



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

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

MATTER OF J-A-A-

DATE: OCT. 1, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a singer, 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 Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only one of the initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner presents previously submitted documentation and a brief, arguing that she fulfills 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 previously performed as singer for the bands, [redacted] and [redacted] and indicates current employment with the [redacted]. 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 determined that the Petitioner met one of the initial evidentiary criteria, published material under 8 C.F.R. § 204.5(h)(3)(iii). However, for the reasons discussed later, the record does not reflect that the Petitioner demonstrated her eligibility for the published material criterion.

On appeal, the Petitioner maintains that she fulfills six 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.

*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 claims to meet this criterion based on receiving a “Gold Record Award” for selling 20,000 copies of an album while a member of [redacted]. The record contains a photograph of the

“Gold Record Award” issued by the band’s record company, [REDACTED]. In addition, the Petitioner submitted [REDACTED]’s compact disc and photographs of the band’s performance of a song on a Filipino television show, “[REDACTED]!”

In order to fulfill this criterion, the Petitioner must demonstrate that she received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.<sup>2</sup> Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, 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 on competitors.<sup>3</sup> Here, the Petitioner did not demonstrate how her evidence shows that the field recognizes the record company’s award as a national or international award for excellence.<sup>4</sup> Moreover, the Petitioner did not establish that [REDACTED]’s “Gold Record Award” is nationally or internationally recognized for excellence in the field of endeavor consistent with this regulatory criterion.

Accordingly, the Petitioner did not show that she fulfills this criterion.

*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 contends that she satisfies this criterion based on being “a contract artist and/or member” of [REDACTED] as a lead vocalist for [REDACTED] as well as a lead singer for [REDACTED] and [REDACTED]. The record reflects that the Petitioner provided a document from [REDACTED] certifying the Petitioner’s employment as a contract artist order while a member of [REDACTED]. In addition, she submitted screenshots from [REDACTED] highlighting another artist. Further, she presented employment letters relating to her performances with the [REDACTED] at several venues, such as hotels, pubs, and cafes.

In order to satisfy the regulation at 8 C.F.R. §204.5(h)(3)(ii), 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.<sup>5</sup> Here, the Petitioner did not establish that employment with [REDACTED] as a contract artist constitutes “membership” in an association. Moreover, the Petitioner also claims her [REDACTED] employment qualifies as a leading or critical role under the regulation at 8 C.F.R. § 204.5(h)(3)(viii), a separate and distinct

<sup>1</sup> The Petitioner claimed that [REDACTED] later became [REDACTED].

<sup>2</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>3</sup> *Id.*

<sup>4</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (instructing that an award limited to competitors from a single institution, for example, may have little national or international significance).

<sup>5</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (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).

criterion that will be discussed later. Consistent with the regulatory requirement that a petitioner meet at least three separate criteria, we will generally not consider evidence to the leading or critical role criterion.

In addition, although the Petitioner's evidence demonstrates her membership with the bands, she did not show how her evidence reflects that outstanding achievements are required for band membership. Moreover, the Petitioner did not establish that the individuals responsible for judging the membership candidates are comprised of recognized national or international experts consistent with this regulatory criterion.

For these reasons, the Petitioner did not demonstrate that she satisfies 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 satisfied this criterion without identifying the qualifying published material and explaining her determination. In order to fulfill this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material.<sup>6</sup> Because the Petitioner did not establish that her evidence meets the regulatory requirements of this criterion, discussed below, we will withdraw the findings of the Director.

At the outset, the record reflects that the Petitioner submitted advertisements and flyers for [redacted]'s concerts, including ads in publications such as *Bandwidth*, *Okinawa Marine*, and *Harian Analisa*. However, the Petitioner did not demonstrate how such marketing materials for the band reflect published material about her.<sup>7</sup> In addition, she did not offer evidence showing that the publications qualify as professional or major trade publications or other major media consistent with this regulatory criterion.<sup>8</sup> Further, the Petitioner did not include the required title, date, and author of the material.

Moreover, the Petitioner presented an article entitled, [redacted], published in the *Saipan Tribune*. The article, however, relates to the band and its upcoming performance rather than published material about the Petitioner. In fact, the Petitioner is mentioned only one time as being one of the band members. 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 Petitioner did not provide evidence showing that the *Saipan Tribune* is a professional

---

<sup>6</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

<sup>7</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (stating that marketing materials created for the purpose of selling products or promoting services are not generally considered to be published material about the petitioner).

<sup>8</sup> *Id.* (providing that evidence of published material in professional or major trade publications or in other major media publications about the petitioner should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience).

or major trade publication or other major medium. In addition, the Petitioner did not include the required author of the material.

Further, the Petitioner submitted screenshots from abs-cbnnews.com reflecting the posting of “[redacted]” in [redacted] 2013. The Petitioner, however, did not establish how a video of [redacted]’s performance qualifies as published material about her. Moreover, the Petitioner did not establish that abs-cbnnews.com represents a professional or major trade publication or other major medium. Also, she did not include the required author of the material.

In addition, the Petitioner submitted a [redacted] 2007 article reflecting published material about her in *Beach Road Magazine*.<sup>9</sup> However, the Petitioner did not provide evidence demonstrating that the magazine is a professional or major trade publication or other major medium. Moreover, the Petitioner did not include the required title and author of the article.

For the reasons discussed above, the Petitioner did not show that she meets this criterion. Therefore, we withdraw the findings of the Director for 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).

The Petitioner provided evidence that she participated as a judge for singing contests at an elementary and high school. Accordingly, the Petitioner demonstrated that she fulfills 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 performed as a singer for three bands in concert at various venues, such as hotels, resorts, and pubs. Therefore, the Petitioner established that she satisfies 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 argues that she fulfills this criterion based on her role as a “leading vocalist” with [redacted], [redacted], and [redacted], as well as a “talent/artist/member” of [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>10</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 organizations or establishment’s activities. It is not

<sup>9</sup> The record also contains a copy of a cover and table of contents for *Beach Road Magazine* for an [redacted] 2007 article entitled, “[redacted]” However, the Petitioner did not submit the article and include the author. Moreover, the Petitioner did not establish that the article represents published material about her in a professional or major trade publication or other major medium.

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

the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.<sup>11</sup>

As it relates to her role with [redacted] and the [redacted] the Petitioner submitted sufficient evidence demonstrating that she performed in a leading role. Specifically, the Petitioner served as one of three band members for [redacted] and performed as the leading vocalist for the [redacted]. However, she did not establish that the bands enjoy distinguished reputations.<sup>12</sup> While the Petitioner submitted evidence indicating that [redacted] sold 20,000 copies of its album, she did not explain how such receipts indicate [redacted]'s eminent status. She did not, for example, distinguish the band from others or differentiate its achievements or accomplishments.

As it pertains to [redacted] the Petitioner provided letters and contracts verifying its performances at various locations, such as the Philippines, Mariana Islands, and Malaysia. However, the Petitioner did not show how the performances reflect the band's reputation. The Petitioner, for instance, did not demonstrate that the band garnered significant media coverage or sold out venues establishing that its performances resulted in a distinguished reputation.

Moreover, regarding her role with [redacted], the Petitioner did not show that she performed in a leading or critical role. In fact, the Petitioner provided only one letter from [redacted] food and beverage manager for the [redacted] Philippines, who confirmed her employment with the band as a singer. The letter does not provide specific details explaining her duties or showing how she contributed to the success or standing of the band.<sup>13</sup> In addition, the Petitioner did not offer evidence establishing that the band garnered a distinguished reputation.

Regarding [redacted] as discussed under the membership criterion, the Petitioner submitted an employment certification confirming her contract as an artist while a member of [redacted]. The Petitioner, however, did not establish how her role as a band member reflected her performance in a leading or critical role for [redacted] as a whole. She did not show, for example, how her role qualified for a leadership position or that she significantly impacted the company's activities or outcomes overall. Further, while the record contains screenshots from [redacted] about another artist, the Petitioner did not demonstrate the company's standing or excellent reputation.

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

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 10-11 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

<sup>13</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).

*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).

The Petitioner contends that her receipt of a “Gold Record Award” for selling 20,000 copies of [redacted]’s album “is of such magnitude to be simply considered a commercial success.” 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.” Moreover, 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.<sup>14</sup> Although the Petitioner demonstrated that [redacted]’s album sold 20,000 copies, she did not show the significance or relevance of the figures. Here, the Petitioner did not establish that such sales numbers qualify as a “commercial success” in the Philippines consistent with this regulatory criterion.

Accordingly, the Petitioner did not show that she fulfills 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. *See 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.

---

<sup>14</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 11-12.

*Matter of J-A-A-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-A-A-*, ID# 1576701 (AAO Oct. 1, 2019)