



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

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

MATTER OF Y-S-

DATE: OCT. 3, 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.

Following the Petitioner's timely response to the Director of the Nebraska Service Center's request for evidence, the Director denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits a brief and additional evidence asserts that she meets at least three of the ten criteria and is eligible for the benefit sought.

Upon *de novo* review we will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

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

As noted above, the Petitioner is an actress. As she has not received a major, internationally recognized award, the record must demonstrate that she satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director determined that the Petitioner satisfied the criteria for membership and for judging at 8 C.F.R. § 204.5(h)(3)(ii) and (iv), respectively. Evidence in the record establishes the Petitioner’s membership in an artists’ union whose bylaws indicate that the organization requires outstanding achievements as determined by its own experts. The record also includes correspondence confirming that the Petitioner served as a judge in beauty and talent competitions. Accordingly we agree with the Director that the Petitioner meets the criteria for membership and judging. The Director concluded, however, that the Petitioner had not shown she met an additional criterion and therefore was not eligible for the benefit sought.

On appeal, the Petitioner asserts that the “previously submitted evidence... establishes that” she meets at least three of the alternate regulatory criteria found at 8 C.F.R. § 204.5(h)(3). She further notes that the Director “overlooked a regulatory criteria [*sic*] of evidence of the alien’s artistic contributions of major significance in the field that the [petitioner] claimed” (emphasis in original).¹

¹ In May 2018, the Director issued a request for evidence (RFE) asking that the Petitioner provide additional documentation

As the Petitioner notes on appeal, the Director did not address the Petitioner's claim that she met the criterion for original contribution found at 8 C.F.R. § 204.5(h)(3)(v). Accordingly, we will remand the matter for him to analyze the evidence submitted under that criterion.

In addition, the Director concluded that the Petitioner had not met the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), finding in part that the articles submitted by the Petitioner were not about her and her work in the field. However, upon review, we find that that at least one of the submitted articles published on ambebi.ge was in fact about the Petitioner relating to her work in the field: which profiles the actress and discusses her acting roles. Further, on appeal, the Petitioner provides comparative evidence about the monthly number of unique online visits to ambebi.ge, which the Director has not yet had an opportunity to consider. Therefore, we also remand this decision for the Director to determine whether the noted article about the Petitioner meets the remaining requirements of the published material criterion.

If the Director determines that the Petitioner satisfies at least one additional criterion beyond the two already met, his decision should include an analysis of the totality of the record evaluating whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and whether the record demonstrates that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.²

III. CONCLUSION

The appeal will be remanded to the Director for further action in accordance with this decision. It is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of Y-S-*, ID# 4315991 (AAO Oct. 3, 2019)

related to the membership, published materials, scholarly articles, display, leading or critical role, and salary criteria found at 8 C.F.R. § 204.5(h)(3)(ii-iv),(vi-ix), respectively. In her timely response to this RFE, the Petitioner provided additional evidence and asserted that she also met the criterion for original contribution at 8 C.F.R. § 204.5(h)(3)(v).

² *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 4* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).