



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

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

In Re: 12483771

Date: JAN. 19, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for this classification through evidence that she meets at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

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 is a visual artist. She obtained a bachelor’s degree in plastic arts with a major in painting from the University in Venezuela in 2002.

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 two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her participation as a judge of the work of others in her field and artistic display. On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to lesser nationally or internationally recognized awards and membership in associations in the field, and provides additional evidence in support of these assertions.¹ The Petitioner has not pursued her initial claim that she meets the criterion related to published material about her under 8 C.F.R. § 204.5(h)(3)(iii), nor does she contest the Director’s decision relating to this criterion on appeal. Therefore, we deem this issue to be waived and will not address this criterion in our decision. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

¹ On appeal, the Petitioner states that the Director “failed to analyze the comparable evidence, nor they [*sic*] indicate they had done do.” Prior to the appeal, however, the Petitioner did not rely on comparable evidence to establish her eligibility. Because the Petitioner has submitted evidence which she asserts supports her claim to the criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (ii), she cannot demonstrate that these criteria do not apply to her occupation as required under 8 C.F.R. § 204.5(h)(4). We will therefore not further address her claim that the Director failed to analyze comparable evidence.

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 contends that she “has been recognized internationally with recognition, awards, and prizes for her artistic work.” The Petitioner asserts that her receipt of the “[redacted] Award” from the Venezuelan Chapter of the International Association of [redacted] in 2010 is a prize of national recognition, noting that an article published in *El Universal Caracas* discusses the award.

She also submitted documentation showing her receipt of various “prizes,” including a [redacted] Honor Mention” from the [redacted] Museum and a “prize” certificate for “Outstanding Participation” in [redacted]’ by the [redacted] Museum from [redacted]. The record also contains several certificates of recognition acknowledging exhibition and her donation of work from the cities of [redacted] and [redacted] along with articles discussing her receipt of various other prizes including the [redacted] Prize” for [redacted] from Museum of Contemporary Art [redacted].

At the outset, the Petitioner did not submit certified English language translations for each of these documents, all of which were foreign language documents. As noted by the Director in the request for evidence (RFE), all foreign language documents must be accompanied by a full translation that the translator certifies pursuant to 8 C.F.R. § 103.2(b)(3). That provision states: “Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” The record reflects that both at the initial filing and in response to the Director’s RFE, the Petitioner presented an English translation for each submitted document but did not provide any certificates of translation. The English translations do not contain a certification from the translator certifying that the translations are complete and accurate, or that the translator is competent to translate from the foreign language into English. In fact, none of the translations even identify the translator. Because the Petitioner did not offer properly certified English language translations, we cannot meaningfully determine whether the translated material is accurate and thus supports her claims.

In denying the petition, the Director determined that the record was insufficient to demonstrate that any of the prizes or awards claimed by the Petitioner were nationally or internationally recognized for excellence in her field of endeavor. On appeal, the Petitioner asserts that her receipt of the [redacted] Award from the Venezuelan Chapter of the International Association of [redacted] in 2010 satisfies this criterion, noting that the award received news coverage in *El Universal Caracas*, which she claims is a national news outlet with “a daily circulation of about 150,000.” This article, like the award certificate, is not accompanied by a certified English translation and therefore has little probative value. Moreover, the Petitioner’s assertions regarding the publication and its circulation statistics are not supported by independent, objective evidence.

Further, the Petitioner has not presented evidence that this award, or any of the other accolades she claims to have received, are nationally or internationally recognized prizes or awards for excellence

in the field.² Although the Petitioner provides an excerpt (in English) from the [redacted] website on appeal which provides the history of the organization, it does not discuss the [redacted] Award or the criteria for receiving such an award. There is insufficient evidence demonstrating that the prize awarded by [redacted] to the Petitioner in 2010 is nationally or internationally recognized in her field of endeavor.

Moreover, despite providing uncertified translations of articles from [redacted] discussing her receipt of the [redacted] Prize for [redacted], the Petitioner did not present any supporting evidence documenting her receipt of the award.³

Although the uncertified translations have no probative value, they also do not support the Petitioner's claims on appeal. The Petitioner did not establish that the prizes and awards are nationally or internationally recognized for excellence in the field, or that the reporting entities enjoy a national or international audience.⁴ For these reasons, the Petitioner did not demonstrate that she satisfies 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).

In response to the RFE, the Petitioner provided articles published in *El Mundo*, which indicated that she was affiliated with the [redacted] Association and collaborated with the [redacted] Organization and [redacted] City Council for the [redacted] 2009. The Director acknowledged that she was mentioned in these articles, but noted that there was no evidence or other indication that either of the organizations had bestowed membership on the Petitioner as contemplated by this criterion. 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.⁵

The *El Mundo* articles relied on by the Petitioner are accompanied by uncertified translations. Because she did not provide certified translations of the documents, they are of little probative value.⁶ Additionally, as noted by the Director, while the articles suggest her affiliation with these organizations for work on certain projects, no documentation or other evidence demonstrating that she is a member of either of these organizations is contained in the record.

On appeal, the Petitioner points to previously submitted documentation discussing the purpose and mission of [redacted] Organization. While we acknowledge these assertions, we again note that the

² See 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field).

³ See *id.*

⁴ See *id.*

⁵ See *id.* (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).

⁶ See 8 C.F.R. § 103.2(b)(3).

documentation referred to by the Petitioner was not accompanied by certified English translations. Moreover, the documentation does not demonstrate that the Petitioner is a member of this organization, nor does it outline the membership requirements, if any, for such an organization.

The Petitioner also asserts on appeal that a previously submitted certificate from the Government of the Ministry [redacted] granting her recognition as the Director of [redacted] [redacted] in [redacted] Venezuela satisfies this criterion. In support of this assertion, the Petitioner submits an excerpt from [redacted] which provides a general overview of the [redacted] indicating that the museum was [redacted] and holds a collection of over 5,000 works by prominent Venezuelan and international artists.

As noted previously, the certificate referred to by the Petitioner is a foreign language document accompanied by an uncertified English translation, and thus is of little probative value. Nevertheless, the translation provided indicates that the certificate is “thanking his gesture, for the donation of one of his pieces of art ‘mirrors.’”⁷ There is no indication that this certificate confers membership upon the Petitioner as contemplated by this criterion, and the Petitioner provides no evidence of the membership requirements for this organization. Although the Petitioner is recognized as “Director,” no further context with regard to the nature of this title or position has been provided. In addition, the Petitioner did not establish that recognized national or international experts judge the outstanding achievements of any of the referenced organizations’ members.⁸

Accordingly, the Petitioner did not show 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).

Although the Director determined that the Petitioner fulfilled this criterion, we disagree. The 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.⁹ The record reflects that the Petitioner provided uncertified translation of three certificates she claims demonstrate her participation as a judge for various exhibits.

The record contains a certificate from [redacted] and recognizes the Petitioner “for her valuable participation as a jury” in the exhibition [redacted]. The Petitioner provided no additional information regarding [redacted] or the nature of the exhibition referred to in the uncertified translation of the certificate. As a result, we are unable to determine whether her “participation as a jury” was in the same or allied field, which she claims is visual arts.

⁷ We note generally that this certificate and many other uncertified English translations for the Petitioner’s various certificates and awards reference her in masculine terms such as “he” and “his” throughout the record.

⁸ 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).

⁹ See *id.*

The Petitioner also provided a certificate from [redacted] recognizing the Petitioner for her “valuable participation as a guest juror” in the exhibition [redacted]. Again, the record contains no additional information defining the nature of [redacted] or the type of exhibition referred to in the certificate, which again was not accompanied by a certified translation.

Additionally, the Petitioner provided a certificate from Museum of Latin American Art, Buenos Aires, recognizing the Petitioner for her “outstanding participation as a Jury” in the [redacted]. The record contains no further information explaining the nature of this “donation,” such that we can determine whether her service as a “jury” involved judging of the work of others in the same or allied field of specialization.

The uncertified translations of the above-referenced certificates do not meet the plain language requirements of 8 C.F.R. § 103.2(b)(3). Although they purport to acknowledge the Petitioner’s service as a “jury” or “juror,” the Petitioner did not provide evidence corroborating the certificates from these organizations, such as documentation or letters detailing her responsibilities as a jury member for the referenced exhibits or donation, or any other evidence regarding these events and how they were judged. Without this evidence, we cannot determine that her role as a “jury” or “juror” involved judging the work of others in her field. Without certified translations and supporting evidence clarifying her role, the Petitioner did not demonstrate that she satisfies this criterion. Accordingly, we withdraw the Director’s finding for this issue.

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).

Although the Director determined that the Petitioner fulfilled this criterion, we disagree. In order to meet this criterion, the Petitioner must show that the venues where her work was displayed were artistic exhibitions or showcases.¹⁰ The record contains a list of her claimed individual and collective exhibitions, identifying 12 individual exhibitions and 20 collective exhibitions at various locations in Spain and Venezuela. The record, however, is accompanied by uncertified translations of only three certificates, two issued by [redacted] and one issued by [redacted] which recognize her “participation” in “exhibitions.” The certificates do not clarify the nature of the referenced exhibitions or the extent of her “participation” in such exhibitions. Further, because the Petitioner did not provide certified translations, she did not establish that the submitted documentation accurately supports her claims.¹¹

Moreover, the Petitioner also submitted uncertified translations of an “Undefined Work Contract” between the Petitioner and the Museum of [redacted] as well as a contract between her and [redacted] in support of this criterion. Although the contract with the Museum of [redacted] indicated that she would serve as an “honorary counselor,” no further information regarding her roles or obligations to this organization was submitted. Moreover, the contact between her and the [redacted] was vague and did not define her role. Absent additional evidence, the evidentiary purpose of these documents is unclear, as they do not indicate that such agreements were related to the artistic display

¹⁰ See *id.*

¹¹ See 8 C.F.R. § 103.2(b)(3).

of her work. These documents do not demonstrate that her work was displayed at artistic exhibitions or showcases.

For these reasons, the Petitioner did not establish that she satisfies this criterion, and we withdraw the Director's findings for this issue.

B. Summary and Reserved Issue

We conclude that the Petitioner has not established that she meets any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), of which she must meet at least three to satisfy the initial evidence requirement for this classification. As this determination is dispositive of the appeal, we reserve and will not address the Director's separate determination that the Petitioner did not demonstrate that she seeks to enter the United States to continue work in the area of extraordinary ability, as required by section 203(b)(1)(A)(ii) of the Act and 8 C.F.R. 204.5(h)(5).¹²

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 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.

¹² *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).