



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

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

In Re: 6222950

Date: DEC. 10, 2019

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a television presenter and actress, seeks classification as an alien of extraordinary ability. *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 petition, concluding that the Petitioner had satisfied only one of the initial evidentiary criteria, of which she must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

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).

II. ANALYSIS

The Petitioner asserts that she has worked an actress, host, presenter, model, spokesperson, and journalist. 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 determined that the Petitioner fulfilled one of the initial evidentiary criteria, artistic display of her work at 8 C.F.R. § 204.5(h)(3)(vii). For example, the record reflects that the Petitioner modeled for fashion shows and performed as an actress in television soap operas. Accordingly, we agree with the Director that the Petitioner has satisfied the display criterion.

On appeal, the Petitioner asserts that she meets additional evidentiary criteria, discussed below. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three 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 claims eligibility for this criterion based on membership with the Union of Artists and Technicians for Entertainment Shows – [REDACTED] and Union of Professional Journalists of [REDACTED]. In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.¹

As it relates to [REDACTED] the Petitioner provided the organization's bylaws from [REDACTED] reflecting that applicants for membership must present an academic diploma in theater, choreography, or dramatic art; a "diploma or certificate corresponding to the professional qualifications of 2nd degree

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

of actor”; or a “certificate of professional qualification provided by the union representative of professional categories.” In addition, [redacted]’s website indicates that those who do not have training in schools recognized by the Ministry of Education (Brazil) can “request from [redacted] the issuance of the Training Certificate and, with it, their Professional Registration (DRT) from the Regional Superintendent of Labor and Employment” through these steps:

- Reading the Normative Ruling and the Criteria for Training Certification Dubbing Direction
- Collect printed material proving experience in the intended function (in chronological order)
- Gather printed proofs of courses, workshops, lectures, etc. in the area (with respective menus and workload)
- Complete here the Application and Professional Profile Questionnaire
- Deliver the folder of printed materials at the headquarters of [redacted] or interior ([redacted])
- Pay 50% training exam fee
- Wait for [redacted]’s email contact to confirm and schedule an interview
- Attend the interview
- In case of approval, attend the Lecture on Legislation lasting 4 hours and pay the administrative fee (50%)
- Withdraw the Certificate of Qualification and schedule the delivery of the documentation of the Professional Registry at SRTE (Regional Superintendence of State Work)

With respect to fulfilling the aforementioned requirements to become a member of [redacted], the Petitioner has not shown that presenting an arts diploma or earning a professional certificate is tantamount to outstanding achievements as required by this regulatory criterion. Furthermore, she has not established that outstanding achievements for membership are judged by recognized national or international experts.

Regarding [redacted] the Petitioner submitted a letter from the union president, screenshots from the organization’s website, and its bylaws. The letter from [redacted]’s president and the website screenshots offer information about the organization’s history and background, but this information does not indicate that [redacted] requires outstanding achievements of its members. According to [redacted]’s bylaws, “[t]he following are requirements for affiliation as an effective member of the [redacted] I. - proof of professional registration in the legally competent body; II. - proof of habitual and paid professional exercise in the territorial base of the entity.” The bylaws further state that “[j]ournalism students may be admitted as members.” In addition to not demonstrating that [redacted] requires outstanding achievements of its members, the aforementioned documentation does not show that admission to membership is judged by recognized national or international experts. Accordingly, the Petitioner has not established that she fulfills 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. 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).

As documentation for this criterion, the Petitioner presented articles and photographs in *FT Show*, *Jornal Zero Hora*, *Jornal da Semana*, *Reinaldo Lourenco Summer Collection Catalogue*, *Nova Nova Catalog*, and *Marie Claire*, but the date and author for the majority of these articles were not identified

as required by the language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the submitted material just briefly mentions the Petitioner or only includes her photograph.² Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Furthermore, the record does not include evidence showing that the aforementioned publications constitute major media. Based on the foregoing, the Petitioner has not established that she meets this criterion.

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 letters of support discussing her work in film, theater, television, advertising, fashion, and journalism. In order to meet this criterion, a petitioner must establish that she has made original contributions of major significance in the field. For example, a petitioner may show that her 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 in the field.

The Petitioner contends that she “has made original contributions of major significance in the field of Acting, Hosting, Presenting, and Spokesperson [*sic*].” She argues that evidence documenting her participation in various projects and the recommendation letters demonstrate her eligibility for this criterion.³ As discussed below, these 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.”

For example, [redacted] a Brazilian film director and producer, stated that the Petitioner “is a reference in her profession in Brazil. I consider her a complete actress with extraordinary ability. She has already performed important works in the theater, television, dubbing and cinema industries, as well as having the background of presenter and journalist.” [redacted] further indicated that the Petitioner performed in projects for his [redacted] production company, but did not offer specific examples of how her work has risen to the level of contributions of major significance in the overall field.⁴

Likewise, [redacted] another Brazilian film director and producer, asserted that the Petitioner’s “experience in film, theater, television, and commercial work is vast, and her contributions to each project’s success and originality have been substantial. These projects were made better because of her creative involvement.” The record, however, does not include sufficient information or evidence

² For instance, the article in *Jornal da Semana*, entitled “[redacted]” is about English designer [redacted] and does not mention the Petitioner. The Petitioner appears in a photograph wearing [redacted] fashions that accompanies the article.

³ While we discuss a sampling of these letters, we have reviewed and considered each one.

⁴ *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9; *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).

demonstrating that the Petitioner's work has affected the field in a substantial way or otherwise constitutes original contributions of major significance in her field.

In addition, the Petitioner contends that her authorship of [redacted] also represents an artistic-related contribution in her field. Her evidence, however, does not show that this article has widely influenced other performing artists or has otherwise received attention at level indicative of a contribution of major significance in her field.

Letters that specifically articulate how a petitioner's contributions are of major significance in the field and her impact on subsequent work add value.⁵ On the other hand, 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.⁶ 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). Without sufficient information and 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 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).

As documentation for this criterion, the Petitioner initially submitted a February 2018 letter from the chief executive officer of [redacted] in [redacted] offering her a part-time position as a media advertiser with compensation of "\$10,000 U.S. for each campaign." The Petitioner, however, did not present comparative evidence demonstrating that this remuneration is high relative to other media advertisers working in the United States.

In addition, the Petitioner submitted income statements from her company and accountant reflecting her earnings in Brazil from 2012 until 2016. In response to the Director's request for evidence, she provided contracts with [redacted] [redacted] [redacted] [redacted] and [redacted] for her services in Brazil. She also submitted [redacted] "Guidelines for Advertising and Advertising Agencies" listing union recommended minimum wages for advertising and television work. The Petitioner, however, must demonstrate 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 the union recommended minimum wage.

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). Without

⁵ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9.

⁶ *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 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).

documentation demonstrating that the Petitioner's compensation constituted a high salary or was significantly high in relation to others in the field, she has not established that she meets this regulatory criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales. 8 C.F.R. § 204.5(h)(3)(x).

As evidence for this criterion, the Petitioner presented documentation indicating that she appeared in advertisements for [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted] and information about these companies. In addition, she provided media articles discussing television programs in which she appeared. On appeal, the Petitioner argues that "in the world of television and advertising, there are no tickets sold." The Petitioner further states that she "provided information regarding the success of the companies for which she appeared in advertising, and several articles regarding the success of the television programs she appeared in."

The regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of the Petitioner's commercial success, "as shown by box office receipts or record, cassette, compact disk or video sales." While the Petitioner has appeared in advertisements for various companies and television programming, she has not shown that the success of those companies and television shows was attributable to her specific work as an actress, television host, or spokesperson. Furthermore, she has not demonstrated that her televised performances have attracted substantial audiences or that her advertising work generated significant sales. In order to meet this criterion, the evidence must show that the volume of sales and box office receipts reflect a petitioner's commercial successes relative to others involved in similar pursuits in the performing arts.⁷ Here, the record does not include evidence identifying the Petitioner as having commercial successes relative to other performing artists. Nor is the evidence sufficient to demonstrate that the commercial successes of the aforementioned companies and television programs in which she appeared were mainly because of the Petitioner's work.⁸ For the above reasons, the Petitioner has not established that she satisfies this criterion.

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. at 954. Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that

⁷ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11-12.

⁸ For example, with respect to the Brazilian soap operas in which she acted, the Petitioner has not shown that their television ratings or viewing audience increased significantly once she joined their acting cast.

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 reasons discussed above, the Petitioner has not demonstrated her eligibility 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.

ORDER: The appeal is dismissed.