



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

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

In Re: 13656450

Date: FEB. 26, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a singer, seeks classification as an individual 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 had satisfied at least three of ten initial evidentiary criteria, as required. The Director then reopened the proceeding twice – first on the Petitioner’s motion, and later treating an untimely appeal as a motion to reopen under 8 C.F.R. § 103.3(a)(1)(v)(B)(I). Both times, the Director again denied the petition. The matter is now before us on appeal.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to individuals 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 international 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 criteria 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).

## II. ANALYSIS

The Petitioner asserts that she “has obtained the highest level of fame in her native [redacted] and international recognition in pop singing.” After performing on the televised *Geostar* competition program, the Petitioner worked as a “specialist” at [redacted]’s Ministry of Culture; the record provides few details about this employment, which she mentioned in interviews in 2009 and 2014. The Petitioner also appeared in the film [redacted] but the record does not indicate that she has continued to pursue acting work. The Petitioner has spent an increasing amount of time in the United States since 2015. Her most recent entry was in 2017 as a B-2 nonimmigrant visitor for pleasure. She later changed status to an O-1B nonimmigrant with extraordinary ability in the arts, through a petition filed by [redacted] [redacted] Through [redacted] the Petitioner operates a studio, [redacted] where she provides voice lessons to children.

Because the Petitioner has not indicated or shown that she 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 Petitioner initially claimed to have satisfied seven of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met two of the criteria, numbered (i) and (iv). On appeal, the Petitioner asserts that she also meets the other claimed criteria.

Upon review, we conclude that the Petitioner has also submitted published material that satisfies criterion (iii). Because the Petitioner has met at least three of the regulatory criteria, we will not discuss the individual criteria in detail. Instead, we will evaluate all of the submitted evidence and determine 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.<sup>1</sup> In this matter, we determine that the Petitioner has not established eligibility.

The Director gave insufficient weight to some of the submitted evidence, such as media coverage. The Director acknowledged the Petitioner's submission of multiple interviews, but largely discounted that evidence because many of the interviews were not about the Petitioner's work in the field as required by 8 C.F.R. § 204.5(h)(3)(iii). This is a valid criticism, but looking at the broader picture, the [redacted] media's interest in the Petitioner's personal life is, itself, some indication of the [redacted] public's interest in the Petitioner.

Overall, the evidence is of mixed caliber. The record contains evidence of a high-profile career, including television appearances and significant awards. But there are also gaps in the evidence. The record contains occasional references to recordings by the Petitioner, but the record does not identify any released recordings or contain any evidence of their commercial release. The president of a recording studio praises the Petitioner as a popular entertainer, but does not say that the Petitioner has actually recorded at that studio. It is possible to achieve acclaim as a singer without releasing hit records, but the burden is on the Petitioner to show how she has done so. Likewise, the record contains copies of contracts that establish how much the Petitioner earned for specific projects, but the Petitioner has not submitted objective, documentary evidence to allow a meaningful comparison between her earnings and those of others in the field.

The record indicates that the Petitioner had a successful career in [redacted]. It does not, however, establish that she sustained a qualifying level of acclaim up to, and beyond, the time of filing. The Petitioner's initial filing included copies of 21 contracts dated between July 2010 and June 2016; the most recent contract was dated more than two years before the petition's filing date in July 2018. The Petitioner appeared on [redacted]'s version of [redacted] in 2016, but the record does not document any comparably high-profile activity since then. [redacted] media continued to interview her after she relocated to the United States, but in those interviews, she discusses staying at home with a new child, teaching singing lessons, and singing at corporate events.

In a translated September 2015 interview, conducted shortly after a two-month visit to the United States, the Petitioner stated: "[redacted] is too small, you can become popular with one clip and one song. In

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<sup>1</sup> 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/legal-resources/policy-memoranda> (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).

America everyone sings . . . . After [a television appearance in [redacted]], when I was walking in the streets everyone asked me [for] autographs and it is not happening in [the] USA.” This interview took place almost three years before the petition’s filing date, and the record does not show that her career gained momentum afterward. In the same interview, the Petitioner stated that, in the United States, “[t]here are lots of singers who ha[ve] no job and it’s difficult to find a job in a restaurant too.” The Petitioner stated that she found work performing in [redacted] lounges. Promotional fliers reproduced in the record corroborate this public statement, advertising her performances at small venues such as restaurants, coffee shops, and cultural centers.

Consistent with the above quotation, the record does not show that the Petitioner has earned sustained national acclaim in the United States. Rather, her recognition in the United States appears to be largely confined to the [redacted] community in [redacted]. The Petitioner has not documented any U.S. media coverage apart from local, Russian-language media. One such article, from 2017, discussed the Petitioner’s achievements between 2001 and 2015 and stated that “[h]er dream is to conquer [redacted] . . . . Meanwhile she shares her mastery with [redacted] children, participates in charity concerts, and recently she performed at [a] [redacted] festival.”

The record indicates that the Petitioner sang at the opening of a fashion show in [redacted] [redacted] media reported that the Petitioner “performed at [redacted]” but photographs from the event show the legend “Couture Fashion Week.” The Petitioner has not established that the two names correspond to the same event, or that one is a part of the other. The Petitioner told [redacted] interviewers that her performance generated “a huge response,” but the record does not include any U.S. media coverage of the event. The Petitioner told an interviewer that she appeared because the art director for the event is from [redacted]. Other recent performances have been tied to [redacted] cultural events. Some of these events have been at well-known locations, such as the [redacted] [redacted] but the Petitioner has not shown that these appearances generated attention at a level consistent with national or international acclaim, or that her participation was highlighted either before or after the events. A printout from the [redacted]’s website discusses a performance by the [redacted] but the Petitioner’s name does not appear in the article. Because these events took place in the United States, it is entirely appropriate to judge the events by the standards of the U.S. entertainment industry.

In light of these facts, we cannot conclude that the Petitioner was at the very top of her field at the time of filing, and remains there now.<sup>2</sup>

### III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals currently at the top of their respective fields, rather than for individuals progressing toward the top or who continue to command some degree of media attention on the strength of past achievements. U.S. Citizenship and Immigration Services 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 recognition of her work indicative of the

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<sup>2</sup> A petitioner must meet all eligibility criteria at the time of filing, and must continue to meet them throughout the adjudication of the petition. *See* 8 C.F.R. § 103.2(b)(1). To this extent, it is appropriate to consider a petitioner’s activities after the petition’s filing date. Those activities, by themselves, cannot establish eligibility as of the filing date, but they directly bear on the question of whether a given petitioner *continues* to be eligible.

required sustained national or international acclaim, or which demonstrates 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 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).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.