U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17440615

Date: JUN. 25, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a designer [redacted], 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 Texas Service Center denied the petition, concluding that the Petitioner met only one of the ten initial evidentiary criteria for this classification, 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)(A) 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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 self-employment in [redacted] fashion design from 1997 until at the date of filing the instant petition in June 2018.[1] 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 the criterion relating to display of her work in the field at artistic exhibitions or showcases at 8 C.F.R. § 204.5(h)(3)(vii). The record confirms that she has been a [redacted] designer for many years and has displayed her work in national and international [redacted] competitions, theatrical performances, and other artistic performances. She therefore meets this criterion. Accordingly, we agree with the Director that this criterion was satisfied.

On appeal, the Petitioner asserts that she meets six additional criteria, including through the submission of comparable evidence, discussed below. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *Documentation of the individual'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 argues for the first time on appeal that she meets this criterion based on her membership in the Union of Designers of USSR, [redacted] Federation, [redacted] Union of Artists, Union of Designers, and [redacted] Union of Designers. In order to satisfy this criterion, the Petitioner must show that she is a member of an association, and that membership in the association is based on

[1] *See* the Petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, which indicates self-employment as a freelance costume designer between 2016 and 2018 and, previously, with her eponymous design bureau between 1997 and 2016.

being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[2]

Regarding the Petitioner's membership in the Union of Designers of USSR, the Petitioner submitted a membership card indicating "Year of becoming a member 1989." This evidence was accompanied by a letter from the former chairman of the union's [redacted] board, [redacted] who describes the union as a professional creative association of Soviet designers that was in operation between 1987 until 1991. He asserts that the association had "very strict selection criteria" whereby "designers were accepted based on the results of a creative competition," and that "the selection committee consisted of masters of Soviet design, world famous artists, like [redacted]." He asserts as follows:

> [The Petitioner] was admitted to the Union at the end of 1989, her membership card number is [redacted] which suggests that in the two and a half years of the Union's existence, only a few were selected: there were hundreds of thousands of professional designers in the USSR, and everyone wanted to join the Union. Thus, membership in the Union was a confirmation of the high level, exceptional abilities and existing achievements.

Here, [redacted]'s statements are not sufficiently detailed to establish that the Union of Designers of USSR required prospective members to demonstrate "outstanding achievements" as a condition of admission or that recognized national or international experts judged the outstanding achievements for membership with the organization. [redacted] mentions that the Union of Designers of USSR considered factors such as "a high level as artists, but also have implementation in industrial products, their own unique developments." This statement is broad and is not accompanied by any supporting evidence regarding the Union of Designers of USSR or its membership requirements, such its constitution or bylaws, which may contain information regarding the process for becoming a member, the selection criteria, and the qualifications required for the reviewers of the selection committee.

In addition, regarding the Petitioner's membership in the [redacted] Federation, [redacted] Union of Artists, Union of Designers, and [redacted] Union of Designers, the record does not contain documentation establishing the Petitioner's membership in any of those organizations or their official membership criteria. A letter from the Russian [redacted] Federation to the Acting Mayor of the City of [redacted] dated 2013, requesting "free usage" of a premises "as the creative workshop of [the Petitioner] in the name of the regional non-governmental organization [redacted] Union of Artists," states that the Petitioner "has been making [redacted] of Russia" but does not confirm her membership in either organization. Thus, regarding the aforementioned organizations, the Petitioner has not submitted the primary initial evidence required to meet this criterion.

Further, the Petitioner previously claimed to meet this criterion based her work as a costume designer for [redacted] On appeal, the Petitioner maintains that because "an [redacted]

[2] *See* 6 *USCIS Policy Manual* F.2(B)(2), Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (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).

designer's work is one of the components of success for the [redacted] . . . the [redacted] designer becomes a member of the team in [the] same way as [redacted] would." As an example, she relates that her work requires her "to meet and design sketches with the [redacted] attend their training, consider the music that will be used in the performance, etc." She claims, therefore, that selection of her work by [redacted] who can test first hand the designers expertise" constitutes "team membership." However, the Petitioner did not demonstrate that being selected to design costumes by individual [redacted] conveyed membership in an association consistent with this regulatory criterion.

Furthermore, the Petitioner maintains that this evidence should also be considered as comparable evidence. The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to her occupation.[3] A petitioner should explain why she has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence she has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[4] The Petitioner did not demonstrate that the membership criterion is not applicable to her occupation. General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted.[5] Here, the Petitioner did not show why she cannot offer evidence that meets at least three criteria. The fact that the Petitioner provided documentation that does not meet at least three criteria is not evidence that a fashion designer could not do so. In fact, as indicated above, the Petitioner claims to meet six other criteria. Further, the Petitioner did not explain why the other criteria, such as judging and original contributions, do not apply to her occupation.

Based on the above, the Petitioner did not demonstrate that she fulfills this criterion, including through the submission of comparable evidence.

> *Published material about the individual in professional or major trade publications or other major media, relating to the individual'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).

As a preliminary matter, the record contains an interview with the Petitioner from [redacted] The record reflects that this was published in 2020, subsequent to the filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). As this article cannot establish the Petitioner's eligibility as of the date of filing, we need not evaluate whether it otherwise satisfies the regulatory requirements of this criterion.

The Petitioner also provided several articles that contain photographs of the Petitioner's [redacted] including articles from Cosmopolitan.com dated 2018 titled [redacted] Thedailybeast.com dated 2012 titled [redacted]" and from [redacted] However, these articles do not mention the Petitioner and therefore are not about her. Articles that are not about the

[3] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.
[4] *Id.*
[5] *Id.*

petitioner do not meet 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 about a show are not about the actor). In addition, the article from [redacted] is missing the date of publication.

Additional articles mention the Petitioner by name but are not about her relating to her work. For instance, the record contains a screenshot of part of an article dated 1997 from the print publication *Where Moscow* titled '[redacted]' The article, which is in the "Shopping" section of the publication, provides that the Petitioner's design company presented a collection of bathing suits at the [redacted] in [redacted] In interview dated 2000 from Kommersant.ru, [redacted] mentions that her costumes are made by the Petitioner. Similarly, in an interview dated 2015 from Kazan2015.com, [redacted] states that the Petitioner has been her personal designer for several years for solo and duet performances. An article dated 2003 from Itogi.ru quotes the Petitioner, among others, in a discussion of fashion trends in different [redacted] over many decades. The Petitioner discusses some recent [redacted] design challenges and successes. As mentioned previously, the aforementioned articles are not about the Petitioner, but are about the presentation of the Petitioner's swimwear collection, fashion trends in [redacted] As previously discussed, articles that are not about the Petitioner do not meet this regulatory criterion. In addition, the article from Kazan2015.com does not include the author of the material.

Moreover, the record contains two articles about the Petitioner related to her fashion design work dated 2017. In those articles, from Zhizn.ru and Life.ru, the Petitioner discusses her [redacted] design career as part of a team at the [redacted] and highlights with individual [redacted] However, the article from Zhizn.ru does not include the author of the material.

Further, the Petitioner did not provide any supporting evidence, at the time of filing or in response to the Director's request for evidence (RFE), to establish that any of the aforementioned publications qualify as a professional or major trade publication or other major media. [6] The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). In this case, the Director advised the Petitioner in the RFE that additional documentary evidence would be needed to establish that any of the submitted articles satisfy the requirement that the material be published in professional or major trade publications or other major media. Specifically, the Director advised that such evidence could include the circulation (on-line and/or in print) for the publications in which the material appeared and the intended audience of the publication.

The Petitioner did not acknowledge this request or submit the requested evidence in response to the RFE, but now submits evidence pertaining to the circulation of Cosmopolitan.com and Thedailybeast.com. When, as here, the record shows that a petitioner was put on notice of an evidentiary deficiency and was given an opportunity to address that deficiency, we will not accept evidence regarding that deficiency when offered for the first time on appeal. *See, e.g.*, *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Similarly,

[6] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (instructing that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

on appeal the Petitioner submits a portion of an article dated 1997 from *Marie Clare Russia* titled [redacted] that contains a photograph of a swimsuit with a caption identifying the Petitioner as its designer and its price. This article is primarily about "what to wear, how to be protected from the sunlight, where to spend a vacation," and only briefly mentions the Petitioner. The author of the material was not identified. There is no documentary evidence showing the distribution of *Marie Clare Russia* relative to other industry publications to demonstrate that the magazine qualifies as a major media. Regardless, as the Petitioner had the opportunity to submit the 1997 *Marie Clare Russia* article in response to the Director's RFE we will not consider this evidence offered for the first time on appeal.

Finally, the Petitioner argues that the fact that her costume designs have appeared in fashion magazines and broadcasts of [redacted] is comparable to the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii). As previously discussed, the Petitioner did not show that at least three of the listed criteria do not readily apply to her occupation, she did not explain why she has not submitted evidence that would satisfy at least three of the criteria, and she did not establish why the evidence she has included is truly comparable to that required under 8 C.F.R. § 204.5(h)(3). Therefore, the Petitioner did not demonstrate that she may use comparable evidence to demonstrate her eligibility.

For the above reasons, the Petitioner did not demonstrate that she fulfills this criterion, including through the submission of comparable evidence.

> *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).

Within her response to the Director's RFE the Petitioner submitted a letter from [redacted] founder of the inaugural 2020 [redacted] who states that the Petitioner "was invited by the organizing committee as a consultant and a member of the panel tasked with selecting initial contestants in 2019 to 2020" for the [redacted] category. He asserts that she is qualified for this position "as a leading expert in this field, whose costumes for many years have been . . . highly appreciated by judges and experts . . . ." At the outset, [redacted]'s letter indicates that the Petitioner "was tasked with selecting initial contestants in 2019 to 2020." 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). As she filed his petition in June 2018, the Petitioner did not demonstrate that any judging she performed for the 2020 [redacted] occurred prior to or at the time of her initial filing.

Notwithstanding the above, in order to meet this criterion, a petitioner must show that she has not only been invited to judge the work of others, but also that she actually participated in the judging of the work of others in the same or allied field of specialization.[7] Here, the letter does not demonstrate that the Petitioner actually completed any judging tasks for the 2020 [redacted].[8] In addition, the Petitioner did not present any supporting evidence establishing that she, in fact, performed as a

[7] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

[8] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (providing an example of peer reviewing for a scholarly journal, as evidenced by a request from the journal to the alien to do the review, accompanied by proof that the alien actually completed the review).

judge for the 2020 [redacted] including showing how many or which contestants she reviewed, and how many or which initial contestants she selected for the 2020 [redacted] category. Further, we note that the statement does not bear the letterhead of the contest's company or the company's contact information.

On appeal, the Petitioner provides a letter from [redacted], president of Russian Children's [redacted] who states he has known the Petitioner since 1989, "when she worked at the [redacted] Models House and I headed the [redacted] department in . . . *Komsomolskaya Pravda*." He provides that "when we had the idea to revive the International [redacted] Fair, we invited [the Petitioner] to the organizing committee of the fair." He asserts that the Petitioner "was responsible for the region of Siberia and the Far East of the USSR, and was also a member of the jury of the competition for young fashion designers (regional in Siberia and the Far East) and finals, which took place in [redacted], and also was a member of the jury of the all-Union beauty contest 'Beauty of Russia.'" He further claims that "[a]fter the advertising campaign [redacted] we continued our cooperation with [the Petitioner] and invited her to our other events as a member of the jury of beauty contests and fashion designers' contests."

Merely submitting a statement asserting that the Petitioner has served as a judge of the work of others without evidence showing when and who she judged, and their field of specification is insufficient to establish eligibility for this criterion. For instance, [redacted]'s letter does not indicate when, in fact, the Petitioner performed as a judge for in the International [redacted] Fair's regional and final competitions for young fashion designers, and the all-Union beauty contest "Beauty of Russia." The record also does not show, for instance, how many or which regional and final young fashion designers whose work she reviewed and selected for the International [redacted] Fair, or the names and the specific assessments of the beauty contestants she evaluated for the "Beauty of Russia" contest. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). In this instance, the record does not include supporting documentation demonstrating the Petitioner's participation as a judge for any of the aforementioned contests. Finally, on appeal, the Petitioner submits an article dated 2017 from Life.ru titled [redacted]' that quotes the Petitioner, fashion historian [redacted] and others expressing largely unfavorable opinions after the official presentation of the Russian national [redacted] The article does not establish, however, that the Petitioner performed a role in judging the designs for the uniforms before their official presentation to the public.

For the reasons discussed above, the Petitioner did not establish that she participated as a judge of the work of others consistent with this regulatory criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field.[9] For

[9] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (finding that

example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner submitted letters of support discussing her work and documentary evidence of her fashion design work for various clients. [10] For instance, [redacted], a fashion designer who indicates she has consulted with the Petitioner, states that the Petitioner "has her own style that many designers tried (but failed) to copy." [redacted] a fashion designer and colleague of the Petitioner's from the [redacted] Fashion Academy, provides that the Petitioner's [redacted], a fashion designer and colleague of the Petitioner's from the Textile Institute in [redacted] calls the Petitioner "an incredible pattern maker" whose "artistry in costume design elevates her work to the level of Art, especially her hand dyed pieces." While the above letters compliment the Petitioner on the quality of her work, the record does not show how the Petitioner's costume design had a majorly significant impact in the field, has significantly influenced the work of other designers, or otherwise equates to an original artistic contribution of major significance in the field.

In addition, in a joint letter, [redacted] indicate that they met the Petitioner as performing soloists for [redacted] Theater for which the Petitioner was the set designer and costume designer. They indicate that the Petitioner subsequently designed the costumes in which they won a [redacted], a [redacted] in Israel, states that she has known the Petitioner for twenty years, and that her team has used the Petitioner's "incredible art designs in our [redacted] She asserts that the Petitioner's "amazing talent highly contributed and upgraded our presentation." [redacted], an [redacted] who has known the Petitioner since childhood, asserts that the Petitioner's costume designs helped her and her partner to win Gold Medals in the 1994 [redacted] The record does not establish, however, how the Petitioner's costume designs are considered an original contribution of major significance in the field as a whole, rather than perhaps impacting the [redacted] for whom the Petitioner designed costumes. The record does not demonstrate sufficiently that her original work for her clients constitutes original contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that a petitioner's contributions be "of major significance in the field" rather than limited to a single client or company.

Moreover, [redacted] an [redacted], indicates that she has known the Petitioner since childhood and that the Petitioner designed her costumes at the junior and professional level, including for her [redacted] victories at the 1998 and 2002 [redacted] She asserts "the whole world recognized our unique style in costumes, which [the Petitioner] created for us, our style determined the fashion in [redacted] for a decade." [redacted] does not provide specific examples of how the Petitioner's costume designs have significantly impacted the field or otherwise constitute original artistic contributions of major significance in the field.

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although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[10] While we discuss only a sampling of letters here, we have reviewed each one in its entirety.

Further, [redacted] a former vice-chairman of the [redacted] indicates that he has known the Petitioner since 1992, and that she has designed [redacted] costumes for the [redacted] He states that the Petitioner "has done a lot to promote [redacted] working with [redacted] from many countries of the world." [redacted] does not provide specific examples of how the original fashion designs by the Petitioner have significantly impacted others in her field or otherwise constitute original artistic contributions of "major significance" in fashion design.

The record also contains a letter from [redacted], a coach of the [redacted] who provides that "for many years, [the Petitioner] has been a leading designer of the performance outfits for the [redacted]" which "dictates the fashion for [redacted]" We note that [redacted]'s statement does not bear the letterhead of the [redacted] or the [redacted]'s contact information. Regardless, [redacted] does not specify which of the Petitioner's designs equate to original contributions of major significance in the field. The documentation submitted does not demonstrate that her specific work for the [redacted] equates to original contributions of major significance in the field. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that a petitioner's contributions be "of major significance in the field" rather than limited to a single client or company.

The Petitioner also provided a letter from [redacted] the artistic director of [redacted] who indicates he has known the petitioner since their collaboration in 1992 on the [redacted], for which the Petitioner was the costume and set designer. [redacted] comments on the Petitioner's work for that theater production, but he does not provide specific examples of how the costume or set designs from the event have significantly impacted the field at large or otherwise constitute original artistic contributions of major significance in the field. He provides that "[t]he video version of the performance . . . is still sold worldwide." In addition, the record contains screenshots from an unidentified library website showing that the 1999 videorecording of [redacted] featuring the [redacted] with set designs by the Petitioner is available. However, the documentation submitted does not show that the Petitioner's design work from that [redacted] production has impacted the field at a level indicative of an original artistic contribution of "major significance" in the design field.

The opinions of the Petitioner's references are not without weight and have been considered above. The preceding references discuss their collaborations with the Petitioner and her skills as a costume designer and set designer, but they do not provide specific examples of how the Petitioner's original work equates to original contributions of "major significance" in the field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics and simply use hyperbolic language do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.[11] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Absent detailed examples of how the Petitioner's design work has been of major significance in the field, the reference letters do not sufficiently establish that the Petitioner satisfies this criterion.

[11] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

Finally, the Petitioner asserts that fashion designer [redacted] is among the "famous names" in her field of expertise. The Petitioner provides that [redacted] 'was inducted into the [redacted] Hall of Fame for her design/artistic contributions to [redacted] and "designed far less [redacted] than [the Petitioner.]" Therefore, the Petitioner asserts that "if [redacted]'s contributions to the [redacted] of costume design is significant enough to warrant induction into a Hall of Fame, [the Petitioner's] contributions are even more significant in light of her experience." However, the Petitioner does not provide specific examples of how her costume designs have impacted the field in the same manner as [redacted] the individual to whom the Petitioner compares herself, or were otherwise majorly significant to the field. For example, the submitted documentation does not show the extent of the Petitioner's influence on other artists in the field or that the field has somehow changed as a result of her original work.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that she has made original contributions of major significance in the field.

> *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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the Petitioner must demonstrate her authorship of "scholarly" articles. Outside of the academic arena, a scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship.[12] Evidence of scholarly articles published 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 and identify who the intended audience of the publication is.[13]

On appeal, the Petitioner asserts for the first time that she satisfies this criterion based on an article dated 1995 published in the print magazine *Stas Russia*. She asserts that "[g]iven the celebrity of its creator, the publication would have been a major media at the time and as such, [the Petitioner's] article in the same should be treated as authorship of an article in her field" under this criterion.

First, we note that the article translation does not identify the Petitioner as the author. In addition, the Petitioner did not assert or establish the scholarly nature of the published article. The article does not appear to qualify as scholarly, in that it is a popular article offering general information on the Soviet and Russian fashion design industry, rather than an article written in a technical manner that presumes considerable knowledge of fashion design terminology. In addition, the limited information about the publication contained on its cover indicates its subject matter includes "All the stars" in "Music – Cinema – Fashion – Theater – Literature – Art – Media – Night Life," with such topics as "Mystery of the Premier's Power," "20 Russian Beauties," "Confession," and "Who Does the Champion Sleep With?" Thus, the publication indicates its articles are intended to be accessible to the general public. The evidence, therefore, does not establish that the intended audience of the Petitioner's articles is "learned persons" in the field. Moreover, the Petitioner has not addressed the other element of this

[12] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.
[13] *Id.*

criterion by submitting evidence to establish that *Stas Russia* is a professional or other trade publication, or that it has the circulation to be considered a major medium.

In light of the above, the Petitioner has not established that this evidence meets this criterion.

III. CONCLUSION

We find that the Petitioner does not satisfy the criteria relating to membership, published material, judging, original contributions, and scholarly articles. Although she claims eligibility for one additional criterion on appeal, relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.[14] Accordingly, 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).

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.

[14] *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).