



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

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

In Re: 8656970

Date: JULY 23, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a photographer, 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 although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, she did not show sustained national or international acclaim and demonstrate that she is among the small percentage at the very top of the field of endeavor.

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 indicated employment as a contracted photographer with Photography Channel Network since 2012.

A. Evidentiary Criteria

Because the Petitioner has not claimed 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 determined that the Petitioner met four of the evidentiary criteria relating to awards at 8 C.F.R. § 204.5(h)(3)(i), published material at 8 C.F.R. § 204.5(h)(3)(iii), judging at 8 C.F.R. § 204.5(h)(3)(iv), and display at 8 C.F.R. § 204.5(h)(3)(vii). However, the Director concluded that the Petitioner did not show that she garnered sustained national or international acclaim and that her achievements have been recognized in the field of expertise, demonstrating that she is one of that small percentage who has risen to the very top of the field.

On appeal, the Petitioner argues that she satisfies an additional criterion relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), and her evidence in the aggregate establishes her eligibility as an alien of extraordinary ability. Because the Petitioner has already shown that she satisfies the minimum requirement of at least three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.¹

¹ *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* 13 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of

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,² 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 her successes are sufficient to demonstrate that she has 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 1119-20.³ In this matter, we determine that the Petitioner has not shown her eligibility.

According to her résumé, the Petitioner “has been a professional photographer since 2003” and a member of various photography associations, such as the Entrepreneur Photography Association [redacted], the [redacted] Youth Photographers Association, the [redacted] Women Photographers Association, the China Photographers Association, the Chinese Women Photographers Association, the China Photographic Copyright Association, and the Photographic Society of America. Further, she claimed that she “took summer art programs at [redacted]’s [I]nstitute of Art [redacted] and art programs at [the University [redacted]] [in] recent years.” Moreover, as mentioned above, the Petitioner has been employed as a contracted photographer with [redacted] Photography Channel Network since 2012. As indicated above, the Petitioner garnered awards, received press coverage, judged others, and displayed her work. The record, however, does not demonstrate that her personal and professional achievements rise to a level of “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The record reflects that the Petitioner garnered the “Excellent Photographer Award” at the [redacted] China [redacted] International Photography Festival. In addition, the Petitioner presented evidence showing that she received lesser known prizes or awards, such as two “Silver Awards” at the [redacted] Photography Art Exhibition of Entrepreneur Photographers Association, a “Gold Award” at the [redacted] [redacted] National Photography Competition, a “Commendation Award” at the [redacted] [redacted] International Photography Contest, and a “Silver Prize” at the [redacted] Photography Art Exhibition. Although the prizes and awards reflects some recognition of her work by the field, the Petitioner did not demonstrate how her honors place her among that small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not establish that her receipts of such prizes and awards compare to those in the upper echelon of her field. Moreover, while she provided supporting documentation briefly listing her among all of the other prize and award recipients at the competitions and contests, the Petitioner did not show that she received significant attention demonstrating her sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act.

extraordinary ability under section 203(b)(1)(A) of the Act).

² *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and providing *Black’s Law Dictionary’s* definition of “sustain” as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

³ *Id.* at 4 (instructing 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).

Similarly, regarding media coverage, the Petitioner offered seven articles relating to her and her work. However, the Petitioner did not demonstrate that such press coverage is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. Further, the Petitioner did not show how her overall media coverage is indicative of a level of success with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Thus, the Petitioner did not establish that the limited media reporting on her and her activities reflects a career of acclaimed work in the field or a very high standard to present more extensive documentation than that required. *See* H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

As it relates to the Petitioner's service as a judge of the work of others, an evaluation of the significance of her experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22.⁴ The record reflects that the Petitioner participated as a review committee member for the [redacted] [redacted] Photography Exhibition, the [redacted] Photography Exhibition, and the [redacted] National Photography Exhibition. Although the names of the photography competitions indicate national exhibitions, the Petitioner submitted evidence reflecting regional contests; for example (cpandet.org.cn):

[redacted] National Photography Exhibition is one of the top ten cultural brands of [redacted] District. . . . sponsored by the Propaganda Department of [redacted] District CPC Committee and [redacted] District Federation of Literary and Art Circles, and organized by [redacted] District Photographers Association.⁵

Here, the Petitioner's judging experience involves evaluating the work of local and regional competitions, rather than nationally or internationally renowned contests.

Further, the Petitioner did not establish that these three instances contribute to a finding that she has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. She did not show, for example, how her experience in judging regional or district competitions compares to others at the very top of the field. In addition, the Petitioner did not establish, for instance, that she garnered wide attention from the field based on her review committee work judging local contests. Moreover, serving on review committees does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of her field. *Cf., Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (USCIS has long held that even athletes performing at the

⁴ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

⁵ Other examples of the absence of national exhibitions include, "[redacted] Culture Photography Exhibition . . . , sponsored by [redacted] Public Welfare Foundation and [redacted] Culture Academy, and organized by Entrepreneurs Photographers Association [redacted]" (xuehua.us) and "the [redacted] National Photography Exhibition . . . , sponsored by [redacted] Disabled Persons' Federation and Entrepreneur Photographers Association [redacted] and organized by [redacted] Group" (sohu.com).

major league level do not automatically meet the “extraordinary ability” standard). Without evidence that sets her apart from others in her field, such as evidence that she has a consistent history of reviewing or judging recognized, acclaimed experts in her field, the Petitioner has not shown that her judging experience places her among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Likewise, displaying one’s work at artistic exhibitions or showcases does not automatically place one at the top of the field. The Petitioner offered evidence reflecting various exhibitions, such as at the [redacted] Photography Exhibition, the 14th and 18th [redacted] International Photography Festival, the 2017 [redacted] Photo Festival Exhibition, the 6th [redacted] International Photography Exhibition, 2015 Photo [redacted] and the 1st [redacted] China International Exhibition of Photography. While the Petitioner presented her photography at various venues, she did not demonstrate, for instance, that her work brought wide praise from critics, drew notable crowds, raised attendance, or was responsible for the success of standings of the events. Here, the Petitioner’s evidence does not distinguish her work from others in her field or show that it reflects a career of acclaimed work in the field and sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. Further, the Petitioner did not establish that her work garnered a level of attention or was regularly seen at highly reputable venues consistent with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Beyond the three criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility as an alien of extraordinary ability. Here, for the reasons discussed below, we find that the evidence does not establish that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of her field.

The record reflects that the Petitioner submitted selected series of her work, such as [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted], along with recommendation letters that praised her and her work. However, the letters do not contain sufficient information to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as garnering national or international acclaim. *See* section 203(b)(1)(A) of the Act. For example, letters from [redacted] and [redacted] indicated that two of the Petitioner’s photographs displayed at Photo [redacted] were purchased by private collectors. Here, the letters did not explain how the purchase of two of the Petitioner’s pieces demonstrated sustained national or international acclaim in the field. The Petitioner, for example, did not establish that she received significant attention based on the selling prices or sales volume of her work, placing her among that small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2).

In addition, although her letters opined on her talents and skills, such as “[the Petitioner] is very talented and has a wide range [of] interests and topics in photography” [redacted], “[h]er creativeness and passion to photography only grows when years go by” [redacted], and “[the Petitioner’s] passion for art creations has never ceased, and I am proud to have witnessed her efforts and achievements on the artistic path of photography over the past 15 years” [redacted], they did not establish that she has made impactful or influential contributions in the greater field reflecting a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. Here, the letters

comment on the series of her works without showing how they represent an individual whose achievements have been recognized in the field through extensive documentation. *See* 56 Fed. Reg. at 30704.

Further, the Petitioner provided documentation reflecting that she serves as the vice chairwoman of the Entrepreneur Photographers Association [redacted] and the [redacted] Women Photographers Association. Although she submitted letters from [redacted] and [redacted] confirming her positions, they did not establish how the Petitioner's roles resulted in widespread acclaim from her field, that she drew significant attention from the greater field, or that overall field considers her to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704. Here, the Petitioner did not demonstrate that her service to these associations caused her national or international acclaim or a career of acclaimed work in the field. *See* section 203(b)(1)(A) of the Act and H.R. Rep. No. at 59.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Price*, 20 I&N Dec. at 954. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that she has sustained national or international acclaim and is among the small percentage at the top of her field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

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.