening schedule. All other Winners (Diamond creative categories and all Platinum, Gold, Silver, Bronze and Honorable Mentions): Will receive digital award certificates and laurels, will be

listed on their respective winners page. All independent, underground, big and low budget projects of all genres and topics are accepted.

While the [redacted] is a competition that screens independent films from multiple nations, the record does not contain sufficient evidence to demonstrate that the Petitioner's Bronze award constitutes a "nationally or internationally recognized" prize or award for excellence in the field. The issue here is not the national or international scope of the Petitioner's competitions, but rather whether her specific awards are "nationally or internationally recognized" prizes or awards for excellence in the documentary filmmaking field.

The Petitioner asserts that she directed and produced "one episode" of [redacted] a film about Paralympic athletes from six countries.<sup>1</sup> At the [redacted] received awards for "Best Paralympic Film" and "Best Soundmixing." The record includes information from this festival listing [redacted] and [redacted] as award recipients, but not the Petitioner. Regardless, the evidence is insufficient to demonstrate that the aforementioned awards are nationally or internationally recognized awards for excellence in the field of documentary filmmaking.

The record contains a certificate stating that the Petitioner's film [redacted] received an "Honorable Mention" at the 2013 [redacted] and information about that film festival from its organizers. While [redacted] contends that earning an "Honorable mention at this world renowned festival . . . is truly a milestone in any filmmaker's career," her statement and the information from the [redacted] organizers is not sufficient show that the Petitioner's honorable mention rises to the level of a nationally or internationally recognized prize or award for excellence in the field.

In addition, the Petitioner provided various newspaper articles mentioning that she was "nominated for a 2014 [redacted]" and a "[redacted]" While the Petitioner provided an event program indicating that she competed in the "Region Three Semifinals" of the [redacted] (2014), the record does not include evidence from the [redacted] reflecting her receipt of a [redacted] nomination.<sup>2</sup> Regardless, the Petitioner's evidence is not sufficient to demonstrate that her participation in the "Region Three Semifinals" of the [redacted] is a nationally or internationally recognize prize or award for excellence in the field. Accordingly, the Petitioner has not established that she meets this criterion.

*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.*

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<sup>1</sup> The Petitioner states that she filmed scenes in Texas that focused on [redacted], an American sledge hockey player. The record indicates that this film was "directed by [redacted], [and] [redacted] and "produced by [redacted] [and] [redacted]"

<sup>2</sup> Thirty-nine students from 23 U.S. colleges and universities as well as 10 students from foreign universities were selected as "finalists" in the [redacted] competition, but the Petitioner was not listed among those finalists. See "2014 [redacted] awards-r-finalists-announced (visited on March 29, 2019, and incorporated into the record).

*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 found that that the Petitioner had demonstrated her eligibility under this criterion. For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary evidence showing that she meets the requirements of this criterion. Accordingly, the Director's determination on this issue will be withdrawn.

The Petitioner presented a copy of a page appearing in the *New York Times* ( [redacted] 2015) with the heading [redacted] which included several pieces of writing, including one entitled [redacted].<sup>3</sup> Below the [redacted] heading, however, a disclaimer states: "This special advertising feature is sponsored and produced by [redacted] and did not involve the reporting or editing staff of *The New York Times*." The Petitioner has not demonstrated that "published material" as referenced in the regulation includes this type of promotional material that has not gone through the traditional editing and reporting process of the publication.<sup>4</sup> Accordingly, we do not find that this paid advertising feature in the *New York Times* constitutes published material about the Petitioner in major media.

The record includes a [redacted] 2014 article in *NY Blueprint* entitled [redacted] and an [redacted] 2015 article in *Voice of America* entitled [redacted] but they are not about the Petitioner. While these articles mention the Petitioner and her film, they are about a selection of films at the aforementioned festivals and not the Petitioner. This regulatory criterion requires "published material about the alien." Articles that are not about her do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at \*1, \*7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). Similarly, the articles the Petitioner presented from *Hipster Jew* [redacted] 2013) and *Filmkommentaren.dk* [redacted] 2014) are about her film [redacted] and not the Petitioner.

The Petitioner submitted a screenshot for "audTV's interview with [the Petitioner] at the 2016 [redacted] at [redacted] reflecting "49 views." The record, however, does not include a transcript of this interview or identify the required author of the material. In addition, the Petitioner offered a [redacted] 2014 interview of the Petitioner from *IndieWire.com* entitled [redacted] [the Petitioner] – [redacted]. She also provided a [redacted] 2014 article about her at [www.\[redacted\].net](http://www.[redacted].net)<sup>5</sup> entitled [redacted].

<sup>3</sup> At the conclusion of this article, it states: "Read the full story at [rbth.com](http://rbth.com)." The record, however, does not include a copy of the "full" article from [rbth.com](http://rbth.com). Nor has the Petitioner shown that the Similar Web rankings and "traffic overview" she provided for [rbth.com](http://rbth.com) establish that website is a form of major media.

<sup>4</sup> *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 7* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that marketing materials created for the purpose of selling a petitioner's products or promoting his or her services are not generally considered to be published material about the petitioner).

<sup>5</sup> This website is run by organizers of [redacted] an annual documentary film festival in [redacted].

The record includes additional articles about the Petitioner from *Aif.ru*, *Mk.ru*, *City Guide of Saint Petersburg* ( ) and *Futures Centre* ( )

As evidence regarding the publications in which the above material appeared, the Petitioner offered screenshots from Similar Web regarding rankings and “traffic overview” for each of the aforementioned websites. For example, Similar Web reflects that *IndieWire.com* has a global rank of 6,730, a country rank of 2,781, and a category rank of 72. In addition, *Mk.ru* has a global rank of 1,123, a country rank of 69, and a category ranking of 37. The Petitioner, however, did not demonstrate the significance of these Internet rankings and viewing statistics or explain how such information reflects status as major trade publications or other major media.

Finally, the record does not show that any of the remaining articles submitted for this criterion were about the Petitioner and in major media. Based on the foregoing, she has not demonstrated that she meets this regulatory 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 supports the Director’s finding that the Petitioner meets this criterion. For example, the Petitioner provided evidence indicating that she was a member of the judging panel for the (2017) hosted by the Russian program at

*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 Petitioner submitted documentation reflecting that her films were screened at and the in New York. As such, the record supports the Director’s determination that she fulfills 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 for her video production company that specializes “in documentary films, videos for non-profit organizations and commercials.” As founder and sole filmmaker for we find that the Petitioner has performed in a leading and critical role for her company.

The record includes a letter from a script writer for and an adjunct professor at and stating:

I have been professionally involved with [the Petitioner] through [redacted] for a number of years now, writing grants and scripts for [redacted] and [redacted]. These three films in particular are indicative of [the Petitioner's] extraordinary ability as a filmmaker, and within the independent film industry, have substantially elevated the name and standing of [redacted].

While the record shows that the Petitioner has performed in a leading and critical role for [redacted] the evidence is not sufficient to demonstrate that her company has a distinguished reputation in filmmaking, video production, or commercial advertising. For example, the Petitioner has not shown that the submitted published material relating to [redacted] or its films sets her company apart from others in the industry or otherwise reflects its distinguished reputation. Similarly, the record does not demonstrate that the stature of the Petitioner's awards, nominations, and film festival screenings are such that her company has garnered a distinguished reputation as a result.<sup>6</sup> With regard to the Petitioner's awards, they have already been discussed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Further, while the film [redacted] received various student awards and other honors, and was included in the "Online Film Database" of the [redacted] and the DVD collection of the [redacted] this evidence is not sufficient to establish that the film company [redacted] is an organization with a distinguished reputation.<sup>7</sup>

In addition, the Petitioner contends that she has performed in a leading or critical role as a film editor for [redacted] a film and media production company. As it relates to a leading role, the 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.<sup>8</sup> 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.<sup>9</sup>

The record includes a letter from [redacted], director and producer at [redacted] stating that she "hired [the Petitioner] to work as an editor on a documentary film for a gala held by the [redacted] and that this film, entitled [redacted] "was the most popular the [redacted] had ever created, resulting in a wonderful emotional response from the audience." In addition, [redacted] indicates that she "brought [the Petitioner] onto further projects," including as editor of the documentary short film [redacted] which she asserts "was one of only 57 films selected out of 4,400 entries for a World Premiere at the [redacted]." However, the Petitioner did not show how her role as an editor for the aforementioned films reflects her leading or critical role for the overall production company. For instance, [redacted] letter did not contain detailed and probative information that specifically addressed how the Petitioner's editorial role was leading or critical for the organization.<sup>10</sup> Moreover, [redacted] did not explain how the Petitioner's role was

<sup>6</sup> 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).

<sup>7</sup> For instance, the DVD collection of the [redacted] identifies the "School of Visual Arts" rather than [redacted].

<sup>8</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

leading compared to the other crew on the film such as its director and producers, nor did her statements indicate that the Petitioner's film editing was of significant importance for [REDACTED] success or standing in the industry so as to demonstrate a critical role. Furthermore, while the record includes information about [REDACTED] from its website and evidence that [REDACTED] was screened at the [REDACTED] this documentation is not sufficient to demonstrate that [REDACTED] has achieved a distinguished reputation.

Finally, the Petitioner maintains that she has performed in leading or critical roles as director and producer of [REDACTED] and [REDACTED]. The Petitioner, however, has not identified how her work on these films constitutes leading or critical roles for "organizations or establishments," pursuant to the language of the criterion, nor has she demonstrated the distinguished reputation of any such entities.<sup>11</sup> For the above reasons, the Petitioner has not established that she meets this regulatory criterion.

#### 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 and recognition of her filmmaking projects are indicative of the

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<sup>11</sup> With respect to the production company [REDACTED] as discussed above, the record does not establish the distinguished reputation of this organization.



required sustained national or international acclaim or that they are 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 O-K-*, ID# 2647573 (AAO Apr. 9, 2019)