



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

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

In Re: 7881804

Date: MAR. 11, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a rhetorical linguist in the field of education, 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 evidentiary requirement of meeting 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 indicates that she received a Ph.D. in linguistics in 2014 from the [redacted] University of [redacted] in Brazil, and that at the time of filing she was a visiting scholar at the University of [redacted]. She states that her plans in the United States include “accepting a position at [redacted] Unified District” after she gains teacher certification, and opening a consultancy to provide training in rhetoric and the Portuguese language.

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 judging the work of others. On appeal, the Petitioner asserts that she also meets three additional evidentiary criteria.¹ 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 Petitioner submitted evidence to establish that she was a recipient of the [redacted] (Brazilian Service for Support to Micro and Small Enterprises) Entrepreneur Education award. A certificate documenting this award indicates that she received it on July 8, 2011 for “excellent performance in teaching speech courses.” In his decision, the Director found that the evidence does not establish that this award is nationally or internationally recognized.

On appeal, the Petitioner asserts that [redacted] is a national organization and that the award is national in scope, and that it submitted several media articles and other evidence which supports the award’s recognition at the national level. However, we note that the record includes conflicting evidence about the status and scope of the award. First, in what appears to be a news release from [redacted] dated May 11, 2018, it is announced that the agency is launching the first edition of the national [redacted] Award for Entrepreneurial Education.” Another article from a Brazilian website dated March 20, 2019

¹ The Petitioner does not contest on appeal the Director’s finding that her membership in [redacted] does not meet the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

indicates that enrollment for the first edition of this prize has opened. These articles do not mention the awards [redacted] previously granted, such as the Petitioner's issued seven years earlier, and the selection process for the national-level awards which they describe does not relate to that previous award.

In addition, articles regarding previous awards issued by [redacted] refer to the same award being presented at the state level. For example, an article dated May 2, 2018, which appears to have been posted on the website of a military school in the city of [redacted] indicates that it received "the [redacted] award for Entrepreneurial Education [redacted] - 2nd edition." A second article states that another institution [redacted] in the state of [redacted] received the award in 2018. And a third article concerning another institution's receipt of a [redacted] award includes a quote from an official of the receiving entity, noting that this was its first such prize received "at the state level." These articles indicate that the [redacted] award was previously granted at the state and local level, possibly in addition to the national level. Further, as with the articles noted above, the references to a first edition and a previous second edition indicate that the recent information in the record regarding a national award does not apply to the award received by the Petitioner years earlier. It has therefore not been established that the award given to the Petitioner was national in its scope. More importantly, we note that the articles in the record originate from the websites of the institutions which received the respective awards, indicating that recognition for the award did not extend beyond the receiving organization. Therefore, upon review of the evidence initially submitted, as well as that submitted in response to the Director's request for evidence (RFE), we find that it does not establish that the award received by the Petitioner is nationally recognized.

Evidence of the alien'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)

The evidence establishes that the Petitioner served as a judge of theses and dissertations written by graduate students at [redacted]. We therefore agree with the Director's determination 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 stated in his decision that the evidence submitted in support of the Petitioner's claims to this criterion did not include scholarly articles, noting that the source of the materials submitted was not verifiable. However, the issue of whether an article is scholarly depends solely upon the content of the article and its intended readership, and is not dependent on whether it was published or in what type of media. On review of the evidence, we note that it includes the Petitioner's Ph.D. dissertation, as well as at two additional papers that include all of the hallmarks of scholarly papers.² In addition, we note that the evidence regarding the Petitioner's dissertation indicates that the website on which it was published serves as [redacted]'s "digital library." This evidence sufficiently establishes that it was

² 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*. (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

published in a professional medium where the works of other researchers and scholars would be published. Accordingly, based upon the evidence of the Petitioner's dissertation, we disagree with the Director and find that she meets this criterion.

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, the Petitioner must establish that she played either a leading or a critical role for a qualifying organization or establishment. If a leading role, the evidence must establish that she is or was a leader. A title, with appropriate matching duties, can help to establish if a role is, in fact, leading. If a critical role, the evidence must establish that she has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of her role, but rather the performance in it that determines whether the role is critical.³

In support of her assertion that she played either a leading or critical role for [redacted], the Petitioner submitted three reference letters from professors at the institution under whom she studied during her graduate and doctoral degree programs, and who were later her colleagues. These letters generally relay the Petitioner's skills and accomplishments, and two of the letters describe her as "a linguist of extraordinary ability," but they do not establish that she played either a leading or critical role at the institution. [redacted] notes that the Petitioner had a good relationship with her students and found solutions for challenging situations, and that her "extensive teaching experience had great assets to our program." [redacted] writes that the Petitioner "was successful in all her evaluations," and that as a member of the Orality and Writing Group (GEOE) of the Brazilian National Council of Research (CNPq) she conducted linguistics research on the [redacted] language, "aiming at applying the result toward the teaching of this language." And [redacted] verifies that the Petitioner taught a course on academic writing during her graduate studies and is a member of [redacted], the Brazilian association of linguistics. None of these letters indicate that, in her duties as a teacher and researcher at [redacted], the Petitioner served as a leader for the institution as a whole, or that the role she played was of significant importance to its activities.

In responding to the Director's RFE, the Petitioner also referenced her own statement letter. She indicates in that letter that she "spearheaded the growth and development of the linguistics education program, as well as performed important research for the school." However, this statement lacks sufficient detail regarding the impact of her work on [redacted] overall, and is not supported by the letters discussed above or any other documentary evidence in the record. We therefore agree with the Director and find that the Petitioner does not meet 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

³ 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*. (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

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 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 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 his 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.