



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

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

In Re: 21166441

Date: JUL. 27, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a hair stylist, 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 of this classification by meeting three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner asserts that she meets four criteria in addition to the two criteria that the Director concluded she met.

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 withdraw the Director's decision and remand the matter for a new decision consistent with the following analysis.

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 hair stylist who opened her own studio in 2005. The evidence shows that she has received several awards in national stylist competitions, and has styled the hair of several celebrities in her native [REDACTED]. She states that upon relocating to the United States she plans to open a new salon in [REDACTED].

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 published materials about her and her participation as a judge of the work of others in her field. On appeal, the Petitioner asserts that she also meets four additional criteria. After reviewing all of the evidence in the record, we find that she has met the initial evidence requirement for this classification by meeting three criteria, and will therefore remand the matter to the Director to conduct a final merits analysis.

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)

The Petitioner submitted several interviews and articles about her and her work as a stylist which were mainly published on the websites of [REDACTED] news media. In addition, the record includes evidence which demonstrates that some of those websites are comparatively highly visited to the extent that they may be considered to be major media. We therefore agree with the Director that this criterion has been met.

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)

The record shows that the Petitioner served as a judge for the [redacted] Championship in Hairdressing, Decorative Cosmetics and Nail Art in 2009. As such, we agree with the Director's conclusion that this evidence establishes that she meets this criterion.

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)

In order to meet this criterion, a petitioner must show that their work in the field was displayed at an exhibition or showcase, and that the exhibition or showcase was artistic in nature. The Director noted three general categories of evidence submitted by the Petitioner in support of this criterion: photos from fashion shows, credits from video productions, and articles about competitions. While he did not dispute that the Petitioner's work was displayed in music videos, fashion shows, and beauty competitions, he concluded that the evidence did not establish that any of these were artistic exhibitions or showcases versus events conducted for marketing or competitive purposes.

On appeal, the Petitioner focuses on several competitions and fashion shows in which hairstyles she created were displayed, and refers to previously submitted evidence which include photographs taken at two competitions in which she competed in 2006 and 2009. Those photographs show that as part of the competitions, models displayed the hairstyles, makeup and fingernails created by the stylist competitors in a runway show attended by spectators. While the overall exhibitions within which the competitions take place have a commercial component, the evidence sufficiently demonstrates that the competitions were primarily exhibitions of the artistic skills of the competing stylists. Accordingly, we withdraw the Director's decision regarding this criterion and conclude that the evidence shows that the Petitioner meets this criterion.

B. Final Merits Determination

Because we conclude that the Petitioner meets at least one criterion under 8 C.F.R. § 204.5(h)(3) in addition to the two which the Director determined that she met, she has met the initial evidence requirement for the requested classification. We therefore need not consider whether she also meets additional criteria. Rather, the totality of the evidence, including evidence not discussed by the Director in his decision or herein, must be analyzed in a final merits determination to assess whether it shows that the Petitioner has sustained national or international acclaim in the field of hair styling and is one of the small percentage of stylists at the top of that field. As the Director's decision did not include a final merits determination, we remand this matter for him to consider the entirety of the record and determine whether the Petitioner has established her eligibility as an individual of extraordinary ability.

ORDER: The decision of the Director is withdrawn and the matter remanded for the entry of a new decision consistent with the foregoing analysis.