



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

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

MATTER OF T-G-

DATE: SEPT. 26, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a make-up artist, 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, and subsequently affirmed his decision on motion, 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 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 indicated freelance employment as a make-up artist in Russia and Europe since 2014.¹ 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 two of the initial evidentiary criteria, published material under 8 C.F.R. § 204.5(h)(3)(iii) and judging under 8 C.F.R. § 204.5(h)(3)(iv). The record reflects that the Petitioner served on juries for hair and make-up competitions. Accordingly, we agree with the Director that the Petitioner satisfied the judging criterion. However, for the reasons discussed later, we do not concur with the Director’s finding as it relates to the published material criterion.

On appeal, the Petitioner maintains that she fulfills five 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 meets the requirements of at least three criteria.

¹ See page 5 of the Petitioner’s Form I-485, Application to Register Permanent Residence or Adjust Status, relating to her employment history.

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 three awards from the [redacted] [redacted]. Specifically, the Petitioner presented certificates reflecting that she received a "Prestige Diploma" at the [redacted] in 2015 [redacted], a "Diplome D'Honneur" at the [redacted] in 2010 [redacted] and a "Gold Medal" in "Ladies Juniors Body Painting" at the [redacted] in 2008 [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.² 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.³

The record contains screenshots from modernsalon.com, globalnews.ca, racked.com, and esteticamagazine.com that refer to the '[redacted]' as the [redacted] [redacted] and the [redacted]'. In addition, the Petitioner presented a letter from [redacted] [redacted] president of [redacted] who stated that the '[redacted]' is the most important international professional event in the beauty industry" and is "[t]he Olympics of Beauty." Moreover, the Petitioner submitted the [redacted] "Competition Guidebook" reflecting three approved [redacted] international championships: [redacted] [redacted]

The Petitioner, however, did not establish that her awards are nationally or internationally recognized for excellence in the field. Here, the Petitioner's evidence mentioned above relates to [redacted] competitions rather than the bestowed awards. In fact, none of the screenshots mention [redacted] awards, including the awards received by the Petitioner. Further, while [redacted] confirmed the Petitioner's receipt of the awards, he did not discuss their national or international significance or recognition in the field.

Moreover, according to the "Competition Guidebook," there are seven award sequences for all championships: 1) Gold Medal plus diploma, 2) Silver Medal plus diploma, 3) Bronze Medal plus diploma, 4) diploma 4th place, 5) diploma 5th place, 6) all competitors will be awarded the [redacted] Prestige Diploma, and 7) the Leo Passage Trophy will be presented only to the Juniors Ladies and Gents winners of the 1st tests (only at [redacted]). Here, the "Prestige Diploma" is awarded to all competitors, and the Petitioner did not show that such participation certificate is tantamount to an award "for excellence" consistent with this regulatory criterion. Likewise, there is no mention of the "Diplome D'Honneur" in the "Competition Guidebook," and the Petitioner did not demonstrate that such honorary diploma represents a nationally or internationally recognized award for excellence in the field. Similarly, although the Petitioner won a "Gold Medal," she received the award in the junior

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

³ *Id.*

ladies division, and she did not establish that such junior award is recognized in the field as a national or international award for excellence.

For the reasons discussed above, 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 her membership with the Union of Hairdressers and Cosmetologists of Russia (UHCR). 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.⁴

Initially, the Petitioner submitted the bylaws for UHCR reflecting that membership is open to: 1) organizations working in the field and providing services 2) experts having awards, diplomas, and medals from regional, national, and international professional contests, 3) experts having the highest category in the industry for participation in various professional events, and 4) models who won regional, national, and international awards and are included in the national team in the beauty industry, hairdressing, and make-up. Furthermore, admission to membership “is carried out by the Board meeting or Supervisory Committee.” In addition, the Petitioner offered a screenshot from spkr.ru indicating that a UHCR candidate shall have: 1) a relevant professional education, 2) three plus years of experience of occupational work, and 3) awards, diplomas, and medals for participation in various professional events. In response to the Director’s request for evidence (RFE), the Petitioner provided a letter from [redacted] of UHCR, who stated that “[t]o become a member of the Union, one has to pass close selection, including a number of major contests and awards.” Moreover, [redacted] listed three “key specialists” who comprise some members of the “expert commission.”

As indicated above, candidates for membership range from organizations to individuals. As it relates to organizations, the Petitioner did not show that working in the field and providing services are tantamount to “outstanding achievements,” as required by the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Moreover, as it pertains to individuals, the Petitioner did not establish that receiving awards, diplomas, or medals in regional, national, and international professional contests, as well as participating in various professional events and possessing a professional education and occupational work experience, rises to the level of “outstanding achievements” consistent with this regulatory criterion. Furthermore, while [redacted] claimed that membership requires a number of major contests and awards, she did not identify those contests or awards or articulate how they qualify as outstanding achievements. In addition, [redacted]’s assertions contradict the bylaws that only require awards, diplomas, and medals from regional, national, and international professional contests rather than major

⁴ 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).

contests and awards. Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner did not demonstrate that membership with UHCR requires outstanding achievements.

Further, the Petitioner did not establish that recognized national or international experts in their disciplines or fields judge the outstanding achievements for membership with UHCR. Although [redacted] [redacted] named three individuals who are members of the commission or committee, she did not identify the other members and elaborate on their qualifications as nationally or internationally recognized experts.

Accordingly, the Petitioner did not demonstrate that she meets 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 his 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.⁵ The record reflects that the Petitioner claimed eligibility for this criterion based on screenshots from cosmo.ru, graziamagazine.ru, joybyjoy.ru, krasota.ru, and cetre.ru and magazine articles from *Krasota & Zdoroviye*, *Total Look*, and *Antvan*. 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.

Regarding the screenshots from cosmo.ru, the Petitioner offered her opinions for beauty products by Kim Kardashian and Rihanna. The screenshots, however, are not about the Petitioner consistent with this regulatory criterion. Rather, the screenshots discuss the celebrity beauty products of Kim Kardashian and Rihanna. 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). Moreover, the Petitioner did not include the required author of the material.

Similarly, the screenshots from graziamagazine.ru are about the Petitioner's opinions on seven American make-up artists rather than about her. Further, although the Petitioner submitted a screenshot from imedia.ru regarding *Grazia* (magazine), she did not demonstrate that graziamagazine.ru (website) is a professional or major trade publication or other major medium.⁶ In addition, the Petitioner did not provide the required author of the screenshots.

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (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).

Likewise, the screenshots from joybyjoy.ru reflect her opinions about the use of cosmetics in major capitals of the world. Again, the screenshots are about cosmetics rather than about the Petitioner. Moreover, the Petitioner did not offer evidence showing that joybyjoy.ru is a professional or major trade publication or other major medium. Further, the Petitioner did not include the required date and author of the material.

In addition, the screenshots from krasota.ru and article from *Krasota & Zdoroviye* are about the Petitioner's views on American and *Instagram* make-up but are not about her. Furthermore, the Petitioner did not present evidence demonstrating that krasota.ru or *Krasota & Zdoroviye* is a professional or major trade publication or other major medium. Moreover, the Petitioner did not provide the required authors of the screenshots and article.

Further, the screenshots from cetre.ru reflect the Petitioner's favorite American cosmetic brands. Here, the screenshots are about cosmetic brands rather than about the Petitioner. In addition, the Petitioner did not present evidence establishing that cetre.ru is a professional or major trade publication or other major medium. Moreover, the Petitioner did not offer the required date and author of the material.

Regarding the articles in *Total Look* and *Antvan*, the evidence indicates interviews of the Petitioner reflecting published material about her. However, the Petitioner did not submit any documentary evidence demonstrating that *Total Look* and *Antvan* are professional or major trade publications or other major media. In addition, the Petitioner did not include the required date and author for the *Total Look* article and the required author for the *Antvan* article.

For the reasons discussed above, the Petitioner did not show that she meets this criterion. Accordingly, we withdraw the findings of the Director for 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 Petitioner claims eligibility for this criterion based on screenshots entitled, "[redacted]" posted on dance.ru. The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires her "authorship of scholarly articles in the field, in professional or major trade publications or other major media."⁷

As pointed out by the Director, the Petitioner did not demonstrate that she authored the screenshots. Although the screenshots list the Petitioner as the author, the screenshots contain an introductory section discussing the application of make-up before going on the dance floor and states that "how do we take into account the features of stage make-up and be trendy? says [the Petitioner]" and then briefly covers several topics. Here, the Petitioner is mentioned in the third person point of view rather than as authoring the screenshots. Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591-92. Moreover, the Director found that the screenshots reflected "a brief interview with [the Petitioner] discussing make-up techniques." On appeal, the Petitioner does not address this issue. Instead, the Petitioner claims

⁷ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

that “USCIS acknowledged receiving evidence that [she] authored articles but needed more evidence to show that the articles were published in professional publications, trade publications, or other major media.” On the contrary, as discussed, the Director did not acknowledge the Petitioner’s authorship of the screenshots.⁸ Regardless, for the reasons indicated above, the Petitioner did not establish that she authored the screenshots, nor did she provide any corroborating evidence from the website confirming her authorship.

In addition, the Petitioner did not show that the screenshots qualify as “scholarly” consistent with this regulatory criterion. A scholarly article should be written for “learned” persons in the field. “Learned” is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field.⁹ Here, the screenshots reflect tips and techniques for stage make-up. For example, the screenshots state that “[w]aterproof primer and matte foundation will create an ideal base for further techniques and protect you from white glare on the skin” and “[a]pplying blush in shades of beige, with a light shimmer on the convex part of the cheekbones, will help create a soft glow.” The Petitioner did not demonstrate that the screenshots were written for “learned” persons in the make-up field rather than tips for dancers. In addition, the Petitioner did not establish that the screenshots contain the characteristics of a scholarly article.

Moreover, the Petitioner did not demonstrate that dance.ru is a major medium. As indicated by the Director, the Petitioner submitted support letters discussing “the importance of Dance.ru portal to [her] industry.” On appeal, the Petitioner argues that dance.ru is a professional publication. However, the Petitioner did not show that dance.ru qualifies as a publication rather than as a website. Thus, the Petitioner must show that dance.ru is a major medium. Here, the Petitioner did not provide statistics or other evidence establishing the major status of the website.¹⁰

Further, even if we considered dance.ru as a publication, the Petitioner did not show that it is a professional publication. The term “profession” shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. *See* section 101(a)(32) of the Act. Moreover, “profession” means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation. *See* 8 C.F.R. § 204.5(k)(2). Here, the Petitioner did not demonstrate that the intended audience, such as make-up artists or dancers, of dance.ru meets the definition of “profession” as defined in the law and regulations. Accordingly, the Petitioner did not establish that dance.ru qualifies as a professional publication.

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

⁸ The Director indicated that the Petitioner also authored a “Make-up Workbook Introduction.” The Petitioner does not contend, nor does the record reflect, that the workbook introduction qualifies for this criterion.

⁹ *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

¹⁰ *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9 (providing that evidence of professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and the intended audience).

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 displayed her work at artistic exhibitions and showcases, such as OMC competitions. Accordingly, the Petitioner established 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).

The Petitioner submitted four contracts for her services at the following events: 1) [redacted] Festival of Health and Beauty ([redacted] 2012) for 155,000 rubles; 2) American Lighting & Gifts, [redacted] ([redacted] 2013) for 200,000 rubles; 3) [redacted] Ball ([redacted] 2014) for 200,000 rubles; and 4) [redacted] Concert ([redacted] 2015) for 200,000 rubles. In order to meet this criterion, a petitioner must demonstrate that the Beneficiary's salary or remuneration is high relative to the compensation paid to others working in the field.¹¹

Initially, the Petitioner provided a letter from [redacted] general director of [redacted], who claimed that the average compensation of make-up artists in Russia is around 30,000 rubles per month with the highest receiving 47,000 rubles per month. In response to the Director's RFE, the Petitioner submitted screenshots from trud.com reflecting that the average wage level for make-up artists in Russia is 40,000 rubles per month. Although the evidence relates to average monthly wages of make-up artists, the Petitioner earns remuneration for services on a per project basis. Moreover, the Petitioner did not offer comparative evidence for remuneration of other make-up artists' earnings on projects or events. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner did not demonstrate that she commanded a significantly high remuneration for services in relation to others in her field.

Accordingly, the Petitioner did not demonstrate that she satisfies 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

¹¹ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Price*, 20 I&N Dec. at 954. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of T-G-*, ID# 4266641 (AAO Sept. 26, 2019)