



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

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

In Re: 6245728

Date: MAR. 17, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a textile embroidery artist, 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 Petitioner had satisfied only one of the initial evidentiary criteria, of which she must meet at least three.

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 employment as an embroidery designer with [redacted] in [redacted] New York. 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).

In denying the petition, the Director determined that the Petitioner fulfilled only one of the initial evidentiary criteria, display at 8 C.F.R. § 204.5(h)(3)(vii). The record reflects that the Petitioner displayed her work at artistic exhibitions. Accordingly, we agree with the Director that the Petitioner met the artistic display criterion.

On appeal, the Petitioner asserts that she meets six additional criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that she satisfies the requirements of at least 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 argues that she meets this criterion based on her first place finish in the contest, [redacted] [redacted]" from the [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.¹ 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.²

She provides [redacted]'s charter indicating that "[b]ased on the merit and accomplishments, the Union nominates and presents individuals the national awards and certificates, for that purpose it cooperates with various organizations and structures of the State." In addition, the Petitioner submits two letters from [redacted] chairman of [redacted] who discussed [redacted]'s goals and membership

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

² *Id.*

requirements and claimed that “the Union consults the Minister of Culture during organizing national and international exhibitions and presentations” and “[a]wards and prizes given by the [redacted] are [n]ationally revered.”

The issue for this criterion is not whether an alien competed in an event with cooperation from a governmental department but whether the bestowed prizes or awards are nationally or internationally recognized for excellence in the field of endeavor. Here, the Petitioner did not demonstrate that her first place finish in the “Visual Arts” contest from [redacted] represents a nationally or internationally recognized prize or award for excellence in the field. Furthermore, [redacted] did not provide specific, detailed information explaining or justifying his assertion that [redacted]’s awards and prizes “are [n]ationally revered.” In addition, the Petitioner, for example, did not offer supporting evidence beyond [redacted] showing the field’s recognition of her first place finish in the contest. Moreover, the Petitioner did not establish the national or international significance of her first place finish from the [redacted] contest.

Because the Petitioner did not demonstrate that she received nationally or internationally recognized prizes or awards for excellence in the field, she did not establish that she meets 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 asserts eligibility for this criterion based on membership with [redacted] and references the same documentation discussed above. In order to satisfy this criterion, 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.³

According to the charter, a [redacted] member must be a citizen of Georgia or a non-citizen individual permanently residing in the country, at least 18 years of age, and an artist, art critic, folk creator, or craft master who recognizes the board of [redacted]. In addition, “[b]ecoming a member of the Union is based on a written statement.” However, the Petitioner did not demonstrate that such membership requirements reflect “outstanding achievements” consistent with this regulatory criterion. Here, the evidence does not show that membership is contingent upon making accomplishments that rise to the level of “outstanding achievements.” Instead, [redacted] membership requires general conditions, such as citizenship, age, and professional status. Moreover, although [redacted] claimed that “[o]ne can only become a member by invitation based on their achievements, talent and accomplishment in the art world,” the charter does not support his assertions. Regardless, [redacted] did not provide detailed, specific information defining “achievements, talent and accomplishment,” so as to represent “outstanding achievements” as required under this regulatory criterion.

³ 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).

Furthermore, the Petitioner did not establish that recognized national or international experts judge the outstanding achievements for membership with [redacted].⁴ According to the charter, “[t]he charter and resolutions of the Union determine acceptance of a member.” However, the charter does not reflect that recognized national or international experts judge membership for [redacted] nor does the Petitioner indicate the provisions in the charter where such requirement is located.

For these reasons, the Petitioner did not demonstrate that she fulfills 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 Petitioner contends that she satisfies this criterion based on material from six websites. In order to satisfy 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

At the outset, the Petitioner provides screenshots from an article posted on kvira.ge; however, the article is dated after the filing of the initial petition.⁶ The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Accordingly, the Petitioner did not demonstrate that this article qualifies for eligibility at initial filing of the petition.

Moreover, the evidence does not include the date of the article posted on goga.tv and the authors of the remaining material posted on bm.ge, press.ge, newstimes.ge, and dicraft.co. The inclusion of the title, date, and author of the material is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii).

Furthermore, although the articles posted on goga.tv and press.ge reflect interviews about the Petitioner, the other material is not about her relating to her work. Specifically, as it relates to bm.ge, the evidence appears to show still shots of an interview of the Petitioner; however, the Petitioner did not submit transcripts to establish published material about her relating to her work. In addition, the screenshot from newstimes.ge announces an exhibition of the Petitioner’s work without a discussion about her. Similarly, the screenshots from dicraft.co blogs about the Petitioner’s work without indicating published material about her. Articles that are not about an alien 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).

⁴ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6-7.

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

⁶ The record reflects that the Petitioner filed her petition on April 13, 2018, and kvira.ge posted the article on [redacted] 2018.

Finally, the Petitioner did not establish that any of the material occurred in professional or major trade publications or other major media. While the Petitioner provides monthly website visits for goga.tv, bm.ge, and kvira.ge, she did not demonstrate the significance of these figures or show how such data reflects status as a major medium.⁷ Moreover, although the Petitioner submitted “about us” documentation from press.ge and newstimes.ge, the evidence shows background information about the websites without indicating their standings as major media. Further, the Petitioner did not submit independent, probative evidence to support the websites’ claims. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff’d* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine’s status is not reliant evidence of a major medium). In addition, the Petitioner did not offer major medium evidence relating to dicraft.co.

For the reasons discussed above, the Petitioner did not demonstrate that she meets this criterion.

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 specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

This regulatory criterion requires an alien to show that she has acted as a judge of the work of others in the same or an allied field of specialization.⁸ The Petitioner submits evidence showing that she served on a jury panel for two art competitions. Accordingly, the Petitioner established that she fulfills 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).

The Petitioner argues eligibility for this criterion based on leading roles for the [redacted] and [redacted].⁹ As it relates to 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.¹⁰

She references a letter from [redacted] chairwoman of [redacted], who claimed that the Petitioner “is one of the best artists in the industry,” and “she played a leading role in the success of our organization and in the promotion of [redacted] and culture nationally and worldwide.” In addition, she cites a letter from [redacted], director of [redacted] who indicated that the Petitioner served on a jury panel for a children competition and was later hired as “Head of Art Department and Teacher of Embroidery.”

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in 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).

⁸ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

⁹ The Petitioner does not claim, nor does record reflect, that she performed in critical roles for [redacted] and [redacted].

¹⁰ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

The letters, however, do not contain detailed information demonstrating that she performed in a leading role for either organization.¹¹ Moreover, [redacted] did not identify the role the Petitioner held. Instead, [redacted] made broad statements regarding the Petitioner's skills and abilities without showing how the Petitioner used those traits to perform in a leading role. Furthermore, [redacted] did not further elaborate or explain how the Petitioner contributed to the success of [redacted] and the promotion of [redacted]. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Likewise, [redacted] did not show how serving on a competition jury reflects the Petitioner's leading position to [redacted] overall. In addition, although the Petitioner was appointed to "Head of Art Department," [redacted] did not offer further information, such as how the Petitioner's role compared to the other departmental heads. Moreover, in relation to [redacted]'s role as director of [redacted] the Petitioner performed in a far lesser role. Further, while [redacted] praises the Petitioner for "creat[ing] a relaxed and supportive classroom atmosphere that allowed the students to explore their individual artistic potential" and "giving praise when earned and insightful guidance where improvement was warranted," she did not demonstrate how the Petitioner's teaching characteristics established her leading position with [redacted]. Here, the lack of specific information does not provide probative information to show the Petitioner's leading roles for the organizations.

Furthermore, the Petitioner did not establish that [redacted] or [redacted] enjoys a distinguished reputation.¹² Regarding [redacted] the Petitioner submits four articles announcing [redacted] festivals in Georgia. However, [redacted] is never mentioned in any of the articles, nor do they indicate [redacted]'s reputation. As it relates to [redacted] the Petitioner references [redacted]'s letter who indicated that the organization "exist[s] to feed creative development and facilitate emotional expression in children" and "encourage[s] our students to reach their full potential and instill within them a passion for the arts." Although [redacted] described the goals of [redacted] the Petitioner did not demonstrate how the organization's intended purposes show its distinguished reputation. Here, the Petitioner did not include evidence, for example, showing the field's view of the organizations, how their reputations compare to similar establishments, or how their successes or accomplishments relate to others, signifying a distinguished reputation consistent with the regulatory criterion.

Accordingly, the Petitioner did not establish that she satisfies this criterion.

¹¹ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10 (providing that this is one criterion where letters from individuals with personal knowledge of the significance of the alien's leading or critical role can be particularly helpful to USCIS officers in making this determination as long as the letters contain detailed and probative information that specifically addresses how the alien's role for the organization or establishment was leading or critical).

¹² See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10-11 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

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 claims eligibility for this criterion based on her salaries from her current employment with [] and past employment with [] and [] as well as from sales of her individual pieces of artwork. In order to meet this criterion, a petitioner must demonstrate that her salary or remuneration is high relative to the compensation paid to others working in the field.¹³

At the outset, the Petitioner offers a letter from [] indicating employment since February 18, 2019, approximately a year after she filed her petition. However, the Petitioner did not establish that her salary from her [] establishes eligibility at the time of filing her initial petition. *See* 8 C.F.R. § 103.2(b)(1).

As it relates to [] she provides a 2014 “Labor Agreement” reflecting a contractual salary of 4,000 Georgian Lari (GEL).¹⁴ In addition, she submits average monthly wages from geostat.ge regarding “[a]rts, entertainment and recreation” of 581.6 GEL for the last quarter of 2014. Moreover, she presents a screenshot from salaryexpert.com showing an average yearly base salary of 23,639 GEL for fashion artists and 29,551 GEL for senior level fashion artists.

Here, the Petitioner has not shown that her contractual salary is high in relation to others in her field. Although the Petitioner claims that her contractual salaries reflect her monthly wages, the labor agreement does not support her assertion. As indicated above, the labor agreement states her salary without specifying monthly payments. Even if they are monthly wages, her comparable evidence shows the average salaries of broad fields rather than the high salaries of other textile embroidery artists.¹⁵ *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).

Regarding [], she provides a 2015 “Labor Agreement” reflecting a contractual salary of 2,000 GEL.¹⁶ Further, she offers average monthly wages from geostat.ge relating to “[c]raft and related trades workers” of 1,073 GEL and “[t]eaching professionals” of 648.8 GEL for 2017. According to the labor agreement, the Petitioner “is obliged to perform the following job requirements: [v]olumetric embroidery teacher responsibilities and to participate in the activities planned by the organization.” However, the Petitioner intends to seek classification as an alien of extraordinary ability as a textile embroidery artist rather than as an embroidery teacher, a separate and distinct occupation and field. Therefore, the Petitioner did not establish that her wages as a teacher establishes her eligibility for this criterion. Regardless, for the reasons discussed above, the Petitioner did not

¹³ *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

¹⁴ The contractual term for [] reflects a period of one year.

¹⁵ The Petitioner also submits the average salaries of Georgians; however, this regulatory criterion requires that an alien commands a high salary in relation to others in the field rather than comparing the wages to the overall workers in Georgia.

¹⁶ The contractual term for [] shows a period of two years.

show that she commanded a high salary in relation to others in her field as she compared her salary to the average wages of teachers. Moreover, the Petitioner did not demonstrate that she earned wages from [redacted] as a textile embroidery artist.

Finally, the Petitioner presents letters from individuals indicating that they purchased pieces of her artwork, along with unidentified cash deposit and payment orders. Here, the Petitioner earned remuneration for services based on the sales of her artwork. However, the Petitioner did not offer comparative evidence for remuneration of other textile embroidery artists' earnings from artwork sales. Thus, 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 show that she meets 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 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 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). Although the Petitioner has judged two competitions for aspiring artists and displayed her work, the record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

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.