



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

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

In Re: 19539561

Date: FEB. 16, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an actor, 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 Texas Service Center denied the petition, concluding that while the Petitioner established the initial evidence requirements by meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3), the record did not establish that she possesses sustained national or international acclaim and is one of the very few at the top of her field. On appeal, the Petitioner asserts that the Director did not consider the totality of the record in making his decision.

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 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 has been working as an actress, primarily in theater productions but also in film, for more than a decade. She earned a Bachelor of Performing Arts from the [redacted] University [redacted] in 2010, and completed coursework towards a Bachelor of Fine Arts from [redacted] University. The record includes a job offer letter from a company in Massachusetts to work as a media and broadcasting head.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to published material about her in qualifying media, her participation as a judge of the work of others, and the display of her work in artistic exhibitions or showcases. On appeal, the Petitioner asserts that she also meets two additional evidentiary criteria, those relating to a leading or critical role and commercial success in the performing arts.¹ After reviewing all of the evidence in the record, we agree with the Director that she has met the requisite three criteria, but also that the record does not establish that she qualifies as a noncitizen of extraordinary ability.

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)

¹ The Petitioner does not reassert her claims to the criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii) or (vi) on appeal. We will therefore consider the evidence submitted in support of these criteria only as part of the final merits determination.

The record includes copies of several articles published in Nepali media which discuss or mention the Petitioner and her work in varying degrees. For purposes of this criterion, while published material need not be primarily or only about a petitioner to qualify, it cannot be solely about their employer or another organization with which they are associated. 6 USCIS Policy Manual at F.2, <https://www.uscis.gov/policymanual>. Here, the Director listed the names of several publications which published articles that were included in the record, but did not identify specific articles which were about the Petitioner. After review, we conclude that at least two articles are about the Petitioner: an interview of her published in *Nepali Times* in its [redacted] 2013 edition, and a review of an adaptation of Shakespeare's [redacted] in the [redacted] 2014 edition of the *Kathmandu Post*. In addition, the record includes evidence which establishes that both of these publications are major media in Nepal. We therefore agree that the Petitioner 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 specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

To support her claim to meeting this criterion, the Petitioner submitted letters from the organizers of two theater festivals: the [redacted] Theater Festival and the [redacted] Theater Festival. This evidence is further supported by two articles posted on a website which indicate that she served as the head of the jury for the [redacted] Theater Festival in 2012 and for the [redacted] Theater Festival in 2010. On appeal, the Petitioner asserts that the evidence shows that she also served as a judge at the [redacted] Theater Festival. However, the two letters from [redacted] do not identify him as an organizer of this event, or as someone associated with an organization which organizes it, nor do they provide specific dates or even the year or edition of the event at which the Petitioner is claimed to have participated as a judge. Accordingly, we agree with the Director that the Petitioner meets this criterion based upon the evidence of her work at the 2012 [redacted] Theater Festival and the 2010 [redacted] Theater Festival.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

The Petitioner submitted evidence of her performance in numerous theater productions and movies as an actor, as well as in other roles including translator, director, and producer. However, we note that not every display of work by an artist takes place at an artistic exhibition or showcase, and it is the petitioner's burden to establish that a particular venue or event at which their work was displayed was an artistic exhibition or showcase. *Id.* Although the Petitioner has submitted evidence that she has performed as an actor in many theater productions and films, the evidence does not establish that the plays and films were shown at artistic exhibitions as opposed to shows presented for commercial purposes.

Turning to her work as a movie director, the evidence shows that films she directed or produced were shown at film festivals including the 2020 [redacted] Film Festival and the 2016 [redacted] [redacted] Film Festival. Because this evidence shows that those film festivals were artistic rather than commercial exhibitions of her work, we conclude that based upon this evidence the Petitioner meets this criterion.

As noted above, on appeal the Petitioner asserts that she also meets two additional criteria. However, because we have determined that she has met the requisite three criteria in order to meet the initial evidence requirements for this classification, we will not consider her claims to those criteria. Rather, we will review her arguments and the evidence submitted in their support as part of the totality of the evidence when conducting a final merits determination.

B. Final Merits Determination

In a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner 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. Here, the Petitioner has not offered sufficient evidence that he meets that standard.

On appeal, the Petitioner asserts that the Director's final merits determination focused on the evidence submitted for each criteria instead of considering the totality of the evidence to determine whether she had the requisite sustained national or international acclaim and is one of the small percentage at the top of her field. In addition, she asserts that the Director did not give sufficient consideration to the many reference letters submitted on her behalf, and highlights phrases in some of the published material in the record.

The record shows that after obtaining her performing arts degree in 2010, the Petitioner began an active period in Nepali theater and film before coming to the United States in 2015 to continue her education. Articles in Nepali publications and reference letters from colleagues and others in the Nepali theater and film sector confirm that she performed, and in many cases played a leading character, in several theater and film productions during this period. For example, the article published in the *Nepali Times* in its [redacted] 2013 edition is about the Petitioner and her portrayal of one of the [redacted] characters in the play [redacted], an adaptation of [redacted]. The article notes that the production was created by [redacted] a group co-founded by the Petitioner, and describes it as "her show." Another article about the play, published in the *Kathmandu Post* a day earlier, mentions the Petitioner but focuses on the director, another co-founder of [redacted]. And a letter from the program director of [redacted] Theater Nepal states that the play was staged at that venue for 30 days in 2013 and attracted full-house audiences.

Another example of a performance by the Petitioner which received positive mention in major media was her role in [redacted] covered in a review in the *Nepali Times* on [redacted] 2012. This play was also reviewed in the *Kathmandu Post* on the previous day, with the article noting that the Petitioner is one of the "well-known faces" in the performance.

However, the evidence does not establish that her acting roles in other theater productions brought the Petitioner the same level of recognition as her role in these plays. The Petitioner asserts that her role in the Nepali adaptation of [redacted] was commercially successful, relying upon an article posted as a blog. While that article includes sections of reviews of the play that are claimed to have been published in major Nepali media, some of which mention the Petitioner, the full reviews are not

included in the record as published by those media, nor is there further information regarding the website where the blog was posted. Another article posted on a website, bishowkhabar.com, also mentions the Petitioner and her claimed high salary for her work as an actor in [redacted] but as with the blog article, information about this website does not appear in the record to show that this is either a reliable or influential source of information. We also note that despite the claims of the Petitioner's commercial success (and high salary) which is largely based upon these articles, information about ticket sales for this show is not included in the record, nor is evidence of the Petitioner's income or how it relates to that of other actors in Nepal. In addition, a letter from one of the Petitioner's co-stars in this play, [redacted] states only that "it is an established fact that all the artists involved in that play were paid the highest amount till date for a single production," but does not provide salary figures (his own or the Petitioner's) or refer to any documentation to support this claim.

Regarding her acting roles in films, the Petitioner submitted articles posted to several websites that mention her as an actress in [redacted] [redacted] [redacted] and [redacted]². The record also includes screen shots of movies on YouTube, and photographs of the Petitioner taken during the filming of these movies. However, although a reference letter from [redacted] founder of a website focused on Nepali theater, states that the Petitioner "has had a very strong presence in Nepali film," the record does not support this statement. The articles mentioned above primarily list her amongst others as an actress in the film discussed, and the evidence does not show that she has received critical acclaim or commercial success at the national or international level for these roles.

In addition to material published in Nepali media, the Petitioner also submitted evidence of an award she received to support her acclaim as an actress, for [redacted] at the 2010 at the annual [redacted] [redacted] One Act Play Drama/Dance/Music and Instrumental Competition. In response to the Director's RFE, the Petitioner submitted a letter from [redacted] a journalist and co-founder of an Indian news website, in which he describes the history and competition rules for this competition. However, [redacted] does not indicate that he is a member of the organization which sponsors the competition, the [redacted] Artist Association, or otherwise explain the basis of his knowledge. More importantly, the evidence does not establish that this award is recognized as being prestigious in the field of acting at the national or international level, or otherwise brought acclaim to the Petitioner as an actress. We note that the most in-depth article about the Petitioner and her work, published in the *Nepali Times* on [redacted] 2013, does not mention her receipt of this award, nor does the record include evidence that the award is well publicized in major or arts media.

The Petitioner also submitted evidence of her participation as a judge of other actors. Specifically, she submitted a letter from the organizer of the [redacted] Theater Festival which states that she was a jury member for the festival, as well as an article from a website stating that she was the head of the jury for the first edition of this event in 2012. The evidence indicates that the festival was open to [redacted] The Petitioner also participated as a jury member for the [redacted] Theater Festival in 2010, which consisted of plays [redacted] and was held in [redacted] As with the evidence of the award received by the Petitioner, we note that the evidence does not show that either of these festivals received major media coverage, and it is therefore not apparent that the Petitioner garnered acclaim through her participation as a jury member. In addition,

² The record includes multiple alternate spellings of the title of this film.

she judged the performance of students and children, not professional actors, which reflects upon her perceived status in the acting field and the level of acclaim she has received for her work.

In addition to the evidence of her work as an actor, the Petitioner also submitted evidence of having performed other roles in theater productions and films. She directed the [redacted] School's Theater Club in three plays: [redacted] and [redacted] in 2014 and [redacted] [redacted] in 2015. Also, the evidence indicates that she translated and adapted productions for the Nepali stage, including [redacted] and [redacted]. Although her work on [redacted] [redacted] and [redacted] (in which she also acted, as noted above) received mention in major Nepali media, the evidence does not establish that her work directing secondary students led to acclaim or placed her as one of the small percentage of theater directors at the top of the field.

The record also shows that the Petitioner served as a director in films. Specifically, she served as a casting director in the film [redacted] a director of the short film [redacted] [redacted] and was a producer for the short film [redacted]. The latter two films were screened at the [redacted] Film Festival in 2020 and the [redacted] Film Festival in 2016, respectively. However, the record indicates that the [redacted] festival was intended to highlight the work of local filmmakers, and the record does not demonstrate that either the [redacted] festival or another festival in [redacted] where [redacted] was also screened received widespread media attention or were otherwise recognized in the film industry as prestigious or important festivals where the work of top filmmakers is displayed. Further, we note that the Petitioner has not demonstrated that either film was singled out for recognition among others displayed at those festivals.

Another aspect of the Petitioner's work in Nepali theater is shown by her participation in related organizations. As previously noted, the evidence shows that she was a co-founder of [redacted] [redacted], a group which went on to stage theater productions in which she also performed and played other roles. While her role was no doubt leading or critical to [redacted] the evidence does not demonstrate that her activities in this role placed her among the small percentage of actors at the top of her field. Her co-founder, [redacted] explains that the group worked together from 2014 to 2017 and mentions the production of [redacted] and [redacted]. He also states that the group "started the culture of freelancing artists in Nepal," but the record does not include evidence to support this statement.

The Petitioner also points to evidence of her membership in [redacted] Theater on appeal, as shown by a letter from [redacted] president of the organization. [redacted] lists some of the theater productions that the Petitioner was involved in, but does not indicate which of these were done as a part of [redacted] Theater. In addition, evidence of some of the productions mentioned in his letter does not appear elsewhere in the record. He also states that the Petitioner "led our theater group to the international theater festivals," but again there is no documentary evidence of the mentioned festivals, nor is the letter specific about how she led the group or whether she or the group received acclaim for performing at these festivals.

The evidence shows that the Petitioner's work as an actress in some Nepali theater productions received positive reviews and attention at the national level, and that her work in adapting and directing plays, primarily at the student level, was well appreciated. However, this media attention occurred

over a brief period of time, and the record does not show that her work was formally recognized by performing arts organizations or establish that it led to commercial success or notable financial gain for the Petitioner. Further, while her work in other roles in Nepali theater was mentioned in critical reviews of the work, the evidence does not establish that this work placed her as one of the few directors or translators/adaptors at the very top of the field. When the record is viewed in its entirety, it does not show that the Petitioner enjoyed sustained acclaim at the national or international level for her work as an actor in theater and film, or for her work in other roles in theater production and direction.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated 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.