



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 13904080

Date: MAR. 26, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an art museum, seeks to classify the Beneficiary, a curator, 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 Petitioner did not establish, as required, that the Beneficiary meets at least three of the initial evidentiary criteria for this classification. The matter is now before us on appeal.

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 sustain 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

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, a [redacted] art museum, has employed the Beneficiary in the endowed position of [redacted] Associate Curator for [redacted] Art since 2014 and seeks to continue her employment in this role.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must demonstrate that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner submitted evidence relating to the Beneficiary's eligibility under six of these ten criteria.

The Director determined that the Beneficiary satisfies the judging and scholarly articles criteria under 8 C.F.R. § 204.5(h)(3)(iv) and (vi), respectively, and the record supports this conclusion. The Petitioner has provided evidence of the Beneficiary's authorship of books, book chapters, and scholarly articles published in professional publications, as well as evidence of her participation as a judge of the work of others in the field, specifically as a member of doctoral panels, and award and fellowship committees.

On appeal, the Petitioner maintains that the Director overlooked or failed to properly weigh evidence relating to published materials about the Beneficiary, her original contributions to her field, the display of her work at exhibitions or showcases, and her leading or critical role with its organization. See 8 C.F.R. § 204.5(h)(3)(iii), (v), (vii) and (viii). The Petitioner maintains that the Beneficiary satisfies at least three criteria and is otherwise eligible for classification as an individual of extraordinary ability.

We conclude that the record establishes that the Beneficiary satisfies the leading or critical roles criterion based on her role with the Petitioner, which has established its [redacted] [redacted] museums in the United States. The Director determined that the Petitioner's evidence was insufficient because it relied, in part, on letters from experts who work outside the organization that attested to the critical nature of the work the Beneficiary performs for the Petitioner.

However, both the initial petition and the Petitioner's response to the Director's request for evidence (RFE) were accompanied by supporting letters from high-level employees of its organization who described the Beneficiary's position and her performance in that role in considerable detail and were sufficient to establish that she performs in a leading or critical role consistent with the criterion at 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner described the Beneficiary's responsibilities, the impact of her role on the museum, and submitted supporting evidence, including its annual report and critical reviews in major media, which highlight that the exhibitions, research, educational activities, and other projects for which she is responsible [redacted] [redacted] are of significant importance to the organization as a whole.

The Petitioner has established that the Beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3), therefore, we will evaluate the totality of the evidence, including evidence submitted in support of the remaining claimed criteria, in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, that the Beneficiary has sustained national or international acclaim and 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. 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. We conclude that the Petitioner has established the Beneficiary's eligibility for this classification.

The record reflects that the Beneficiary has bachelor's degrees in art history and modern languages, and a master's degree in visual anthropology. She later obtained a master of arts focused on the Arts of [redacted] from the [redacted] at the University of [redacted] [redacted], where she also received her doctorate degree in 2007. She completed two post-doctoral research fellowships at the University of [redacted] [redacted] between 2008 and 2014, during which time she also provided exhibition curatorial support for [redacted] art exhibitions for museums in Switzerland, Germany, Belgium, Scotland, and England. As noted, since, 2014, the Beneficiary has served in the position of [redacted] [redacted] Associate Curator for [redacted] Art in the Petitioner's Department of Arts [redacted] [redacted]

The record reflects that the Beneficiary's critical role with the Petitioner, one of [redacted] art museums, is a high profile position that has earned her national and international acclaim in her field and recognition as one of the top curators and scholars in [redacted]. The exhibitions she has curated for the Petitioner have earned positive critical reviews in major U.S. media such as The New Yorker, The New York Times and The Wall Street Journal, as well as in international publications. In addition, the Beneficiary and her work have consistently been the subject of interviews and articles in media publications throughout her tenure with the Petitioner. For example, articles about the Beneficiary and her work have appeared in professional publications included Art Asia Pacific magazine, in a publication of the National Museum of Women in the Arts, in mainstream media publications, and in Cultural Survival Quarterly, which is focused on the preservation of the cultures of the indigenous people. She has also been invited to provide her expertise in [redacted]

[redacted] art to film and video projects made for television in New Zealand, for other museums, and for [redacted], an educational partner of [redacted]

In addition, the record reflects that, as a result of her acclaimed work and recognition in her area of expertise, and in connection with her high-profile role with the Petitioner, the Beneficiary is frequently invited to serve as a panelist, lecturer and keynote address speaker at events, conferences and symposia hosted by prominent institutions such as [redacted] University, [redacted] College, [redacted] University, the [redacted] Museum, the Arts Council of [redacted], the [redacted], University of [redacted], the [redacted] Academy of Arts, and the [redacted]. In 2019, the Beneficiary was invited by the [redacted] to serve as a visiting faculty member for its prestigious [redacted], and she has participated as a judge of the work of others in her field by serving on doctoral panels and award and fellowship committees.

In addition to her highly visible role as a curator, the record reflects that the Beneficiary remains especially active in publication of scholarly research in her field. She has authored a considerable number of articles that were published in distinguished professional journals and has authored books and book chapters as well as contributing to the Petitioner's major exhibition bulletins and catalogs. The Petitioner has also documented her membership in the [redacted] [redacted] where she and other leaders of the organization coordinated three international conferences held in Canada, New Zealand and Australia, as well as panel events held throughout North America.

Finally, the Petitioner has submitted several detailed letters from experts in the Beneficiary's field who discuss and provide context to her contributions and achievements and the scope of the recognition she has received for them. [redacted] of [redacted] University explains that the Beneficiary "brings a singular perspective and set of curatorial skills that have enabled her to expand the profile of [redacted] at [the Petitioner's museum]," and describes her as "an innovator whose rigorous and creative curatorial work has expanded the accepted canon of world art history to include [redacted] arts." [redacted] Director of the University [redacted] [redacted] Art Collection, indicates "as a fellow curator and academic specializing in [redacted] art in the United States, I can state with confidence that [the Petitioner] is one of the foremost experts in the world in our field" and "has opened up the world of [redacted] art to viewers in the United States." She mentions the Beneficiary's "expansion of [the Petitioner's] contemporary [redacted] art, and her creation of important opportunities for [redacted] art and artists, who she has elevated to an increasingly visible position within the wider art world." [redacted] describes in further detail the influence of the Beneficiary's curatorial approach in their shared field, and concludes by stating that the Petitioner's "significant scholarly and curatorial achievements in the field of [redacted] [redacted] art have been revolutionary and continue to inspire the museum community at an international level."

[redacted] Director of the University [redacted] Research Unit, states that he "can affirm without question that [the Beneficiary] is a world-renowned expert" on the art of the [redacted] region and asserts that "an art history professional must be at the very top of their field to even work for [the Petitioner]." [redacted] also emphasizes the Petitioner's "sole responsibility for a wide range of curatorial duties that relate to the care of the hugely significant

collection of [redacted] art at [the Petitioner's museum], including her involvement in an ongoing [redacted] project." [redacted] Director Emeritus of [redacted] also discusses the Beneficiary's curatorial vision for updates to the Petitioner's [redacted] galleries, explaining that the renovation designs "will have an enormous impact internationally and stand to influence museum installations of [redacted] art across the world." He describes the renovation as "a once-in-a-generation undertaking, and [the Beneficiary] was the only choice to lead this project due to her world-renowned expertise in the art of [redacted]" [redacted], former Vice President of the Arts for the [redacted], highlights the Beneficiary's achievements at the Petitioner's museum, noting her "commitment to advancing and evolving" her field and describing her as "the leading voice of her generation in the highly specialized area of [redacted] art in the museum industry."

Based on the foregoing letters and others not discussed here, the evidence establishes that the Beneficiary's critical role with the Petitioner and her related contributions to the museum field, art curation, and scholarship in [redacted] art have garnered her sustained acclaim and placed her among the small percentage at the top of a field in which the Petitioner maintains a prominent position as a leading institution.

When considered in the aggregate with the evidence discussed above, the Petitioner has demonstrated that the Beneficiary's achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). We conclude that the record supports a finding that the Beneficiary is among the small percentage at the top of her field of endeavor with sustained national or international acclaim. See 8 C.F.R. § 204.5(h)(2)-(3).

III. CONCLUSION

The Petitioner has shown that the Beneficiary meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). It has also demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national and international acclaim and that her achievements have been recognized through extensive documentation. Finally, the record reflects that the Beneficiary intends to continue working in her area of expertise and that her admission will benefit prospectively the United States. Therefore, she qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.