



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

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

MATTER OF V-Y-K-

DATE: APR. 16, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an artist and art teacher, 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 satisfied only one of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief asserting that she fulfills 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

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 only one of the initial evidentiary criteria: display of her work at artistic exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii). The record reflects, for example, that her work was displayed at exhibitions in Russia entitled [REDACTED]

Accordingly, we agree with the Director that the Petitioner fulfilled the display criterion. On appeal, the Petitioner maintains that she meets four additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that she 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).

As evidence under this criterion, the Petitioner presented her membership card for the [REDACTED] of Russia and this organization's bylaws. Section 3.1 of [REDACTED] bylaws states: [REDACTED] can be professional painters, graphic artists, sculptors, masters of decorative and applied art, photo artists, designers, architects, art historians, gallery and museum workers, journalists, other persons who have professional interests in the field of culture and art that have reached the age of 14" In addition, section 3.2 indicates: "Membership in the [REDACTED] is voluntary. Individuals are admitted to the membership of the [REDACTED] on the basis of personal appeal in writing." The record also includes a document entitled [REDACTED] explaining that those seeking membership must complete a questionnaire and provide a photograph, an autobiography, and information about their work, "including a list of exhibitions, catalogues, publications, reproductions of 5-10 works for different periods of creativity." This document further states that "[r]ecommendations from museums and galleries will also be useful." The aforementioned information, however, is not sufficient to demonstrate that [REDACTED] requires "outstanding achievements" of its members pursuant to the language of this criterion.

Furthermore, the Petitioner submitted the [REDACTED] a description of the rating categories, a list of members of the [REDACTED] and an August 2017 certificate from the chairman of [REDACTED] assigning her an artistic rating of "5B (a formed professional artist)." The description of the rating categories the Petitioner provided states:

1 – an artist of the world fame, tested with time (for more than a century), 1A – a world famous artist, 1B – a high-class professional artist with remarkable organizational skills, who is popular and in demand.

2A – a high-class professional artist with a bright creative individuality, 2B – a high-class professional artist, recognized and in demand with the art-market and public.

3A – a professional artist with a recognizable individual style, 3B – a professional artist, recognized and asked for in the art market and by the public.

4A – an established professional artist with creative potential, 4B – an established professional artist, who is in demand in the art market.

5A – a professional artist with creative potential, 5B – a formed professional artist.

The remaining categories are "6A – an artist with creative potential, 6B – a forming professional artist, 7 – an amateur artist with perspective evaluation of specialists, 8 – an amateur artist, 9 – an artist-beginner, [and] 10 – an artist-scholar." The record, however, does not show that the Petitioner's "5B" "formed professional artist" rating rises to the level of outstanding achievements.¹ Nor has the Petitioner provided sufficient evidence to demonstrate that [REDACTED] applicants' achievements are judged by recognized national or international experts. Accordingly, the Petitioner has not established that she meets this criterion.

¹ We note that the description of rating categories includes multiple levels above the Petitioner's "5B" rating that reflect higher levels of artistic achievement.

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).

As evidence under this criterion, the Petitioner submitted various letters of support discussing her work as an artist and teacher. The Director considered this documentation, but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field. For the reasons discussed below, we agree with that determination.

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 contributions that were original 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 the field, or have otherwise risen to a level of major significance in the field.

On appeal, the Petitioner asserts that the Director erred in determining that the letters of support from colleagues in the field and an expert in Russian legal matters were insufficient to meet this criterion.² However, as discussed below, the letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to demonstrate the nature of specific original contributions that the Petitioner has made to the field that have been considered to be of major significance.

With regard to the Petitioner's artwork, [REDACTED] chairman of the [REDACTED] branch of the [REDACTED], contended that she has achieved "success in the field of visual arts" and that "she can create her artworks in many different ways and on different media – canvas, glass, stone." In addition, [REDACTED] asserted that the Petitioner's "technique of making paintings on the glass is of the greatest interest since it is unique and unrepeatable." Likewise, [REDACTED] a Russian teacher-psychologist and poet, stated: "[The Petitioner] has created a huge amount of artworks. I especially want to mention the paintings that are made on the surface of glass. To create them you need concentration, attention to color separation, love of animals and great patience." While [REDACTED] and [REDACTED] praised the creativity of the Petitioner's glass paintings, the evidence is not sufficient to demonstrate that her artwork rises to the level of contributions of major significance in the field. For instance, the record does not show that the Petitioner's art has influenced other professionals in the visual arts fields, that any of her specific works are widely viewed as important pieces of contemporary art, or that her original work otherwise constitutes artistic contributions of major significance in the field.

Furthermore, the record contains letters from several educators discussing supplementary arts training programs taught by the Petitioner at their schools. For example, [REDACTED] deputy of the general director at [REDACTED] a network of kindergarten schools in [REDACTED] Russia, asserted that the Petitioner "conducted master classes on the theme 'Artistic development of children, Open talent in every child'" for that company's staff and that her training helped teachers "increase the interest of children in the art classes." Similarly, [REDACTED] director of College of Small Business [REDACTED] indicated that "classes conducted by artist [the Petitioner] allowed college students to

² While we discuss a sampling of these letters, we have reviewed and considered each one.

improve their skills and abilities to improve their academic performance” and “to consolidate their skills in composition, drawing and color separation.”

In addition, [REDACTED] an English teacher at Public School [REDACTED] in [REDACTED] stated that the Petitioner “conducted free courses as a volunteer on additional art education for children from 6 to 10 years old in the Public School [REDACTED] and that her program combined “classical art school and modern technology.” [REDACTED] further noted that this program helped children to “significantly improve the grades of academic achievement in common subjects at school.” Another educator at that school, [REDACTED] indicated that the Petitioner taught fine arts to disadvantaged children and that her program helped children with learning disabilities to improve their academic performance.

The record also includes a letter from [REDACTED] a [REDACTED] attorney, explaining that “obtaining a license for [the Petitioner’s] supplementary education program in the Russian Federation is not required.” [REDACTED] further stated that it was legal for Russian schools to use the Petitioner’s “educational programs without payment.”³

The statements and information from the aforementioned educators and Russian legal expert, however, are not sufficient to show that her art programs have widely influenced the field beyond the schools where she taught or have otherwise risen to the level of contributions of major significance in the field. The language of this regulatory criterion requires that the Petitioner’s original contributions be “of major significance in the field” rather than mainly affecting her students and their schools’ arts programs. *See 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). Without sufficient evidence demonstrating that her work constitutes original contributions of major significance in the field, the Petitioner has not 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 former role as Head of Design and Deputy of General Director for [REDACTED], a Russian company that designs automated teller machines (ATMs) and customer-activated terminals. For the reasons discussed below, the record does not contain sufficient evidence to demonstrate that the Petitioner has performed in a leading or critical role for [REDACTED] or that this organization has achieved a distinguished reputation.

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.⁴ Regarding

³ The Petitioner provided this letter in response to the Director’s request for evidence (RFE) under this criterion asking for “Contracts with companies using [the Petitioner’s] products” and “Licensed technology being used by others.” We note, however, that the aforementioned types of evidence were only two examples among many listed in the RFE for this criterion. The Director’s RFE did not limit the Petitioner regarding the types of evidence she could present under 8 C.F.R. § 204.5(h)(3)(v).

⁴ *See* USCIS Policy Memorandum *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-*

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.⁵

The record includes the Petitioner's "Book of Employment History" identifying the various jobs she has held in Russia since 1992. Pages 10-11 of this book list her position as "Deputy of General Director: The Head of Design Department" for [REDACTED] but do not describe her specific duties. In addition, while the Petitioner offered a letter from the event director at [REDACTED], a client of [REDACTED] expressing gratitude for "the design decisions" she made on projects as leader of her company's team of designers, this letter does not show how her role leading various design projects for [REDACTED] was leading or critical role for [REDACTED]. The Petitioner also submitted a list of her job duties as "Head of Design Department" for [REDACTED]. Although the Petitioner contends that this list was "obtained from the employment contract with job description," she did not provide a copy of the aforementioned [REDACTED] employment contract containing that list. Nor has she presented a letter from [REDACTED] containing detailed and probative information that specifically addresses how her role was leading or critical for that organization.⁶ Furthermore, the Petitioner has not demonstrated that such a letter from her former employer is unavailable. See 8 C.F.R. § 204.5(g)(1). For these reasons, the evidence is not sufficient to demonstrate that the Petitioner has performed in a leading or critical role for [REDACTED].

In addition to not demonstrating that she performed in a leading or critical role for [REDACTED] the evidence is insufficient to show that this organization has a distinguished reputation. The Petitioner presented multiple letters of appreciation from [REDACTED] clients thanking the company for developing signage and displays for their ATMs and bank branches. For example, an April 2009 letter from the Deputy of General Director for the Department of Banking Technologies at [REDACTED] an exclusive distributor of [REDACTED], expressed gratitude for [REDACTED] "joint participation in the presentation of [REDACTED] ATMs at the [REDACTED] for banks." In addition, the Petitioner offered lists of the largest banks in Europe and Russia, and noted that several of these banks were [REDACTED] clients. She also provided a November 2006 letter from [REDACTED] stating that radio stations "Europe Plus" and "Retro FM" announced news "about the realization by the company [REDACTED] of the project on creation of self-service banking zones across Russia by the order of the [REDACTED]. The record, however, does not include the transcripts of these radio stations' news announcements to demonstrate that their coverage was indicative of the company's distinguished reputation. Furthermore, the Petitioner submitted information about [REDACTED] from its website, but USCIS need not rely on self-promotional material. See *Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9). The aforementioned information and evidence is not sufficient to set [REDACTED] apart from others in the industry or otherwise reflect its distinguished reputation.⁷ For the above reasons, the Petitioner has not established that she meets this regulatory criterion.

14 10 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

⁵ *Id.*

⁶ *Id.* (noting that "8 C.F.R. § 204.5(g)(1) states that evidence of experience 'shall' consist of letters from employers").

⁷ *Id.* (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 Petitioner initially presented documentation from the Federal Tax Service of Russia reflecting her earnings as “Deputy of General Director: The Head of Design Department” for ██████████ in 2010 and 2011. In addition, she submitted information showing average monthly “wages of employees in a full range of organizations in general” for the Russian Federation and average salary levels “for the position Deputy General Director in Russia.”⁸ The Petitioner, however, must submit evidence showing that she has earned a high salary or other significantly high remuneration relative to others in her field and not just a salary that is above average in her field. Furthermore, because the Petitioner’s field is art design, offering “wages of employees in a full range of organizations in general” for the Russian Federation does not provide an appropriate basis for comparison in demonstrating that her earnings constitute a high salary relative to “others in the field.”

In response to the Director’s RFE, the Petitioner provided current wage information from msk.jobcareer.ru indicating the “average monthly salary for position Deputy of General Director by ██████████ region” and “average monthly salary for position Art Director in ██████████. She also submitted a letter from ██████████ discussing the “forms used to confirm an individual’s income in Russian Federation,” how wages are “calculated at commercial organizations in Russia,” and “[h]ow to determine the official salary for positions . . . in Russian Federation” in comparison with “similar statistic[s] in the United States.” In addition, ██████████ asserted that “the amount of annual income received . . . by ‘Deputy of General Director, Head of Design Department’ . . . is significantly higher than the average wage for this position in Russia, as well as in ██████████ or in ██████████ region.”

The Petitioner’s reliance on average salary information compiled from current job openings is not a proper basis for comparison. First, she must provide evidence showing that she has earned a high salary relative to others in the field rather than just a salary that is above average in her field. Second, the salary information she offered from msk.jobcareer.ru is limited to job vacancies and excludes data for filled positions. Furthermore, the information from msk.jobcareer.ru relates to current job openings rather than those from 2010 and 2011 when the Petitioner worked as head of the design department at ██████████

The Petitioner must present evidence showing that she has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *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 Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *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, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner has not established that the wage information she presented constitutes an appropriate basis for comparison. Based on the foregoing, the Petitioner has not demonstrated that she meets this regulatory criterion.

⁸ The Petitioner did not demonstrate that deputy general director positions are indistinguishable in Russia, such that salaries are consistent regardless of the field of endeavor.

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 art and design work are indicative of the 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 V-Y-K-*, ID# 2731295 (AAO Apr. 16, 2019)