



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

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

MATTER OF K-L-W-

DATE: SEPT. 20, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a screenwriter and story consultant, 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, as required, that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of the ten evidentiary criteria.

On appeal, the Petitioner asserts that in addition to the two criteria which the Director found that she met, the evidence shows that she also meets four additional criteria and is eligible for the classification she seeks.

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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

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 Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to the artistic display of her work and her participation as a judge of the work of others in her field. On appeal, the Petitioner asserts that she also meets four additional evidentiary criteria. After reviewing all of the evidence in the record, we find that while she satisfies the initial evidentiary requirement of meeting at least three of the criteria, the record does not establish that she has enjoyed sustained national or international acclaim and is one of the few at the very top of her field.

A. Evidentiary Criteria

Published material about the individual 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)

Several categories of evidence were submitted in support of this criterion.¹ We will first consider the reviews of the performances of the Petitioner’s theatre adaptations. In his decision, the Director noted that in order to meet the requirements of this criterion, the published material must not only focus on an individual’s work, but also must be about the individual. The reviews clearly identify the Petitioner as the creator of the plays, in most cases noting that she adapted the original stories of [REDACTED]

¹ As the Petitioner concedes in her brief that the academic articles in the record which cite to her writings are not about her and her work, we will not analyze that evidence under this criterion.

[redacted] and include the writer's opinion of the results of her work. However, none of the reviews go beyond these mentions to discuss her career, background or other personal elements, and thus they cannot be considered to be about her.

On appeal the Petitioner refers to the two district court decisions cited by the Director² in support of the premise that articles about organizations, teams or productions are not about the individual participants. She asserts that both decisions focus on actors, whereas as a writer she created these plays, and thus any media concerning the plays are about her and her work. We must first note that this is not accurate, as one of the decisions involved a table tennis athlete. More importantly, while we acknowledge that the Petitioner's role in creating these performances most likely exceeded that of others involved, the same reasoning from those decisions is applicable: published material which includes a brief mention of an individual but primarily focuses on a group effort is not considered to be about that individual and his or her work.

For similar reasons, the articles in which the Petitioner is quoted, providing her expert opinion on the subject of the article, are not about her. These include an article in *Investor's Business Daily* about the movies of [redacted] and a story in *The Stage* on the topic of [redacted]

Another type of evidence submitted consists of two interviews of the Petitioner, both of which are about her and her work. The first appeared on a blog, and presents her views on a variety of issues related to the [redacted] film genre. The record includes information about the interviewer and author of the blog, who describes herself as a nationally-recognized health and sexuality writer. However, this evidence does not establish that the blog or the website on which it was posted should be considered to be either related to the Petitioner's profession or to be major media.

Similarly, the second interview appears on the website of the [redacted] Screenwriting Competition as one of several profiles of judges for the competition. But while the evidence shows that [redacted] is an organization focused on providing resources for screenwriters, it does not establish that the interview appeared in a publication, whether professional, trade or other major media.

For all of the reasons stated above, the record does not establish that the Petitioner meets this criterion.

Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

In his decision, the Director found that the evidence regarding the Petitioner's volunteer service for the [redacted] sufficient to establish her service as a judge. A letter from [redacted] Chief Operating Officer, indicates that in 2011 the Petitioner "served on the programming team, rating and reviewing movies to facilitate the final selection for the festival." In addition, the evidence establishes that the Petitioner has served as a judge of screenplays for the

² *Noroozi v. Napolitano*, 905 F.Supp.2d. 535, 545 (S.D.N.Y. 2012) and *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008).

[redacted] film festival and the [redacted] screenplay competition for several years. As such, we agree with the Director and find that she meets this criterion.

Evidence of the individual'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)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she or he made original contributions, but that they have been of major significance in the field. For example, a petitioner may show that the 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.

As documentation of her contributions as a playwright, the Petitioner submitted theatrical reviews, promotional materials, and reference letters which show that she has created theatre adaptations which have been performed and critically reviewed. As noted above, these adaptations are taken from the works of [redacted] were mainly performed at the [redacted] Festival, and received mixed reviews. This evidence shows that she has produced original artistic works, but does not establish them as contributions of major significance. For example, a letter from [redacted] who indicates that he is currently an associate director at [redacted] a theatre venue in the United Kingdom, verifies that he directed the Petitioner's production [redacted] [redacted] [redacted] writes that the play enjoyed successful tours of the United Kingdom and Poland, and that he later also directed the Petitioner's adaptation of [redacted] Although he states that his involvement with these productions significantly advanced his career and is complimentary about the Petitioner's work, he does not suggest that it has had an impact on the fields of playwriting or screenwriting.

Another letter, from [redacted] founder and Artistic Director of [redacted] venues, confirms that the Petitioner served as his theatre's Executive Producer and that her adaptations were produced annually for twenty years. [redacted] states that the Petitioner "has made a superlative and crucial creative contribution to the development and success of [redacted] theatre," but his letter does not explain how this contribution to a single theatre venue or organization has influenced or impacted the broader field of playwriting.

As for the other aspects of the Petitioner's writing career, the evidence shows that she has served as a story consultant for several movie and television projects, and written numerous articles about screenwriting and the [redacted] film genre. In her brief on appeal, the Petitioner points to several reference letters in support of her assertion that these accomplishments are contributions of major significance to the field of screenwriting and story consultancy.³

Regarding her work as a story consultant, the Petitioner refers to a letter from [redacted] founder and CEO of [redacted] Studios, and former CEO of [redacted] He writes that the Petitioner was his "go-to" story consultant for several years and contributed to the script development for many listed feature films, and describes her work as "indispensable" on several [redacted] projects. However, while [redacted]

³ All of the reference letters were thoroughly reviewed, including those not specifically mentioned in this decision.

[] is complimentary of her work, he does not detail the specific nature of the Petitioner's contributions to these films, or describe how her work has influenced the screenwriting field.

A letter from [] founder of the [] production studio, provides greater detail on the Petitioner's work on a television show he is developing. [] explains that her suggested changes to the story and characters for this project resulted in positive feedback from executives, and that he looks forward to her help in developing a pilot episode. In addition, similar but less detailed letters confirm that the Petitioner has contributed as a story consultant to advise other writers and producers on several other film and television scripts, some of which are still in the development stage. While this evidence demonstrates that she has successfully consulted on many story projects, it does not establish that the impact of her consulting work extends beyond these individual projects.

The Petitioner also points to evidence of her work as a columnist with []. In addition to the copies of her columns, which will be further discussed in relation to the criterion below, she submits a letter from [] Managing Editor of [] Mr. [] verifies that the Petitioner has contributed more than 60 essays, in addition to book reviews, interviews, and other work. He also indicates that other writers, as well as academics, have referenced her work in their own published writings. In addition, a reference letter from [] who describes herself as a television writer and editor in the [] genre, indicates that she has applied lessons from the Petitioner's [] column in her own writing, and knows of other writers who have done the same.

The record includes several dissertations and academic journal articles which include citations, and in some cases discussion, of the Petitioner's work. However, the majority of these do not cite her columns and other materials written for [] but instead reference content from the Petitioner's websites; [] billed as a reference for media studies students and teachers, and [] "a decade by decade guide to the [] movie genre." In addition, many of the citations to these websites reference content on camera angles and advertising, as opposed to writing or storytelling techniques. Accordingly, while the letters from [] and [] suggest that many writers have been influenced by the Petitioner's work, the documentary evidence does not show that her columns written for [], or the content on her websites, have remarkably impacted or influenced the broader field of screenwriting and story consulting.

For all of the reasons explained above, the Petitioner has not established that she meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Director found that the evidence regarding the Petitioner's writings published at her own websites, as well as those of [] and [], did not establish that they were one of the qualifying types of media under this criterion. On appeal, the Petitioner focuses on the evidence of her articles written for [], as well as movie reviews she wrote for the [] website and an article about a film preservation project which was published in *The Academy Report*,

a magazine for members of the Academy of Motion Picture Arts and Sciences.⁴ She refers to reviews of the [redacted] website and services that were posted on other websites, as well as the letter from [redacted] which explains that the website provides writing advice and writing classes “designed to meet the needs of professional and aspiring writers.” This evidence does not establish that [redacted] and its online magazine is targeted exclusively towards professional writers; rather, it also includes a broader audience of aspiring writers, students, and amateurs. Accordingly, the Petitioner has not shown that her columns appearing on the [redacted] website were published in a professional or major trade publication.

In addition, although not addressed by the Director, we note that scholarly articles are written for “learned” persons in that field. Learned persons include all persons having profound knowledge of a field.⁵ Again, the materials regarding [redacted] indicate that it provides writing training classes as well as writing advice, and is therefore intended to be used by those seeking to gain knowledge to improve their writing and begin or advance their careers as writers, rather than exclusively learned persons. Therefore, the Petitioner’s articles published on [redacted] do not constitute scholarly articles.

Regarding the film reviews authored by the Petitioner for the [redacted] we first note that the evidence does not establish that [redacted] website on which these reviews were posted qualifies as a professional or major trade publication or other major media. The record in this matter includes a Wikipedia article about the [redacted] as well as a letter from [redacted] Chief Operating Officer of [redacted] neither of which provide information about either the target audience of the website or its circulation.⁶ Further, the Petitioner has not established that these movie reviews were written for learned persons in her field of screenwriting and story consultancy, as opposed to film enthusiasts and other members of the public attending [redacted]

The evidence regarding the Petitioner’s article appearing in *The Academy Report* includes a letter from [redacted] Publications Manager for the [redacted] [redacted] who confirms that the Petitioner will be writing the article for the Academy’s membership magazine. Although the Petitioner describes this publication as “the most “major” of all the professional or trade publication evidence submitted,” the record lacks evidence of whether membership to the Academy is open only to professionals in motion picture fields including screenwriting, or whether others such as amateurs or enthusiasts may also receive the magazine. She has therefore not established that *The Academy Report* qualifies as a professional or major trade publication. Further, the evidence does not establish that either the subject of the article, film preservation, or its intended readership support its classification as a scholarly article written for those in the screenwriting and story consultancy field.

Accordingly, the Petitioner has not established that she meets this criterion.

⁴ We note that on appeal, the Petitioner does not challenge the Director’s decision regarding the material on her websites, [redacted] and [redacted] or that posted on [redacted]. We will therefore not consider this material in our discussion of this criterion.

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 4* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>, at 9.

⁶ *Id.*

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 evidence establishes that the Petitioner has adapted several children's plays, primarily produced by [] Theatre for the [] Festival. We therefore agree with the Director that she meets 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)

A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

In his decision, the Director found that the Petitioner's role as a volunteer mentor for [] and as a former student and, later, panel member at the University of [] had not been established as leading or critical roles for those organizations. Further, while not making a finding regarding her role for the [] Theatre Company, he concluded that it had not acquired a distinguished reputation in its brief history.

On appeal, the Petitioner concedes that her roles for [] and [] were neither leading nor critical, but asserts that [] Theatre Company has earned a distinguished reputation despite having just been established in 2017. In addition, she asserts that she also played a leading or critical role for several other organizations, including [], [], [], and [] Theatre.

The evidence indicates that the Petitioner served as a volunteer for [] a columnist for [] and a screenplay judge for the [] Screenwriting Competition. None of these positions are, by their nature, leading roles within their respective organizations, and despite the Petitioner's being named as a "volunteer of the year" for [] does not suggest in her letter that her contributions had an impact on [] overall. Similarly, representatives of [] and [] submitted reference letters concerning the quality and importance of the Petitioner's work, but they do not establish that it had a critical impact on those organizations as a whole. For example, [] confirms in his letter that the Petitioner has been serving as a judge for the [] Screenwriting Competition since 2008 and is "a vital and leading member of our reading panel" and is the longest-serving judge for the organization, but he does not articulate an impact that the Petitioner has made to the overall organization.

Regarding the Petitioner's activities with [] Theatre Company, the evidence establishes that she has performed in a leading role as a Board member. In support of its reputation, the Petitioner refers to evidence that the company's inaugural production in 2017 received several local awards, including [] Theater Awards for the two lead actors and the playwright, and [] awards for one of the lead actors and the playwright. While we acknowledge

that the longevity of an organization is not dispositive, it remains a factor when determining whether it has achieved a distinguished reputation. In addition, we note that the [] itself was not the recipient of these awards. Accordingly, this evidence does not establish that it has a distinguished reputation in the broader theatrical community.

Two reference letters from [] founder and director of [] establish that the Petitioner's role as supervising judge and member of the festival board is a leading one for the organization. The Petitioner also submitted evidence of coverage of the festival in the form of several [] some of which only list the results of the competition, and a 2011 article from the website of *MovieMaker* magazine naming it as one of []' However, this evidence does not establish that the festival enjoys a distinguished reputation among film festivals at the national or international level.

In summary, we conclude that the evidence establishes that the Petitioner's roles for [] Theatre Company, [] and [] Theatre are or were leading or critical. However, it does not support the same conclusion regarding her role as a columnist for [] a screenplay judge for the [] Screenwriting Competition, or a volunteer for [] In addition, the evidence is insufficient to establish that those organizations for which she served in a leading or critical role have a distinguished reputation. As such, we agree with the Director and find that the Petitioner does not meet this criterion.

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), *affd*, 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 evidence does not establish that the Petitioner received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in its entirety, and conclude that it does not support a finding that the Petitioner has established the level of sustained acclaim and standing in her field required for the

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classification sought. For these reasons, the Petitioner has not shown that she qualifies for classification 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, 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 K-L-W-*, ID# 4131769 (AAO Sept. 20, 2019)