



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

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

In Re: 19795789

Date: MAR. 10, 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 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of the ten initial evidentiary criteria for this classification, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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 sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories 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 who has conducted numerous workshops and has displayed her work in galleries and exhibitions, primarily in Colombia. The Petitioner intends to continue working as a visual artist in the United States.

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 three of the ten criteria, namely: original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v); display at artistic exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii); and high salary under 8 C.F.R. § 204.5(h)(3)(ix).

The Director determined that the Petitioner met the display criterion at 8 C.F.R. § 204.5(h)(3)(vii). We agree, as the record establishes that the Petitioner has displayed her work in a number of galleries and exhibitions in Colombia.

On appeal, the Petitioner asserts that the Director’s decision was erroneous, and maintains that she meets three of the initial evidentiary criteria and is otherwise eligible for the classification sought.

We will address the Petitioner’s claims with respect to the individual evidentiary criteria below.

Evidence of the individual’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

To satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

The Petitioner claims to have made original contributions in the field of visual arts, with a special emphasis on [redacted]. Specifically, the Petitioner asserts that she has pioneered new techniques in [redacted] and has developed a novel method of working with [redacted] and [redacted] colors, and submitted numerous letters of support from experts in her field in support of this assertion. In denying the petition, the Director acknowledged that the testimonial letters submitted were highly complementary of her work and professional accomplishments. However, the Director determined that the testimonial evidence did not establish that she has made original contributions of major significance in the field. He included quotes from several letters and emphasized that while they discuss the Petitioner's artistic vision and technical knowledge as applied to specific [redacted] and [redacted] the letters lacked specificity as to how the Petitioner's work has impacted the field or how her techniques have been widely used or accepted within the field. The Director cited case law indicating that U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, consider advisory opinions as expert testimony, but that USCIS is ultimately responsible for making the final determination regarding eligibility. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988).

The Petitioner asserts that she has developed a novel method in which she creates colored [redacted]
[redacted]
[redacted]. She further claims that she has pioneered new techniques in [redacted] where she applies and combines different materials and [redacted] resulting in a [redacted] effect which she states is a [redacted] appearance. According to the Petitioner, she has displayed examples of her work which incorporate these techniques at numerous galleries and exhibitions, and has conducted workshops where she mentors other artists in the implementation of her methods. The Petitioner asserts that the letters submitted in support of the petition and in response to the Director's request for evidence support these assertions.

In general, the letters recount the Petitioner's achievements in [redacted] and [redacted] but do not demonstrate that her contributions in the artisan field have made the required impact in the field. Upon review of the record, we concur with the Director's determination that the Petitioner did not satisfy the requirements of this criterion.

We observe that the individuals who provided letters in support of the petition attest to the Petitioner's artistic and technical talents as a visual artist, highlight the techniques she has presented in various workshops during the course of her career, and contain assertions that she is well known and highly regarded within the artisan field. We have no reason to question the credentials of the industry experts who provided letters in support of the petition or to doubt the credibility of their statements or the sincerity of their praise for the Petitioner's work. However, the letters focus on the Petitioner's contributions to specific projects, workshops, or her overall standing in the field rather than specifically articulating how her contributions are of major significance in the field and have impacted subsequent work. We address a representative sample of the letters below but have reviewed and considered each one.

[redacted] curator of [redacted] Gallery in [redacted] praises the Petitioner's work with both [redacted] and [redacted]. She states that the Petitioner has held various exhibitions at her gallery, and praises her "excellent composition in each and every work where she has been well-known recognized for her work and beautiful pieces of art." While she describes the "great aesthetic sense and techniques" the Petitioner applies to her [redacted] work, and praises the Petitioner's development of [redacted]

techniques and [redacted] style which she claims “have been used by other [redacted],” her statements do not demonstrate how the Petitioner’s specific contributions have impacted or influenced subsequent work in her field. While [redacted] generally discusses the Petitioner’s novel methods and her success in her field, she does not provide specific, detailed information identifying or explaining the unusual influence her [redacted] and [redacted] methods have had in her field, or corroborating evidence demonstrating that such methods have been widely adopted and implemented by other artists as claimed. Having a diverse or unique skill set is not in-and-of-itself a contribution of major significance, unless a petitioner shows that she has used those skills to impact or influence the field.

The record indicates that the Petitioner has taught her methods through various classes and workshops. [redacted] Director of the [redacted] Museum in Colombia, states that in addition to exhibiting her [redacted] and [redacted] the Petitioner has taught her [redacted] method to the museum’s students, “many of whom now are well-known” artists.” [redacted] an Italian contemporary artist, states that she attended several of the Petitioner’s workshops and praises her as a “unique artist and mentor,” noting that “she perfectly blends the colors that are unique and she has perfect[ed] them over the years.” [redacted] further states that she hopes that the Petitioner “has the opportunity to expose her unique art and continue to mentor other artists with her techniques which are so wonderful. . . .” Colombian artist and stained glass designer [redacted] who attended the Petitioner’s [redacted] workshops, states that “she demonstrated great ability to handle the [redacted] theme,” highlighting her precise and unique application of “[redacted]” and a high degree of [redacted] in order creative original and beautiful [redacted] [redacted] praises her work and claims that he implemented her techniques in several of his own projects.

The authors of these letters attest to the talent of the Petitioner, but do not provide specific examples of how the Petitioner’s teaching methods or [redacted] and [redacted] techniques have influenced the work of other visual artists, or otherwise equate to original contributions of major significance in the field. Also, the submitted letters do not include an explanation as to how the Petitioner’s choice of methods differs from that of other [redacted] or [redacted] artists. The plain language of this regulatory criterion requires that the Petitioner’s contributions be “of major significance in the field” rather than limited to the persons that she teaches or mentors. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). Moreover, while the authors praises the Petitioner’s innovative methods pertaining to [redacted] and her [redacted] method for [redacted] they do not identify any specific examples of how the Petitioner’s methods have influenced the field of [redacted] and [redacted] or otherwise constitute original contributions of major significance in the field. Vague, solicited letters from colleagues that do not specifically identify original contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian*, 596 F.3d at 1122.

We further note that while several of the authors claim to have learned a great deal from the workshops they attended and praise her expertise and teaching methods, none of the authors indicate that the Petitioner has gained recognition for such methods or for significant contributions in the field. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility;

USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. *Id.* See also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

Moreover, we note that [REDACTED] she "hopes" that the Petitioner "has the opportunity to expose her unique art" and "continue to mentor other artists." The regulation requires that the Petitioner has already made major and significant impacts within her field. Furthermore, it can be expected that, to rise to the level of contributions of major significance, other artists would have already reproduced the Petitioner's methods and applied those methods in their work. Here, [REDACTED] comments suggest that the Petitioner's methods have not yet been widely implemented and have not yet significantly impacted the field.

The Petitioner also presented evidence regarding her success in the sale of her artwork. While the Petitioner's methods and individual pieces may be unique in the art world, she has not demonstrated how her work has influenced the field aside from being distinct from other artwork. While the letters in the record from buyers of her work indicate that her work is a favorite among various collectors, the Petitioner does not explain how being a favorite of collectors is having a discernable impact in her field. While any art with exposure such as the Petitioner's can be viewed as contributing to the field, she must also demonstrate that her contributions are of major significance in the field. To rise to the level of contributions of major significance, the Petitioner's work can be expected to have an influence on similar artists and similar works of art. *Visinscaia*, 4 F. Supp. 3d at 134.

With regard to the Petitioner's display of her work in galleries and participation in various art exhibitions, the regulations contain a separate criterion for display of work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). Evidence relating to or even meeting the display criterion is not presumptive evidence that the Petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for artistic display and original contributions of major significance in the field, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. The Petitioner did not explain how her work has substantially impacted the visual arts field, has influenced the work of other artists, or otherwise equates to original contributions of major significance in the field. At best, the evidence shows that the art world has noticed the Petitioner's work and has considered it to be worthy of showing. This consideration, without evidence that her work also has affected and/or advanced the field in a significant way, is insufficient to show that the Petitioner's work constitutes "contributions of major significance in the field," as required under the plain language of the criterion.

The opinions of the Petitioner's references are not without weight and have been considered above. The preceding references highlight their acquisition of her work, their display of her work in their respective galleries, and their admiration for her as a mentor, and her skills as a visual artist. However, they fail to provide specific examples of how the Petitioner's artwork and methods equate to original contributions of "major significance" in the field. As noted previously, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron Int'l*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not

presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the individual's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2. Thus, the content of the references' statements and how they became aware of the Petitioner's reputation are important considerations. Without additional, specific evidence showing that the Petitioner's original work has been unusually influential, has substantially impacted her field, or has otherwise risen to the level of artistic contributions of major significance, we cannot conclude that she meets this regulatory criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

In order to satisfy this criterion, the Petitioner must demonstrate that she commanded a high salary or other significantly high remuneration for services in relation to others in her field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The Petitioner claims that she is highly compensated for the sale of her artwork. The record includes notarized statements from four collectors attesting that they have purchased pieces of the Petitioner's artwork for the collective sums of \$3,000, \$3,500, \$4,000, and \$4,000, respectively, between the years of 1995 and 2020. The Petitioner also submitted photographs of pieces of art listing the value of each piece (ranging from \$300 to \$1,000 per piece) when sold, but the Petitioner's name is not listed in the photographs as the artist of those works.

The record also contains testimonials from gallery owners attesting to the Petitioner's commercial sales while associated with each respective gallery. For example, [redacted] of [redacted] Gallery states that the Petitioner's work drew sales of \$6,000 between 2013 and 2015. [redacted] of [redacted] [redacted] claims that the Petitioner was "linked" to his gallery for several years and that her works earned a total of \$3,000 during that period; however, the time period in which the sales were accrued was not specified. [redacted] of [redacted] Gallery indicates that the sale of the Petitioner's artwork by the gallery between 1995 and 2000 earned \$3,500.

Notwithstanding the above, this regulatory criterion requires the Petitioner to demonstrate that she commands a high salary or other significantly high remuneration for services "in relation to others in the field." The Petitioner provided limited documentation of her past remuneration for her artwork, and the record lacks comparative information to establish that she commands significantly high remuneration in relation to others in her field. Accordingly, the Petitioner did not establish that she satisfies this criterion.

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 lesser 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 conclusion 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. Here, the Petitioner has established that she is a skilled visual artist specializing in the field of [] and [] and that she has gained recognition for her unique works or art as well as her mentoring abilities. But she has not shown that this recognition rises to the required level of 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 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.

ORDER: The appeal is dismissed.