



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

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

MATTER OF D-G-I-

DATE: NOV. 5, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an actress, 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 the Petitioner's evidence did not establish that she has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3), and did not satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

On appeal, the Petitioner maintains that she has received a one-time achievement and meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to certain immigrants 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 regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification’s initial evidence requirement. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying awards, published material in certain media, and scholarly articles).

Where a petitioner meets the initial evidence requirement, we then consider the totality of the submitted material in a final merits determination and assess whether the record, as a whole, 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, 1119-20 (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, 1343 (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 record shows that the Petitioner has been training in acting since at least 2008, and holds an Advanced Diploma of Arts in acting from the [redacted] for the Arts in [redacted]. The evidence indicates that between 2011 and the date when the instant petition was filed on October 23, 2017, the Petitioner has worked as an actress in film, television and stage productions.¹

The Petitioner’s acting credits in film and TV include the following:

- Kate in the short film [redacted] (2011)
- [redacted] in the short film [redacted] (2012)
- Kristi in the feature-length film [redacted] (2013)
- Robin in eight episodes of the TV series [redacted] (2013)
- Moviegoer in the feature-length film [redacted] (2016)(post-production)
- Emma in the feature-length film [redacted] (2015)
- Elizabeth in the short film [redacted] (2015) (post-production)
- Lead role in the short film [redacted] (2015)
- Shane [redacted] in the TV mini-series [redacted] (2016)(post-production)
- Stacey in the feature-length film [redacted] (2016)

¹ The Petitioner was previously approved for a nonimmigrant O-1B visa, with [redacted] from August 19, 2013 to April 10, 2016, and with [redacted] from June 13, 2016 to January 15, 2019.

- Rehab Center Director in the feature-length film [redacted] (2016)
- Catherine in the feature-length film [redacted] (2017)
- Laila in the short film [redacted] (2017)
- Ava in the feature-length film [redacted] (2017)
- The Girl in the short film [redacted] (2018)

The evidence submitted further confirms the following theater roles:

- Cast member in [redacted] with the [redacted] Ensemble at the [redacted] Theatre in [redacted] California (2013)
- Cast member in [redacted] at the Hollywood Fringe Festival (2014)
- Member of the [redacted] comedy troupe at the [redacted] Theatre in [redacted] (2016)

The Petitioner seeks to continue her work in the field of acting in the United States.

A. One-time Achievement

The Petitioner asserts that her receipt of the 2008 [redacted] Rising Star award and her “impressive line-up of film festival honors” are evidence that she has received a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3). We agree with the Director that the evidence does not establish receipt of a major, internationally recognized award.

Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a onetime achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 1 O 1-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The House Report specifically cited to the Nobel Prize as an example of a one-time achievement; other examples which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the field as one of the top awards.

The Petitioner documented her receipt of the 2008 [redacted] Rising Star award with a photo of a crystal trophy and an award certificate. On appeal, the Petitioner urges that the documentation submitted about the award shows that it satisfies this criterion. The record contains general information about the award in the form of a press release from its co-sponsors, [redacted] a law firm, and the [redacted] Academy for the Visual and Performing Arts. According to this item, the award is “one of [redacted]’s most coveted prizes for those beginning to make their way in the performing arts” and is awarded to “four outstanding young women who are all selected by senior staff from the

[redacted] Academy partner schools they represent.” Each award recipient receives “a \$1,000 cash award to help her make the leap into a professional career.” The record reflects that the Petitioner received the award as a student actor at the [redacted] for the Arts. The other award recipients were students of cinematography, dance, and music.

It appears that competition for the [redacted] Rising Star award was by definition not open to all performing artists, but to a very restricted segment of performing artists — students of the partner schools of the [redacted] Academy for the Visual and Performing Arts. The Petitioner, therefore, has not shown that this award was open to established professionals already working in the field rather than limited to those students. In addition, the petitioner did not provide general information about the competition (such as the eligibility criteria, the number of entrants, or the percentage of entrants who earned some type of recognition). Nor is there supporting evidence showing that the recipients of the preceding honors were announced in major media or in some other manner consistent with a major, internationally recognized award. The Petitioner did not present evidence, for example, establishing that the competition is widely reported by international media, is recognized by the general public, or garners attention comparable to other major, globally recognized awards such as Academy Award winners. Accordingly, the Petitioner has not demonstrated that her receipt of the 2008 [redacted] Rising Star award meets the requirements of a one-time achievement.

The Petitioner also asserts that she has received “film festival honors” that satisfy this criterion. The evidence submitted indicates that the Petitioner was a quarterfinalist in the 2013 [redacted] Competition for her role as Robin in [redacted]. The Petitioner has not established that being a quarterfinalist equates to receiving an award at that competition.

Further, information from [redacted] indicates that the short film [redacted] received the Online award from the [redacted] at the 2017 [redacted] Festival, and other documentation shows that the film [redacted] was the winner of several awards at the 2018 [redacted] Film Festival (formerly the [redacted] Film Festival). That evidence does not demonstrate that the Petitioner was the recipient of any of the awards at those festivals. Further, the [redacted] Film Festival awards were in 2018, after the date the petition was filed on October 23, 2017. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Regardless, we note that the record does not document that an award from the [redacted] Festival or the [redacted] Film Festival qualifies as a major, internationally recognized award.

In light of the above, the Petitioner has not submitted evidence that meets the requirements of this criterion.

B. Evidentiary Criteria

Because the Petitioner has not 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 did not meet any of the ten criteria.

On appeal, the Petitioner maintains that she satisfies at least three of those alternate regulatory criteria. For the reasons discussed below, we find that she has not satisfied the initial evidentiary requirements.²

Documentation of the individual'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)

This criterion contains several evidentiary elements a petitioner must satisfy. The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion. The Director determined that the petitioner did not meet the requirements of this criterion.

The Petitioner claims she satisfies this criterion based upon her receipt of one actual award, and several instances where films in which she acted received awards or were screened at film festivals.³ The award the Petitioner received is the previously discussed 2008 [redacted] Rising Star award. As noted above, the evidence submitted does not sufficiently establish that the [redacted] Rising Star award is a major, internationally recognized award. In addition, this evidence does not demonstrate that the award is a nationally or internationally recognized award in the Petitioner's field. As discussed previously, based on the limited information provided in the above-referenced press release, the award was not open to all performing artists, but to students of the partner schools of the [redacted] Academy for the Visual and Performing Arts. The Petitioner, therefore, has not shown that this award was open to established professionals already working in the field rather than limited to those students.

In addition, the indication in the press release that the award is "one of [redacted]'s most coveted prizes" reflects local or regional, rather than national or international recognition. Further, the record contains insufficient evidence establishing the significance and magnitude of the preceding competition and the extent to which the winners are recognized beyond the issuing body. The record does not contain any other evidence related to the award, such as the eligibility criteria, the number of entrants, or evidence showing that the recipients of the award were announced in major media or in some other manner consistent with a nationally or internationally recognized award.

² On appeal, the Petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

³ The evidence indicates that [redacted] was screened at the [redacted] International Film Festival 2012. [redacted] was screened at the [redacted] 2014, [redacted] was screened at the [redacted] Film Festival, and [redacted] was screened in 2016 at the [redacted] Film Fest Los Angeles and the [redacted] Film Festival. We note that although the record also indicates that [redacted] was shown at the [redacted] Film Festival Paris and the [redacted] Short Film Festival, those screenings were in 2018 after the date the petition was filed on October 23, 2017. As previously mentioned the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Finally, as mentioned, although information from [redacted] indicates that the short film [redacted] received the Online award from the [redacted] at the 2017 [redacted] Festival the record does not document that the Petitioner was the recipient of the award, or demonstrate that the award is a nationally or internationally recognized award in the Petitioner's field. While it is notable that some of the films in which the Petitioner acted were presented at various film festivals, the Petitioner did not submit evidence demonstrating that these screenings are evidence that meets the plain language requirements of this criterion as prizes or awards.

For these reasons, the Petitioner has not submitted evidence that satisfies the requirements of 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).

The Director found that the Petitioner did not submit evidence that satisfies this criterion. On appeal, the Petitioner maintains that she meets this criterion based upon the submitted article about her from Bulgaria ON AIR titled '[redacted]' The article briefly reviews her educational background, states she has appeared in a horror film and "romantic comedies, series and short films," and relates her desire to win an Oscar. However, the submitted article does not identify the author of the material, as required by the regulations. Further, the Petitioner did not provide documentation demonstrating that the publication is considered a professional or major trade publication or other major media.

Consequently, the Petitioner did not show that she satisfies this 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).

This criterion requires not only evidence of invitations to serve as a judge, but also that the petitioner actually participated as a judge. On appeal, the Petitioner maintains that she "judged the work of others as a [redacted] Television Nominating Committee member." The record does not substantiate this claim. The Petitioner provided copies of emails dated 2016 addressed to "Members of the [redacted] Nominating Committee," inviting them to attend screenings of several TV series, and a Final Voting Reminder for members of that committee. However, as noted by the Director, the above-referenced emails do not identify the Petitioner as an intended recipient. In addition, while the Petitioner's [redacted] membership card contained in the record is evidence in support of her qualifications to judge, the regulation requires a showing of actual participation as a judge.

In light of the above, the Petitioner has not established that she meets this regulatory 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).

The Director determined that the Petitioner did not establish eligibility for this criterion. In order to satisfy this criterion, a petitioner must establish that not only has she made original contributions but that they have been 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 maintains that "in each of her artistic works" she has made an "essential" and "original artistic contribution" to the field. In support, she references her receipt of the previously discussed 2008 [redacted] Rising Star award, claimed "film festival honors," and the article published about her in *Bulgaria On Air*.

Regarding the [redacted] Rising Star award, once again the press release about the award does not establish its scope and significance in the field of acting. Such evidence could include information regarding the number of entries in the Petitioner's category in the year she won, evidence of any publicity she received as a result of winning the prize, or other evidence that establishes that the winner of this event receives "significant recognition," beyond the crystal trophy, award certificate, and cash award she received. If the results of the event were not publicized beyond the award's sponsors and partner schools, we cannot find that this award has impacted or influenced the field in a significant manner or otherwise equates to a contribution of major significance in the field.

In addition, as previously discussed, although information from [redacted] indicates that the short film [redacted] received the Online award from the [redacted] at the 2017 [redacted] Festival the record does not document that the Petitioner was the recipient of the award. Even if there was sufficient documentary evidence submitted reflecting the Petitioner's receipt of an award at the [redacted] Festival, the Petitioner did not submit any documentary evidence to show how her purported film festival award has impacted or influenced the field in a significant manner.

The Petitioner further claims her eligibility for this criterion based on the aforementioned article published about her in *Bulgaria On Air*. The Petitioner has not demonstrated how the information related about her in this article demonstrates an original contribution of major significance in the field. Without additional, specific evidence showing that the Petitioner's work has been unusually influential, widely applied throughout her field, or has otherwise risen to the level of contributions of major significance, we cannot conclude that she meets this criterion.

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

The Director determined that the Petitioner did not satisfy the requirements of this criterion. We disagree and find that the record supports the Petitioner's claim that she meets this criterion. The record reflects that the Petitioner performed as an actress in theatrical settings. Therefore, the Petitioner established that she fulfills this criterion.

Evidence that the individual 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)

On appeal, the Petitioner states that she has “performed in major roles in film, and television and theatre.”⁴ The scope of this evidentiary criterion focuses on the relative importance of the Petitioner’s role for distinguished organizations. In general, a leading role is evidenced from the role itself, and a critical role is one in which the petitioner was responsible for the success or standing of the organization or establishment. As noted by the Director, the fact that the Petitioner may have played a leading role in several of the above-mentioned film, theater, and TV productions is not sufficient to satisfy this criterion’s requirements. The Petitioner did not demonstrate how such productions equate to an organization. In addition, the record does not provide background information or documentation regarding the production companies for the majority of those productions, to establish the reputation of those organizations. While the record contains some background information on [redacted] Entertainment, indicating it is the production company for [redacted] and [redacted] [redacted] that evidence does not establish that it is an organization with a distinguished reputation in the field.

In light of the above, the Petitioner did not establish 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).

In order to meet this criterion, the Petitioner must demonstrate that she has earned a high salary or significantly high remuneration relative to the compensation paid to others working in the field.⁵ In support of this criterion, the Petitioner presented a list of four projects, three in 2012 and one in 2018, indicating that the hourly wage she earned for each job ranged between \$300 and \$400, and a copy of a cashed check dated September 1, 2018 paid to her in the amount of \$1,250 for a “Film Short.” She further provided comparative wage data, specifically a screenshot from www.bls.gov regarding 2017 Occupational Employment and Wages, reflecting that the 90th percentile of actors earned an hourly wage of \$89.08. On appeal, the Petitioner claims she meet this criterion because she “commanded \$200/hour.”

First, we note that the check dated 2018 pertains to wages the Petitioner earned after the date when the petition was filed on October 23, 2017. As discussed previously, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). A petition may not be approved if the petitioner was not qualified as of the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45,49 (Reg’l Comm’r 1971). In addition, regarding the Petitioner’s assertion that in 2012 she earned between \$300 and \$400 per hour, or her claim on appeal

⁴ The Petitioner also asserts on appeal that she has provided evidence of her performance in advertising campaigns, but the record does not contain such evidence.

⁵ 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 11* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

that she “commanded \$200/hour,” the record does not substantiate that claim. The Petitioner has not provided evidence showing the salary or remuneration she has received as an actress from any source. She has not provided reliable evidence such as her tax returns reflecting her total earnings or the copies of the paychecks she received as a result of her previous acting assignments. Based on the forgoing, the Petitioner has not established that her past earnings qualify as a high salary relative to similarly employed individuals.

C. Summary

For the reasons discussed above, we agree with the Director that the Petitioner is not eligible because she has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, and conclude that it does not support a finding that the Petitioner has established the level of expertise 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 accomplishments 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).

III. CONCLUSION

The Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The appeal will be dismissed for the above stated reasons. 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 D-G-I-*, ID# 4594193 (AAO Nov. 5, 2019)