



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

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

MATTER OF S-E-A-

DATE: JUNE 18, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a dance instructor and choreographer, seeks classification as an individual of extraordinary ability in the arts. 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 the Petitioner satisfied only two of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that she satisfies 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

The Petitioner is a dance instructor and choreographer who has taught at several dance studios and centers in the United States and Australia. Because she 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 two of the initial evidentiary criteria, lesser awards under 8 C.F.R. § 204.5(h)(3)(i) and judging under 8 C.F.R. § 204.5(h)(3)(iv). The record contains evidence that the Petitioner participated as a judge at the 2015 [REDACTED] National Talent Competition. Accordingly, we agree with the Director that the Petitioner fulfilled the judging criterion. However, for the reasons discussed later in this decision, we do not concur with the Director’s determination that the Petitioner demonstrated that she satisfied the lesser awards criterion.

On appeal, the Petitioner maintains that she meets two additional criteria, discussed below. 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).

Although the Director determined that the Petitioner satisfied this criterion, we disagree. Specifically, the Petitioner did not demonstrate her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.<sup>1</sup> The record reflects that the Petitioner claimed eligibility for this criterion based on the receipt of awards won by her students, as well as awards bestowed upon dance studios and centers. For instance, [redacted] CEO and president of [redacted] [redacted], stated that two of the Petitioner's students won "Australia's [redacted] [redacted] from the [redacted] National Dance Championships [redacted]. Moreover, [redacted] general manager of [redacted], and [redacted] assistant general manager for [redacted] listed awards won by the Petitioner's company, [redacted] from 2007 to 2013, including "Group Aggregate 13 years and over," "Best Tapping Group," and "Grand Champion Solo performer." Further, [redacted] co-founder and director of the [redacted] Performing Arts Center, indicated that the Petitioner "has improved the level of technique within our school greatly with her extraordinary teaching methods to go on and win the 'Technique Award' at the [redacted] National Talent Competition [redacted]" and "routines she has choreographed have led our students win National Titles in Contemporary and Jazz last July at the [redacted] National Finals held in [redacted]." In addition, the record contains numerous photographs of plaques displaying events and categories but not showing the recipients.

This regulatory criterion requires a petitioner to receive prizes or awards.<sup>2</sup> Moreover, the description of this type of evidence in the regulation provides that the focus should be on "the alien's" receipt of the prizes or awards, as opposed to his or her employer's receipt of the prizes or awards.<sup>3</sup> Here, the Petitioner did not establish that she received the claimed awards. Rather, the record shows awards bestowed upon her students or dance studios; the awarding entities did not name the Petitioner as a recipient of the awards.

In addition, this criterion requires the prizes or awards to be nationally or internationally recognized for excellence in the field of endeavor.<sup>4</sup> Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field including, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations of competitors.<sup>5</sup> Although the Petitioner's evidence makes references to the competitions and events, the documentation does not demonstrate that the awards are nationally or internationally recognized for excellence in the field. For example, regarding the [redacted] the

<sup>1</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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

<sup>2</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 6.

<sup>3</sup> *Id.*

<sup>4</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 6.

<sup>5</sup> *Id.* (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance).

Petitioner submitted screenshots from [redacted] com reporting on the 2016 event without showing the recognition of the awards in the field. Further, as it relates to [redacted] offered a brief description of the competition but did not provide any detailed information showing the national or international recognition of the [redacted] awards. Moreover, while an unidentified screenshot claimed that [redacted] is Australia's "largest competition of its kind," [redacted] asserted that the [redacted] National Championship is also "Australia's largest and most prestigious dance competition." Regardless, neither the screenshot nor [redacted] letter contains material explaining the national or international significance of the [redacted] awards. In addition, the Petitioner did not establish that the [redacted] awards, as well as awards from the [redacted] National Competition, [redacted] Conventions and Competitions, and the [redacted], are viewed by the field as nationally or internationally recognized awards for excellence.

Because the Petitioner did not demonstrate that her evidence fulfills the regulatory requirements, we withdraw the findings of the Director for this criterion.

*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 record reflects that the Petitioner's choreographed work was displayed at artistic exhibitions and showcases. Accordingly, the Petitioner has shown 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 claims eligibility for this criterion based on her roles with the [redacted] [redacted] and [redacted]. 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>6</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>7</sup> Moreover, this regulatory criterion requires the role to be for organizations or establishments that have a distinguished reputation.<sup>8</sup>

As it pertains to [redacted] the Petitioner did not initially indicate any employment or role with the dance company.<sup>9</sup> However, in response to the director's request for evidence, she submitted a letter from [redacted] who indicated that [redacted] recently hired her for the role of director in 2017 and had subsequently selected the Petitioner as a coach and choreographer for the December 2017 [redacted] Dance Championships in [redacted]. In addition, the Petitioner provided a screenshot from [redacted]s

<sup>6</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 10-11 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

<sup>9</sup> The Petitioner made no claims of employment or roles with [redacted] in her cover letter, résumé, or any of the submitted documentation at the initial filing of the petition on August 25, 2017.

website reflecting that the dance company was founded in 2017. Further, the Petitioner submitted a screenshot, dated November 28, 2017, from [redacted] announcing [redacted] as the director and head coach and the hiring of the Petitioner. On appeal, the Petitioner offers a “Summary of Oral Agreement,” dated October 29, 2018, regarding the terms of the Petitioner’s employment from October 2017 – December 2025. Here, the documentation relates to events occurring after the filing of the petition, and the Petitioner did not demonstrate that she performed in a role with [redacted] prior to the filing of her petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Regarding [redacted] the Petitioner references a letter from [redacted] founder and director of the musical theatre course for [redacted] at [redacted] University, who stated that the Petitioner “was selected to design and teach the dance program for the only Bachelor of Musical Theatre course of its kind in Australia,” and “[a]s a founding member of the course, [the Petitioner] paved the way to success for many of our students.” While [redacted] discussed his reasoning for selecting the Petitioner to start-up a course, he did not explain how the Petitioner performed in a leading or critical to [redacted] overall.<sup>10</sup> Moreover, [redacted] did not demonstrate how designing and teaching a course shows that the Petitioner held a leadership position or contributed to [redacted] successes as a whole; [redacted] indicated the Petitioner’s impact to the musical theatre course rather than [redacted] in general.

As it relates to [redacted] the record reflects that the Petitioner performed in a leading role as she founded and owned the dance company. However, the Petitioner did not establish that [redacted] enjoys a distinguished reputation consistent with this regulatory criterion. Although the Petitioner argues that [redacted]’s students won several awards, as discussed under the awards criterion, she did not demonstrate how the awards show [redacted]’s distinguished reputation. For instance, the Petitioner did not explain the significance of the students receiving the awards to [redacted] or how the quality or quantity of the awards compared to other dance companies. Moreover, the Petitioner references the letter from [redacted] who claimed that [redacted] “was attracting dancers from all over Australia to train,” and a letter from the current owner of [redacted] [redacted], who opined that [redacted] “is still one of the most prestigious performing arts schools in the country.” However, the letters do not provide specific, detailed explanations to support their assertions. In addition, the Petitioner submitted a screenshot from [redacted] and the above-mentioned screenshot from [redacted] which mentioned that [redacted] is “a leading Performing Arts Center in Australia” and “a leading performing arts center on the [redacted] of Australia.” Again, the articles do not justify their statements for [redacted] “leading” reputation. Further, the Petitioner did not show that two screenshots represent sufficient evidence of [redacted]’s reputation in the field compared to, for example, widespread coverage of the dance company in major media.

For these reasons, the Petitioner did not establish that she satisfies this criterion.

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<sup>10</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner’s leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

## 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 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. In visa petition proceedings, the petitioner bears the 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.

*Matter of S-E-A-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-E-A-*, ID# 3497197 (AAO June 18, 2019)