



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

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

In Re: 6500577

Date: APR. 6, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an architect focusing in the areas of landscape architecture and urban planning, 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 denied the petition, concluding that the record did not establish that Petitioner met the initial evidence requirements of at least three of the alternative criteria under 8 C.F.R. § 204.5(h)(3)(i) - (x).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* 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) 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 Petitioner is an architect focusing in the areas of landscape architecture and urban design. In addition to working from an office in [REDACTED] she is also an associate professor at the University [REDACTED] in [REDACTED] Chile. She earned a Ph.D. in architecture in 2013 from the University of [REDACTED]

A. Evidentiary Criteria

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 met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to display of her work at artistic exhibitions or showcases and participation as a judge of the work of others in her field. On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to her authorship of scholarly articles and original contributions of major significance.¹ After review we agree with the Director regarding the two criteria he determined that the Petitioner met. However, we disagree with him regarding the Petitioner’s authorship of scholarly articles and their publication in professional or major trade publications or other major media.

Specifically, in his decision the Director acknowledged that the Petitioner has authored scholarly articles, including books, but found that the evidence does not demonstrate that these were published

¹ The Petitioner does not contest the Director’s decision regarding the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (iii) and (viii). We therefore consider these issues to be abandoned. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

in professional or major trade publications or other major media. On appeal, the Petitioner does not address this requirement in the criterion, but focuses on the Director's discussion of the number of citations to her published works by others in her field when analyzing the evidence under this criterion. We agree with the Petitioner that a comparison of the number of citations to her published work with that of others in the field is not required by the plain language of this criterion. In addition, we note that the Director's request for evidence (RFE) did not specify the type of evidence needed to establish the qualifying nature of the publications.

Even so, in responding to the Director's RFE, the Petitioner provided evidence of the media in which her scholarly works were published. For example, she submitted evidence that her article [redacted] [redacted] was published in the magazine *Studio*, which describes itself as being "written by architects, but it's not written only by architects or just for architects." Another example is a copy of the conference proceedings for the [redacted] Conference of the Italian Society of Urbanists (SIU): Italian Urban Planning in the World, which includes an abstract of her paper presented at the conference. These publications are professional in nature, as they are meant to be read by professionals within the Petitioner's field. In addition to these and other articles published in similar publications, the Petitioner also submitted evidence of several books and book chapters she authored, all of which focus on topics in her field. We therefore withdraw the Director's decision regarding this criterion and find that its requirements have been met.

As the Petitioner has established that she meets the initial evidence requirement of meeting at least three alternative criteria, we will conduct a final merits determination of all of the evidence, including that submitted under the criteria which the Director determined that she did not meet.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and 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. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *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 In this matter, we determine that the Petitioner has not shown her eligibility.

While the Petitioner does not specifically address her sustained international or national acclaim in her appeal brief or other supporting materials, she asserts that her "books are widely distributed in Europe and the United States" and that she has participated as a keynote speaker on many occasions. Regarding the distribution on her books, however, she does not refer to specific evidence in the record to support this assertion. We note that the record includes a letter from [redacted] Publishing,

² *See also* 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 for the immigrant classification).

described as “an independent publishing house created by Chilean architects,” which verifies that it published two of the Petitioner’s books in the Spanish language: [REDACTED] and [REDACTED]. But this letter does not provide information about the number of these books published or sold, or other information to establish that the Petitioner’s work as an author and editor has received acclaim at the national or international level. While additional evidence from the publisher’s website indicates that a new edition of [REDACTED] was published in Spanish in 2017, including new interviews and projects, further information about the book’s distribution are not provided. Also, reference letters in the record confirm that she published these and other books, and conducted book launch events in conjunction with exhibitions, but do not speak to the field’s reception of or reaction to these books, or the number of book sales that followed.

In addition, while we acknowledged above that evidence of the citations to the Petitioner’s published work is not relevant to meeting the criterion regarding her authorship of scholarly articles, comparative evidence is relevant in the final merits determination, in which we must determine whether she is one that small percentage at the top of her field. When discussing the citations in her appeal brief, the Petitioner asserts that the narrow scope of her work, “the subset of landscape and its application to urban planning,” makes any comparison of citation figures useless, as she “is quite literally *the expert* in the field.” However, she identifies herself as an architect elsewhere in the record, and states her intention “to continue teaching, writing, and working in the field of architecture.” She must therefore establish that the totality of the evidence, which here includes evidence of her record of publication, places her amongst the small percentage at the top of that field.³ The Petitioner has not provided evidence to demonstrate that her record of publication, or the reaction to it by other experts in her field, places her at that level or has received or is indicative of sustained national or international acclaim.

The Petitioner also references a document, both in response to the RFE and on appeal, titled “National Scientific Qualification,” which she describes as a qualification evaluation by the Italian Ministry of Education.⁴ It includes individual evaluations of her work in the field of architectural design, as well as a “collective evaluation” and determination that she met the qualifications. This evaluation, which indicates that it is valid from October 17, 2018 to October 17, 2014, describes her as “an erudite and very active young scholar, whose studies... are of elevated quality and have considerably contributed to the progress of research in the scientific community of her field.” Regarding her published work, the evaluation states that they “demonstrate a high level of rigor and originality so that they contribute in a significant way to the advancement of the addressed research topics...” Although the evaluators are unanimous in their opinion that the Petitioner’s scholarly work is sufficient to meet the criteria for qualification for the position of associate professor in Italy, and note specific publications of hers that they consider to be of high quality, they do not specify what her contributions to the field are or in what ways she has advanced knowledge in her field. In addition, the repetition of the same or similar language in the individual evaluations, such as “a recognized position in the national [and international] research context [panorama],” indicates that they may have been written with specific

³ See *Buletini v. INS*, 860 F.Supp. 1222, 1229 (E.D. Mich. 1994) (finding that the alien’s field was medical science rather than nephrology).

⁴ The document indicates that the Petitioner is being evaluated for her qualification as an associate professor.

criteria in mind, and the use of such language in this context does not establish that the Petitioner has met the requirements of Section 203(b)(1) of the Act despite similar verbiage.

Regarding the Petitioner's activity in exhibitions, seminars and presentations, the record includes several reference letters which confirm her roles as a curator, moderator, and peer reviewer, as well as the display of her own work. For example, [redacted] of the University of [redacted] in Italy states that the Petitioner curated a project, [redacted], which was presented in 2014 and 2015 at separate exhibitions. A copy of a program or flyer lists the Petitioner's role in this exhibition as a moderator and curator, with [redacted] as one of several discussants. A similar document indicates that she served as a curator for an exhibition at the Museum of Contemporary Art (MAC) in [redacted] Chile. In addition, a letter from [redacted] of the Museums of [redacted] in [redacted], Italy thanks the Petitioner for allowing the museum to display two of her projects in an exhibition at the museum.

Regarding the evidence of her service as an advisor and peer reviewer for two symposiums, one of which occurred well after the filing of the petition, this evidence demonstrates that the Petitioner is acknowledged as an expert in her field. However, the Petitioner has not shown that this acknowledgement rises to the level of acclaim, or that her work in this role at two symposiums demonstrates a sustained pattern that places her near the top of her field. This evidence shows that the Petitioner has been active in exhibiting her own work and organizing presentations of the work of others, and has on occasion reviewed the work of others, but does not demonstrate that she has set herself apart from other architects working in the area of landscape urbanism.

The record also includes evidence of several architectural projects which the Petitioner has participated in or led. A letter from [redacted] of the University of [redacted] confirms her role as an urban planner and designer and research coordinator on a consulting project for the city of [redacted] Italy, as well as co-coordinator of the [redacted]. Although [redacted] describes the Petitioner's work on these projects as contributions to the field, he does not indicate why they were important to the field or that she garnered acclaim for this work. [redacted] also a scholar at the University of [redacted] goes into further detail about the "[redacted] project, indicating that as a result of the Petitioner's work, "ecological restrictions" were put into place and the city "updated [redacted]." [redacted] concludes that the Petitioner's work on this project and others "have greatly benefit the international architectural field," but offers no explanation as to the specific benefits of these projects and how the Petitioner's work on them have influenced others in her field.

In addition, other reference letters describe the Petitioner's teaching role, primarily at [redacted] [redacted] [redacted] and [redacted] two of her colleagues at the school, confirm that she teaches at the undergraduate, graduate and post-graduate levels. [redacted] mentions her receipt of a research grant for a collaborative project between [redacted] and [redacted] University, and [redacted] lists several projects to which the Petitioner has contributed which "have been immensely influential in her field." As previously noted in the discussion of other reference letters, although these letters confirm the Petitioner's scholarly work and participation in and leadership of several research projects, they do not provide sufficient detail of the impact of this work on the field and her resulting standing within the overall field. We note that depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration

Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Here, while the documentary evidence sufficiently corroborates the writers' statements regarding the Petitioner's activities in her field, it does not support the vague assertions of her standing in the field.

On review, the balance of the record demonstrates that the Petitioner is an active and productive researcher, scholar, and practitioner in the field of architecture, particularly in her focused area of landscape urbanism, but does not establish that her work has brought her the requisite sustained acclaim at the national or international level, or that she has risen to be one of the few at the very top of her field.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. 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 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 demonstrate that the Petitioner 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.

ORDER: The appeal is dismissed.