



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

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

In Re: 27422937

Date: AUG. 22, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (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 (EB-1) 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 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 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 an artist who has displayed her work and offers art instruction to beginners via her social media account. She intends to continue working as an artist through creating and marketing her own artistic work, and by conducting art classes to children between the age of four and fifteen. 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 determined that the Petitioner met two of the claimed evidentiary criteria relating to published material at 8 C.F.R. § 204.5(h)(3)(iii) and artistic display at 8 C.F.R. § 204.5(h)(3)(vii), and we agree with that determination.

On appeal, the Petitioner asserts that she also meets the 8 C.F.R. § 204.5(h)(3) evidentiary criteria relating to lesser nationally or internationally recognized awards (i), membership (ii), and original contributions (v). She does not assert eligibility under the judging (iv), authorship (vi), leading or critical role (viii), high salary (ix), or commercial success (x) criteria. Therefore, we deem these issues to be waived and will not address these criteria 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 the evidence in the record and conclude that the Petitioner has not established that she meets the requirements of at least three criteria.¹

Documentation of the individual'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).

This criterion contains several evidentiary elements the Petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the Petitioner is the recipient of prizes or awards, that the awards are nationally or internationally recognized, and that each prize or award is one for excellence in the field of endeavor. *See also 6 USCIS Policy Manual F.2 appendix*, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (noting relevant

¹ While we may not discuss every document in the record, we have reviewed and considered each one.

considerations in determining if the award or prize meets this criterion, include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients, as well as any limitations on competitors).

As evidence of her lesser national or international awards, the Petitioner submitted certificates from an art promotion organization, [redacted] [L-], regarding artwork that she had submitted to L- as paid entries in its art competitions. According to the internet material submitted by the Petitioner about L-, its mission is to “help[] today’s artists to market their art.” L- offers art competitions on a monthly basis to “amateur and professional artists” who may submit digitized entries of their work on a sliding fee basis – “\$14 for 1 to 2 entries and \$24 for 3 to 5 entries.” There is no limit to the number of entries an artist may submit as long as the fees are paid. However, the pool of entries submitted for L-’s consideration is limited by how many entries the contestants are willing to pay for.

L-’s internet material indicates “[t]he top winning artists for each exhibition will be promoted and circulated to over 550+ major News Outlets, Premium Fox, CBS, NBS, Affiliate Sites, Guaranteed inclusion on Google News & Bing News and Social Media Inclusion.” L- notes “the winning images will be seen by an international audience of gallery directors, art collectors and art consultants. . . . the winning entries will be featured on [L-’s online gallery] for one month and then remain in [L-’s] archive gallery for five (5) years. By having their work on the [L-] website, winning artists should increase exposure to their work, enhance their resume and create an increased number of backlinks to their own website.”

In the request for evidence (RFE), the Director advised the Petitioner that she had not demonstrated that the claimed awards were nationally or internationally recognized and requested additional documentary evidence in support of her eligibility under this criterion. The Director stated that such evidence should demonstrate the criteria used to grant the awards, their significance (including the national or international recognition associated with the awards), the reputation of the organization or panel granting the awards, the geographic scope of the awards and any limitations on competitors, the number of awards or prizes granted, evidence related to previous award winners, and public announcements of the awards.

In response, the Petitioner stated that her “special merit” and “special recognition” awards from L-, along with the submitted information about L- “are sufficient to establish that her awards are recognized both nationally and internationally.” The Director denied the petition, in part, concluding that the evidence submitted was insufficient to meet the plain language requirements of this criterion.

On appeal, the Petitioner points to her “special merit” award from L- for her entry entitled [redacted] among other L- awards, noting that in this competition “over 1,000 contestants from over 30 countries in the world competed.” She states that she “submitted multiple awards she received in [L-’s] competitions. . . [which] clearly satisfies the requirements that the prize or award be recognized nationally or internationally and that the award or prize is for excellence in the field of endeavor.” We disagree.

L-’s internet materials indicate that it receives digitized art entries from amateur and professional artists living in various countries for consideration in its monthly fee-based competitions. While the

pool of competitors willing to pay for the entry of their digitized artwork stems from international locations, this fact alone does not substantiate the Petitioner's claim that the awards given to the winners of L-'s competitions are internationally or even nationally recognized awards for excellence in the field of endeavor.

For instance, the evidence does not sufficiently describe the evaluative criteria used by L- in selecting the winning entries in its competition. If an artist's entry is selected as a "winner," the artist is eligible to have their artwork digitally promoted by L- to various media outlets and the artwork will also appear in L-'s own web gallery. Here, the evidence suggests that L- is engaged in marketing artwork for artists via its website and fee-based competitions, not offering nationally or internationally recognized art competitions which grant prizes or awards for excellence in the field of endeavor. We conclude that this evidence is of little probative value to the issue at hand. *Matter of Chawathe*, 25 I&N Dec. at 369. The Petitioner has not met her burden in demonstrating that the certificates she earned through L-'s art competitions meet the plain language requirements of this criterion. Therefore, this criterion has not been met.

We acknowledge that the Petitioner previously filed another petition seeking the EB-1 extraordinary ability classification, which was denied in March 2020. The Petitioner contends on appeal that since the Director determined that she met this criterion in her first denied petition, the Director erred in concluding that she did not meet this criterion when denying the instant petition. USCIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior affirmative determinations which may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).

Documentation of the individual'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).

To satisfy this criterion, a petitioner must provide evidence of their membership in an association and demonstrate that such membership is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought. *See 6 USCIS Policy Manual, supra*, at F.2 appendix (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).

The Petitioner initially asserted that she met this criterion based on membership in three organizations, the [redacted] Society, Portrait Society of America, and the Pastel Society of America [PSA]. The Director determined that the initial evidence did not provide sufficient evidence about the Petitioner's membership in these organizations or their membership requirements to establish that this criterion had been met. In the RFE, the Director advised the Petitioner that the evidence she submitted did not establish that she is a member of an association in which membership is conditioned on outstanding

achievements in the field of endeavor as judged by recognized national or international experts in the field. He requested additional evidence to establish that the individuals who review prospective members' applications are recognized as national or international experts; the sections of the associations' bylaws which discuss the criteria for membership; and the sections of the bylaws discussing the qualifications required of those who review membership applications.

In response to the Director's RFE, the Petitioner narrowed her focus to just one organization, PSA, and submitted PSA's bylaws and a letter from its president [Mr. W-]. The Director reviewed the response, and then denied the petition, in part, concluding the Petitioner did not show that PSA members are required to have outstanding achievements to gain membership. He further noted that Mr. W-'s letter expressed that PSA's members have a level of expertise in the field, but that his statements did not indicate that the organization requires outstanding achievements of its members.

On appeal, the Petitioner states that while PSA's bylaws "do not specifically state that members are required to have outstanding achievements they do make clear that admission of a member occurs only after evaluation of the applicant's artwork by a jury of at least three signature members." We have carefully reviewed the bylaws and other submitted evidence about PSA, and conclude that contrary to the Petitioner's general assertions about PSA's membership requirements, the bylaws provide four levels of membership within the organization, as follows:

- Signature Member - shall be a person who (1) is engaged in the creation of pastel paintings and (2) has met the professional and other admission requirements. . . Admission of Full Member: Upon receipt of a membership application and the prescribed fees, a pastelist will have his or her submitted works evaluated by a jury of not less than three (3) Signature Members. . . The Jury will determine whether the works meet the established professional standards of the Society.
- Associate Member - shall be a person who (1) is engaged in the creation of pastel paintings judged by the Society to meet the basic principles of the pastel field, (2) exhibits the potential of meeting the professional standards of a Signature Member and (3) meets such other prescribed admission requirements of an Associate Member as the Board may from time to time establish.
- Honorary Member: A person, pastelist or non-pastelist, who has rendered either outstanding or distinguished services to the pastel field and/or other segments of the art world may be granted an Honorary Membership, provided that such person is not currently a Signature Member or an Associate Member of the Society.
- Supporting Member – shall be any person who contributes financially to the Society and meets other criteria [i]ncluding but not limited to the payment of dues.

The record contains the Petitioner's PSA membership certificate which reflects that she was "juried" as an associate member in October 2019. Based on the descriptions provided above, an associate member of PSA meets the "basic principles of the pastel field," but is the next lowest level of membership immediately above that of a supporting member who simply gains membership by financially contributing to the organization. While the Petitioner's certificate indicates that she is a "juried" PSA member, PSA's membership requirements in its bylaws do not suggest that associate members must have "outstanding achievements" in order to gain this level of membership. Rather, it appears that honorary membership is PSA's only membership category which requires "outstanding

or distinguished services to the pastel field and/or other segments of the art world,” and notably the bylaws also indicate that honorary memberships are not available to associate members, such as the Petitioner.

In summary, while it appears that PSA *may* offer a level of membership in its Society that requires outstanding achievements of its members, the record does not show that this is the category of membership that the Petitioner holds. For the sake of brevity, we will not discuss other deficiencies in the evidence regarding whether the Petitioner’s PSA membership meets the plain language of this criterion. This criterion has not been met.

Evidence of the alien’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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions, but that they 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 did not initially identify a specific original artistic contribution that she has made. In her RFE response, she pointed to her YouTube channel “that teaches viewers around the world how to create step-by-step drawings, mostly in the pastel and pencil art mediums.” She asserted that as her channel “has just under 100,000 subscribers, and in the cumulative, her videos have been viewed over 18 million times, [it] is an original artistic contribution of major significance further demonstrating that she is an artist of extraordinary ability who has attained both national and international acclaim in her field.” She provided copies of her channel’s internet pages showing a listing of the instructional videos that she posted in her channel with statistics regarding the number of shares, likes, and views that each video had garnered, as well as the total number of hours that viewers spent watching her videos as of October 2022 (when she made the screenshots of her channel). The Director ultimately determined that while the Petitioner has developed a moderate viewership on A-, her art instruction contributions through this activity had not significantly impacted the field of art.

On appeal, the Petitioner asserts that the Director did not give sufficient weight to “her channel’s subscriptions and view numbers [which] unequivocally demonstrates that millions of viewers have benefited from her art lessons.” However, we agree with the Director that without more, the Petitioner has not demonstrated that the “views” of her videos on YouTube translate to a showing that she meets the plain language requirements of this criterion. The Petitioner presented YouTube screenshots from October 2022 indicating that the number of subscribers to her channel at that time was 98,228, but this subscription information substantially post-dates the filing of the petition. Eligibility must be demonstrated at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Without more, the metrics for these videos do not support the Petitioner’s assertion that she had made contributions of major significance at the time the petition was filed in February 2021.

Regardless, the Petitioner has not sufficiently demonstrated that the availability of her videos on YouTube and subscribership to her channel signify original contributions of major significance in the field. As discussed, to satisfy this criterion, the Petitioner must establish that she has not only made original contributions, but that they have been of major significance in the arts. Major significance in

the field may be shown through evidence that her original art instruction methods or processes have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. Here, the Petitioner has not provided objective, independent documentary evidence to show that her YouTube channel videos are of major significance in her field of endeavor. *Chawathe, supra*.

For example, although the Petitioner provided screenshots from YouTube of her work, she did not offer evidence that her presence on YouTube resulted in the adoption of her art instruction methods by others involved in similar pursuits in the field, or otherwise engendered substantial interest from others with expertise within the field of endeavor. While the record indicates that the Petitioner has achieved a level of popularity in the art instruction industry through her YouTube channel, she has not demonstrated that her original work rises to the level of artistic or even business-related contributions of major significance in the field.

The record, including the YouTube screenshots, does not sufficiently establish that the Petitioner's original work has been unusually influential, has substantially impacted the field, or has otherwise risen to the level of original contributions of major significance. As such, the Petitioner has not demonstrated that she meets this regulatory criterion. *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).

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 determination 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 dedicated artist who devotes part of her time to providing art instruction to beginners. But she has not shown that her artistic achievements have been recognized at the required level of sustained national or international acclaim, or that her work to date 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.