



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

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

In Re: 6081405

Date: FEB. 24, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an actress, 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 that the Petitioner met the initial evidence requirements of at least three of the criteria listed at 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).

## II. ANALYSIS

The Petitioner performs as an actress with theater ensembles in [redacted] as well in television and movie productions, and intends to continue in this career if granted lawful permanent resident status.

### 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 one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to commercial success in the performing arts. We disagree, and will withdraw the Director’s decision regarding that criterion as detailed below. On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to five other criteria. After reviewing all of the evidence in the record, we find that she does not meet the initial evidentiary requirement of 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 evidence establishes that the Petitioner received a 2017-18 [redacted] Award in the category of [redacted]” for her work in [redacted] for the [redacted] Theatre Company in [redacted]. However, the Director noted in her decision that this award is regional in nature, and the evidence indicates that consideration for the [redacted] Awards is limited to productions within the city limits of [redacted].<sup>1</sup> On appeal, the Petitioner asserts that a national or international award for theater productions does not exist, and that “the most renowned award, the Tony award, is also a regional award.” However, it is not geographic scope of a prize or award that is qualifying under this criterion, but its recognition at the national or international level. As the Petitioner notes, the Tony awards are renowned and recognized far beyond the borders of New York. The evidence regarding the [redacted] awards is limited to publications based in the [redacted] area, and there is no indication of their recognition in the theater community at the national or international level. We note that even the 2004 article from *The Guardian* which proclaims that [redacted] is “[redacted],”

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<sup>1</sup> While the Director’s decision states that consideration is limited to “productions within 50 miles of [redacted]’s city center,” we refer to Exhibit 2 of the Petitioner’s response to the Director’s request for evidence (RFE), which appears to be Section IV of the official rules for the [redacted] Awards.

makes no mention of the [redacted] awards. And the article which appeared in *La Nacion* in Argentina, further discussed below, mentions the [redacted] awards but focuses on the Petitioner's career and receipt of the award. Accordingly, we agree with the Director that the Petitioner does not meet 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 bases her claim to this criterion on her nomination and selection as an ensemble member of [redacted]. In response to the Director's request for evidence (RFE) and again on appeal, she submits a copy the ensemble's membership criteria, which primarily include previous work with the company and the support of three active ensemble members. It further states that election to membership requires 75% of the vote of the active members. This evidence does not demonstrate that previous service as an actor with [redacted] is an outstanding achievement, or that the active members who nominate and vote on membership are recognized national or international experts. Therefore, this criterion has not been met.

*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)

In his decision, the Director incorrectly states that neither the text nor an English translation or an article appearing in the Argentine newspaper *La Nacion* were provided. To the contrary, this evidence was included in the Petitioner's response to the Director's RFE, and establishes that the article is about her and her work as an actress. Additional evidence submitted with this article is sufficient to establish that *La Nacion* is a major medium in Argentina.

The record also includes evidence of articles published in the [redacted], [redacted], and other [redacted] publications. As noted by the Petitioner, many of these include mention of the petitioner and comment upon her performance in a particular role. In her appeal brief, the Petitioner focuses on one district court decision, *Noroozi v. Napolitano*, 905 F.Supp.2d. 535, 545 (S.D.N.Y. 2012), which was cited by the Director in his decision in support of his finding that articles about a play in which she performed are not about the Petitioner. The Petitioner notes that the petitioner in that case was an Iranian table tennis player, and that the comparison with her petition ignores the collaborative nature of theater. However, the other district court decision referenced in the Director's decision, *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at\*1, \*7 (D. Nev. Sept. 8, 2008) presents a similar instance of an actor in a Cirque du Soleil show and makes a similar finding. Therefore, we agree with the Director's statement of the general proposition that articles about a show are not about an individual actor in that show for purposes of this criterion.

We note that several of the articles presented here, however, focus on the Petitioner's role in [redacted] [redacted] in which she played the title role and was one of two actors appearing on stage. For example, an article dated [redacted] 2017 and published in the [redacted] reviews the play, and while it describes the [redacted] Theatre, the playwright and the plot of the play, several paragraphs include

mentions of the Petitioner and praise her performance. In addition, another article published in the same newspaper on [redacted] 2017, [redacted] includes a separate paragraph about each of the ten actors named, including the Petitioner. The record also includes evidence which establishes that the [redacted] is considered to be a major medium.<sup>2</sup> As such, based upon our review of the qualifying articles described above, we withdraw the Director's decision regarding this criterion and find that Petitioner has submitted evidence to meet its requirements.

*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)*

In order to meet this criterion, a petitioner must establish both the distinguished reputation of a certain organization or establishment and the nature of the role they played for that organization or establishment. If 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.

The Petitioner references several reference letters from leaders at theater companies where she has performed as an actress, and states that she has “performed leading roles as an actress is [*sic*] several [redacted] organizations with a distinguished reputation.” One such letter was submitted by the artistic director of [redacted] Theatre, who states that “every actor on our stage plays a leading role in our organization...” While this letter indicates that the Petitioner made contributions to the theatre's performance of [redacted] in 2016 by translating text and songs into [redacted] and performing them on stage, it does not suggest that she played a leading role for [redacted] Theatre's overall organization. Actors are undoubtedly necessary for theatre productions, but this letter does not establish that the Petitioner was a leader in the company's overall organization.

Similarly, a letter from the executive director of [redacted] Theatre Company notes the Petitioner's work in [redacted] in which she performed [redacted]. The Petitioner clearly played a leading role in this production, which was well-received and awarded, and the executive director notes that she also assisted in fund-raising for the company and “collaborates with the company in ongoing new-play development work...” However, here again there is no indication that she served as a leader for [redacted] Theatre Company overall.

Another reference letter was submitted by the artistic director of [redacted] Theatre Company's young adult program, who notes that the Petitioner's bilingual ability made her “an essential part of making [redacted] a success with our student audience.” But the Petitioner's performance of an important role in one of [redacted] Theatre Company's productions does not demonstrate that she played a leading role for the company.

The Petitioner states in her brief that actors are not employees of theatres and have no decision-making authority in the operation of these organizations, but nevertheless “are instrumental in establishing the reputation of a theatre.” She further asserts that our interpretation of the regulation “would prevent any theatre actor from being able to meet this criteria [*sic*].” However, we note that under 8 C.F.R. § 204.5(h)(4), where a petitioner can establish that the criteria do not apply to their

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<sup>2</sup> Similar evidence was not submitted about the [redacted] and other periodicals and websites in which articles about the Petitioner appeared. Those articles therefore do not qualify under this criterion.

occupation, they may submit comparable evidence. Here, the Petitioner has claimed and submitted evidence under six criteria, and has not claimed that evidence of her leading performances as an actress should be considered to be comparable to that required under this criterion. Further, while the evidence does establish that the Petitioner is a member of at least one organization, [redacted] it does not demonstrate that she plays a leading or critical role, beyond that of other ensemble members, for that organization. Accordingly, we find that the Petitioner does not meet this criterion.

*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)

As noted above, the Director found that the Petitioner meets this criterion. Although he did not explain the basis for this finding, we note that the record includes two letters, from [redacted] Theatre Company and [redacted] which describe the relative commercial success of two productions in which the Petitioner played a leading role. Specifically, the letter from [redacted] indicates that [redacted] generated single ticket sales in excess of double the average of the three other productions in that season, while [redacted] indicates that [redacted] earned more than triple the revenue of its next highest grossing production for the year. However, we note that the record indicates that these are both relatively small theater companies, and that the Petitioner does not compare the figures referenced, \$42,346 and \$81,940 respectively, to the gross receipts of productions by other small theater companies, larger regional companies or Broadway productions. The evidence is therefore insufficient to establish the Petitioner's commercial success relative to others involved in similar pursuits in the performing arts.<sup>3</sup> We withdraw the Director's finding regarding this criterion and find that it has not been met.

### III. CONCLUSION

As discussed above, we find that the Petitioner meets the requirements of only one of the criteria claimed. Although she claims to meet an additional criteria on appeal, relating to contributions of major significance, we need not reach this additional issue. Because the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.<sup>4</sup>

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. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner

<sup>3</sup> See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14.*, pg. 12 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

<sup>4</sup> See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

has not shown that the significance of her work as an actress 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 that 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.

**ORDER:** The appeal is dismissed.