



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

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

In Re: 5377325

Date: NOV. 21, 2019

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director also found that the Petitioner did not establish how she will continue to work in the area of claimed extraordinary ability, or that her entry will substantially benefit prospectively the United States. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(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. A petitioner can either demonstrate a one-time achievement (that is, a major, internationally recognized award), or 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 qualifying 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 described herself as “a stage play performer” who “also work[s] as a stage director and producer.” The Petitioner stated: “[W]hen I obtain permanent residency, . . . I will spend 90% of my time on performing, and 10% of my time on directing and producing.” [REDACTED] a Chinese-language television network based in California, stated its intention to hire the Petitioner.¹

A. Initial Evidence

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 only fulfilled one of the initial evidentiary criteria, relating to receipt of lesser nationally or internationally recognized prizes or awards, under 8 C.F.R. § 204.5(h)(3)(i). We agree with the Director’s finding regarding prizes or awards; the record establishes that the Petitioner won a [REDACTED] Award in 1999, for her performance in the play [REDACTED]

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 show 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 claimed membership in the China Theatre Association (CTA) and the [REDACTED] Drama Society (CCDS). A partial translation of CTA’s articles indicate that a “theatrical professional” could join the Association with members’ recommendations and “substantial achievements in the field of drama art.” A partial translation of CCDS’s articles states that applicants “shall have made substantial

¹ The Petitioner does not claim any employment in the United States since her arrival in September 2018 as a B-2 nonimmigrant visitor for pleasure.

contribution to the development of children’s drama, or have made substantial achievements in the field of children’s drama.”

In the denial notice, the Director acknowledged the Petitioner’s memberships, but found that the Petitioner had not shown that the associations require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. The Director noted that CTA collects dues, and CCDS collects membership fees.

We agree with the Director that field of employment, length of experience, and payment of dues do not constitute outstanding achievements. Nevertheless, the presence of those requirements does not intrinsically invalidate a given membership; a qualifying association might require outstanding achievements and, in addition, employment in a particular field, experience, and payment of dues.

Of greater concern is the ambiguity in the record regarding the membership requirements of CTA and CCDS. The Petitioner acknowledges that the word “outstanding” does not appear in CCDS’s membership requirements, but the Petitioner maintains that the requirements relating to “substantial contribution” and “substantial achievements” “should be considered as equivalent to the outstanding criterion.”

Substantial is not synonymous with *outstanding*,² and the submitted materials do not show that recognized national or international experts judge the contributions of prospective members of either association. The submitted information does not say who judges applications for CTA membership. CCDS membership applications are “[d]iscussed and approved by the Council or the Standing Council,” but the record provides little other information about that Council. (On appeal, the Petitioner submits a certificate from 2019, stating that the Petitioner “is [a] former council member in our Association” but does not say when or for how long she served in that previously unmentioned capacity.)

The Petitioner quotes a newly submitted excerpt from the CTA’s Standard Rules for Development of Membership, referring to “senior professional titles, or individual winners of national theatre awards, and individual first prize winners of provincial (district, municipal) level awards.” This passage does appear in the submitted rules, but the Petitioner offers a very selective reading of the document. The section headed “Qualifications for Membership” requires a prospective member to “meet one of the following qualifications.” The quoted passage is part of the first qualification on a list that includes several other qualifications that a prospective member can meet in lieu of the prize requirement. Examples include:

- Those who often engage in the translation of foreign screenplays, with . . . more than three translations performed in influential college groups
- Those who hold teaching duties in theatre academies and have the title of associate professor or above.
- Editors who are engaged in theatrical publications with a professional college degree or above and have the title of assistant editor or examiner.

² *Substantial* means “considerable in quantity” or “significantly great.” *Outstanding* means “standing out from a group” or “marked by eminence and distinction.” Definitions from <https://www.merriam-webster.com/dictionary/> (last visited Nov. 6, 2019).

Thus, prizes are only one of several different avenues to eligibility for CTA membership.

The Petitioner submits a translated certificate from CTA, which reads, in part: “In view of her outstanding achievements on the stage of theatrical performance, our Association absorbs [the Petitioner] as a member of the China Theatre Association in 2015.” Despite the present-tense wording, the certificate is dated March 1, 2019, five weeks after the Director denied the petition. This timing suggests that the certificate was printed to aid with the appeal rather than as a standard instrument of membership.

The Petitioner also holds a “Certificate of First-Class Performer,” issued after the Petitioner was “assessed by the [redacted] Municipal Board of Qualifications for Senior Professional/Technical Positions in Art Categories.” The record does not show that the performers who hold those certificates collectively constitute an “association.” Furthermore, the record does not show that the members of the [redacted] Municipal Board of Qualifications are recognized national or international experts in their disciplines or fields.

The Petitioner has not established membership in associations in her field which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

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)

In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution.

The Petitioner initially submitted a translation from her entry in the Baidu Encyclopedia. The entry does not name the author or show the publication date. The omissions are particularly significant because, according to materials submitted by the Petitioner, Baidu is a user-edited online encyclopedia, similar to Wikipedia. As there are no assurances about their reliability, the content from open, user-edited Internet sites will be accorded no evidentiary weight. *See Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008). The lack of a named author is also of significant concern because the Baidu article included many personal details about the Petitioner’s background but cited no primary sources for that information.³

The Petitioner also submitted letters from three figures in the Chinese theater community. These letters are not published materials and therefore they cannot satisfy the criterion under which the Petitioner submitted them.

³ The only identified references consisted of background information about a theater award; background information about a theater where the Petitioner worked; and reviews of plays performed in 2008 and 2012. All four references were added to the article on the same date, November 6, 2017, suggesting that the entry was created on that date.

The Petitioner subsequently submitted translated copies of ten newspaper articles. With one exception, all the submitted articles were published in 1999.⁴ The exception appeared in the *Xinmin Evening News* in [redacted] 2018. The publication date was after the petition's filing date (October 4, 2018) and after the Director requested further evidence (on October 16, 2018). Therefore, it did not exist to establish eligibility at the time of filing as required by 8 C.F.R. § 103.2(b)(1).

Two of the 1999 articles only listed the 23 winners of that year's [redacted] Awards, including the Petitioner. Three other articles were reviews or previews of plays in which the Petitioner performed. The Petitioner played main characters in the shows, but the reviews were primarily about the productions themselves, with only brief mention of the Petitioner and other participants. A sixth article profiled the China Welfare Association Children's Art Theatre, discussing recent successes and mentioning three winners of the [redacted] Award, one of whom was the Petitioner. While all of these materials include a mention of the Petitioner or a listing of his name, articles that are not about the petitioner do not meet 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 about a show are not about the actor).

Three of the remaining submitted articles from 1999 were about the Petitioner. Two focused on her performance in [redacted] and a third provided a broader overview of her career in the context of her then-recent receipt of the [redacted] Award.

The articles about the Petitioner appeared in the *Xinmin Evening News* and *China Actors News*. To establish that the *Xinmin Evening News* is one of "the three major mainstream newspapers in [redacted]," the Petitioner submitted a translated excerpt from a Chinese-language article about the paper from Wikipedia. As we have already discussed above, there are no assurances about the reliability of content from user-edited websites such as Wikipedia.

A 1995 article in *Renmin Rimbao* referred to *China Actors News* as a "four-page, weekly newspaper [that] focuses on reporting performing skills and stories of artists." The information provided is not sufficient to show that *China Actors News* is a major trade publication.

The Director found the submitted materials to be deficient for various reasons, such as a lack of independent evidence to show that the articles appeared in major media, and most of the articles were not about the Petitioner.

On appeal, the Petitioner submits two more articles and information about the publications. A 1999 article from *Jiefang Daily* focused on the Petitioner, in the context of her role in [redacted]. A two-paragraph 2008 article from *Wenhui Daily* previewed a then-upcoming production of [redacted]. The short piece included three sentences about the Petitioner, naming her as a cast member and providing some biographical details. The article did not name the author as the regulations require.

The Chinese government named *Jiefang Daily*, *Wenhui Daily*, and *Xinmin Evening News* among the "Top 100 Newspapers and Periodicals of 2017." The accompanying press release indicates that the publications were chosen not on the basis of circulation or prominence, but rather for their conformity

⁴ Had the case proceeded to a final merits determination, the lack of published material after 1999 would have argued against a finding of *sustained* acclaim.

with government goals. Furthermore, an annual list compiled in early 2018 does not necessarily reflect on the standing of the publications years or decades earlier, when they published the submitted articles.

Evidence submitted on appeal indicates that *Xinmin Evening News* has a large readership in the [] area, but the Petitioner has not established that the articles about her have seen significant national or international distribution, and were not restricted to locally-circulated editions.

In light of the above, it is significant that the submitted articles indicate local coverage for readers in the vicinity of theaters where the Petitioner was performing at the time (primarily in []).

Given the deficiencies identified above, the Petitioner has not shown that she has been the subject of published material in major trade publications or other major media.

B. Continued Work/Prospective Benefit

The Director made additional findings regarding the Petitioner's continued work in the field and the prospective national benefit that would result from her entry. Because the above findings are dispositive, we need not address these additional issues and therefore reserve them.

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. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.