



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

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

In Re: 4699024

Date: DEC. 20, 2019

Appeal of Texas Service Center Decision

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

The Petitioner, a[n] film director and producer, 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 not satisfied any 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) (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).

II. ANALYSIS

The Petitioner is a television and film director and producer holding a Master of Science degree in cinematography and TV production from the [redacted] University of Culture and Arts.

A. Evidentiary Criteria

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). The Director found that the Petitioner met none of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that she meets the following evidentiary criteria: awards at § 204.5(h)(3)(i); original contribution at § 204.5(h)(3)(v); scholarly articles at § 204.5(h)(3)(vi); and leading or critical role at § 204.5(h)(3)(vii). After reviewing all of the evidence in the record, we conclude that it does not support a finding that the Petitioner fulfills the requirements of at least three 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 Petitioner asserts eligibility for this criterion through awards received by the televised concert [redacted] and the movies [redacted] and [redacted]. She also claims to meet this criterion through her receipt of the [redacted] Ukraine Football League medal and the [redacted] award from Ukraine for her “contribution for the liberation of Ukraine at the time of anti-people power.”

As it relates to [redacted], the Petitioner provides translated screenshots from the award’s website <https://teletriumf.au>, the award’s criteria, translated screenshots of the program’s credits from gordist.com, and the abovementioned letters. The screenshots from teletriumf.au confirm that in 2006 this program received the Teletriumf award for “[redacted]” and the award criteria establish that it is a nationally recognized award granted for excellence in the field of filmmaking.

In addition to being a nationally or internationally recognized award for excellence in the field, the regulation provides that the focus should be on the Petitioner's receipt of the awards or prizes.¹ In the instant petition, however, the record indicates that an entity, as opposed to the Petitioner, received the award. For example, the screenshots from teletriumf.ua attribute the film award to "[redacted]," and the translated screenshots of the program credits from gordist.com indicate that the production is copyrighted by [redacted]. Alternatively, in his letter of recommendation [redacted] director of the [redacted], states, "[redacted] received this prestigious national award for the project [redacted] 2006...." Discrepancies in this documentation notwithstanding, the record indicates that either [redacted] or [redacted] received the award.

However, an individual may also be considered to be a recipient of an award if they are integral to a group's winning of that award. The translated program credits from gordist.com show that the Petitioner was the "2nd TV director" for [redacted] and [redacted]'s correspondence notes that the film was "directed by [redacted]." However, the record lacks information about the role of a 2nd TV director that might demonstrate how this role is integral to the success of a film or television production. [redacted]'s correspondence similarly lacks specific examples of how the Petitioner's work was integral to [redacted] receipt of this award. Accordingly, the Petitioner has not established that she was a recipient of the Teletriumf award for [redacted].

On appeal, the Petitioner also asserts that the Director failed to account for awards received by the films [redacted] and [redacted]. However, the record lacks evidence sufficient to establish that these films received awards or prizes that are nationally or internationally recognized for excellence in the field of film or television direction. With regard to [redacted], the record contains printouts from IMDb.com, journeyman.tv, myzff.com, www.pelicam.ro, and Microsoft.com as documentation that she meets this criterion. The printouts from journeyman.tv, myzff.com, and Microsoft.com contain a synopsis of the movie and identify the producer, but do not indicate that it received any awards.

The record also includes letters of recommendation from [redacted] chief executive officer of [redacted] and [redacted] movie director and producer, noting that it "received special jury prize for the "Best International Feature" at the [redacted] film festival in 2015." However, the record lacks documentary evidence substantiating [redacted]'s and [redacted]'s assertions, such as a copy of the award, media reports, or other relevant materials, nor does it establish that the special jury prize for this festival is internationally or nationally recognized for excellence in the field, as required. In addition, the information from IMDb.com indicates that [redacted] received nominations at several festivals, but received no awards or prizes at these events.

As it relates to [redacted] the Petitioner provides a screenshot from Amazon and a Wikipedia entry containing a synopsis of the film with information about its director and an article from <https://wff.pl> mentioning the film as a nominee for "the main award – [redacted] Best Director Award and Special Jury award." However, the record lacks evidence establishing that [redacted] received one of these awards at the [redacted], or establishing that the film received prizes or awards at other festivals.

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>.

Finally, regarding the Petitioner's receipt of awards from the [redacted] Ukraine Football League, and from the [redacted] for her "contribution for the liberation of Ukraine at the time of anti-people power," the record contains a photocopy and translation of each. However, the record lacks evidence that these awards are nationally or internationally recognized for excellence in the field of film production, as required.

For the abovementioned reasons, the Petitioner has not established her eligibility for 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)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner must establish that not only has she made original contributions but that she has 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 in the field.

The Petitioner argues that her development of "the innovative and unique lighting concept" for a television production that "created a visual effect of a performer's disappearance from one part of the stage during the performance and his/her appearance at another part" demonstrates that she meets this criterion. As evidence, she refers to the aforementioned correspondence from [redacted] and [redacted] wherein they both stated, "[the Petitioner's] idea of the [redacted] style was so unique that many directors began to use it in their productions." However, the record lacks evidence corroborating these assertions, such as letters from television or movie directors who have employed this technique, or other materials demonstrating that the technique was originated by the Petitioner and has been widely implemented. Similarly, [redacted] writes that the Petitioner used "an overhead camera which was positioned on rails" in her work on [redacted], and that this and other "innovations have been adopted by others in their work," but this is also not supported by documentary or testimonial evidence. Letters that specifically articulate how the alien's contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics and make broad, unsupported assertions do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.²

For this reason, the documentation in the record is not sufficient to establish that the Petitioner meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The record reflects that the Petitioner published a 2018 article titled "[redacted]" in Issue 38 of the journal *Herald of KNUKiM*,

² See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9.

Series of Art History, a publication of the [redacted] University of Culture and Arts.³ The Petitioner also provides evidence demonstrating she published a peer-reviewed book titled ‘[redacted] [redacted]’. This is sufficient to show that she meets this criterion, and we will withdraw the Director’s determination to the contrary.

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 asserts that she meets this criterion through her “leading and critical” role for [redacted], and references a letter from [redacted] provided in response to the Director’s September 2018 request for evidence in support of her claim. 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 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

In his correspondence, [redacted] argues that the Petitioner’s leading role is “confirmed by [the Petitioner] moving into a new prestigious role of the Director/Producer, the highest position in the world of film and media production.” However, the record lacks evidence, such as an organizational structure for [redacted] which might establish the leading nature of her role within [redacted] including how her position relates, for instance, to other directors and to executives such as [redacted]

As it relates to her critical role for the organization, [redacted] asserts, “clear evidence of [the Petitioner’s] leading and critical role in our company is her leadership in our most complex and prestigious projects, all of which resulted in the highest rating of our broadcasts.” However, this letter does not offer sufficiently detailed information, nor does the record contain adequate corroborating evidence, regarding the impact of her work on television and movie ratings and other indicia of success, or otherwise demonstrate how her role as a director has had been of significant importance to the outcome of [redacted]’s activities.

[redacted] also claims that ‘[redacted] completely owed receiving of “Teletriumf” Award... to [the Petitioner’s] work, her ingenuity, her talent, and extraordinary ability in the filmmaking industry” and that this “confirms [the Petitioner’s] leading and/or critical role within [redacted].” However, his letter does not offer sufficiently detailed information, nor does the record contain adequate corroborating evidence to support these assertions, as we discuss above. Repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

For these reasons, the Petitioner has not demonstrated that she meets this criterion.

³ The Petitioner provides an English language abstract of this article describing its research methodology and conclusions, as well as a translation of the journal’s cover page and table of contents.

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

⁵ *Id.*

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work 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 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.