



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

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

In Re: 20605387

Date: JUN. 1, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, an actress, 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 Nebraska Service Center denied the petition, concluding that although the record demonstrated that the Petitioner met the initial evidentiary requirements for this classification, it did not establish the Petitioner's eligibility as an individual of extraordinary ability.

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 an actress who works in the Chinese film and television industry.

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 Petitioner claimed to meet four of these criteria, and the Director concluded that she submitted evidence to satisfy three of them. Specifically, the Director determined that the Petitioner met the criteria relating to lesser nationally recognized awards, published materials in major media, and commercial success. *See* 8 C.F.R. § 204.5(h)(3)(i), (iii) and (x). We will not disturb the Director’s determinations with respect to these criteria.

After determining that the Petitioner satisfied three of the regulatory criteria, the Director proceeded to a final merits determination. Based on an evaluation of the totality of the evidence, the Director concluded that the record did not show the Petitioner’s sustained national or international acclaim and did not demonstrate that she is at the very top of her field of endeavor.

On appeal, the Petitioner asserts that the Director erred in conducting a multi-part analysis and final merits determination and cites to *Kazarian*, 596 F.3d 1115 (9th Cir. 2010). The Petitioner further asserts that the Director’s decision is contrary to the plain language of the regulatory language, arguing that the regulation at 8 C.F.R. § 204.5(h)(3) requires only that she provide evidence of a qualifying major, internationally recognized award or evidence that satisfies at least three of the ten alternate criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). She further contends that since she has met the minimum required evidentiary criteria, the petition should be approved.

The Petitioner further claims that the Ninth Circuit Court’s decision in *Kazarian* supports her position. Specifically, she maintains that, according to *Kazarian*, if an applicant has satisfied at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), “he should win” and if “he has met 2 or less, he should lose.” In addition, she states that “[n]owhere in *Kazarian v. USCIS* does 9th Circuit rule

that meeting 3 types of evidence does not qualify for extraordinary abilities.” The Petitioner is mistaken in her reading of *Kazarian*, which does in fact set forth the multi-part analysis referenced above, in which eligibility can only be established if a petitioner first meets the initial evidence requirements of a qualifying major internationally recognized award or at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The *Kazarian* decision does not state that meeting three of these criteria establishes eligibility for this classification. Rather, *Kazarian* discusses a two-part review where the evidence is first counted and then, if the initial evidence requirements are fulfilled, considered in the context of a final merits determination to determine whether a given petitioner is one of that small percentage who have risen to the very top of the field of endeavor consistent with the statute and regulations for this restrictive classification.

Therefore, for the reasons discussed, the Petitioner has not established that the Director erred in proceeding to 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. The record, however, does not demonstrate that her achievements rise to a level of a “career of acclaimed work in the field” as contemplated by Congress. See H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). In this matter, the Director determined that the Petitioner did not demonstrate that she meets this very high standard. On appeal, the Petitioner has not addressed the Director’s decision beyond objecting to its inclusion of a multi-part analysis and final merits determination. Upon our *de novo* review of the record, and for the reasons discussed below, we have reached the same conclusion as the Director.

The record reflects that the Petitioner has maintained a professional acting career in China’s television and film industries. As mentioned above, the Petitioner has won awards for acting, been featured in media publications in China, and has experienced some commercial success. The record, however, does not demonstrate that her achievements are reflective of a “career of acclaimed work in the field” as contemplated by Congress. *See id.*

The Petitioner has established that she has received five acting awards from national performing arts entities in China. In 2010, she received the [redacted] Television Drama Actress award at the [redacted] China Television [redacted] Awards, as well as the [redacted] TV Actress award at the [redacted] China [redacted] TV Art Festival, which the Petitioner claimed “is the highest award for a television drama performing actress in China.” The record reflects that the events received major media recognition in *Beijing Daily* as well as media coverage in other Chinese publications. The evidence establishes that these awards are nationally recognized and that her receipt of these awards garnered the Petitioner some national acclaim in China. However, she received these awards approximately 10 years prior to filing the petition and must demonstrate that she sustained this level of acclaim and remains at the very top of her field.

For her performance in the television series [redacted] the Petitioner received the [redacted] Actress award at the [redacted] Television [redacted] Award of China Radio

and Television Grand Prize in 2011. The award is described in the record as “the only government award for Chinese TV series,” and documentation submitted indicates that the award is issued biennially. Although the record demonstrates some media coverage of these awards, the record does not include evidence that the award ceremony or the winners received media attention from major media or entertainment industry publications and does not otherwise establish to what extent this award contributed to the Petitioner’s sustained national acclaim.

The Petitioner also provided evidence that she received the Award of China [redacted] Most Favored Actress at the China [redacted] TV Festival in 2012. The Petitioner submitted search result statistics from Google for this award as well as a list of previous award winners from *Baidu Encyclopedia*,¹ noting that several of the past award winners are internationally renowned for their work. The record, however, does not demonstrate that the Petitioner received significant media coverage as a result of winning the award. Further, the record lacks evidence establishing the level of national acclaim associated with this achievement, or to what degree such acclaim was sustained, given that her next award, a China Film Performing Arts Institute Award, was received nearly seven years later in [redacted] 2019. While her receipt of the Most Favored Actress at the China [redacted] [redacted] TV Festival garnered her some attention from the field, she has not shown that her receipt of this award resulted in or contributed to her sustained national or international acclaim.

Regarding her China Film Performing Arts Institute Award, discussed above, the Petitioner submitted evidence demonstrating that this accolade is awarded to individuals who played roles in films “in the immediate past two years.” According to the selection criteria, candidates for this award must also have achieved “excellent results in the new film performance” in either a leading or supporting role, and were required to submit an academic article summarizing the creative process of their role. The Petitioner again relied on the user-edited online encyclopedia site *Baidu* for information pertaining to past award winners, but provided insufficient evidence demonstrating that this competition is prestigious or well-known such that this award was nationally or internationally recognized and brought acclaim of that scope to the Petitioner.

Overall, the evidence related to the Petitioner’s awards establishes that she has received industry recognition based on her performances in television and in film, as well as some major media recognition, specifically as a result of her [redacted] Awards received in 2010. The record demonstrates that she received all but one of her acting awards eight or more years prior to the filing of the petition in 2020, while the significance of her one more recent award has not been established. For these reasons, the evidence related to her awards does not demonstrate her sustained national acclaim in her field and indicate that she is currently among that small percentage who have risen to the very top of the field.

Regarding published material about her, the Director determined that while the Petitioner submitted ample evidence demonstrating that she received media coverage within China, the record lacked evidence of major media coverage outside of China and internationally. Moreover, upon review, we note that many of the submitted articles were not supported by sufficient independent evidence to establish that the publications qualified as major media, as the Petitioner relied primarily on the publications’ own websites, without providing objective evidence that such publications enjoy high

¹ We note that *Baidu*, similar to *Wikipedia*, is an online, open source, user-edited encyclopedia.

circulation or distribution in comparison in relation to others, or that they are professional or major trade media.

Even if we determined that the Petitioner provided sufficient evidence to establish that all or most of the submitted articles had appeared in major media, the evidence does not establish that the articles published over the course of a decade-long career in the film and television industry are consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. The submitted media coverage shows that the Petitioner has received media recognition for certain roles and projects during her career but does not demonstrate that she has enjoyed sustained national acclaim. The Petitioner works in a high-profile industry in which most, if not all, projects receive media coverage to some extent. Without evidence that sets her apart from others in this field, she has not established how the submission of the published articles about her demonstrates that she is among “that small percentage who [has] risen to the very top of the field of endeavor.” *See* 8 C.F.R. § 204.5(h)(2). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

Regarding the Petitioner’s commercial success, the Petitioner provided evidence reflecting the commercial success of [REDACTED], a 2018 Chinese film in which she appeared. The box office ratings submitted demonstrate that this film has been widely viewed, and accordingly the record reflects that the Petitioner has achieved some degree of commercial success. However, the Petitioner does not offer evidence demonstrating that she has been recognized in the field for this success. For example, the Petitioner does not offer evidence showing how this film’s commercial success sets her apart from that of the success of other films, and therefore other actors in her field of endeavor.

Beyond the three criteria determined by the Director that the Petitioner satisfied, discussed above, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility as an individual of extraordinary ability. Here, we find that the evidence does not establish that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of her field.

The Petitioner submitted evidence that she served as a juror for the [REDACTED] Youth Film Festival in 2017. The Petitioner, however, did not establish that her work on the judging committee of this youth film festival reflects a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. She did not show, for example, that this single judging instance places her among the small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner did not demonstrate how her judging experience compares to others at the top of the field, that the committee included only nationally acclaimed artists, or that the judging committee members received significant recognition in the field as a result of their participation.

The record as a whole, including the evidence discussed above, does not establish the Petitioner’s eligibility for the benefit sought. The record reflects that the Petitioner has enjoyed a career as a film and television actress, is regarded as a talented performer, and has received some industry and press

recognition with respect to a few of her projects over the years. However, the Petitioner seeks a highly restrictive visa classification, intended for individuals who are at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that she has sustained national or international acclaim and is among the small percentage at the top of her field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

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.