



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

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

In Re: 28060386

Date: AUG. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a film director and producer, 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 requirement for the requested classification through evidence of a major, internationally recognized award or meeting at least three of the ten alternative evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that 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.” It also sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *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 television and film director and producer. She holds a master of science degree in cinematography and television production from the [redacted] University of Culture and Arts [redacted]

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she 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 one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her authorship of scholarly articles in her field, and we agree. On appeal, the Petitioner asserts that she also meets five additional evidentiary criteria.¹ After reviewing all of the evidence in the record, we conclude that she does not meet the initial evidence requirement for this classification and is not eligible as an individual of extraordinary ability.

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)

In order to meet this criterion, a petitioner must establish their receipt a prize or award, and that the prize or award was given for excellence in their field. In addition, it must be shown that the prize or award is nationally or internationally recognized in their field.

¹ The Petitioner does not contest the Director’s conclusion that she does not meet the criterion at 8 C.F.R. § 204.5(h)(3)(ii). An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). So we will not consider whether she meets that criterion in this decision.

Here, the Petitioner submitted evidence relating to several awards for films or programs. The Director determined that she received a 2007 Teletriumph award in the category [redacted] [redacted] from the Television Industry Committee (TIC) of Ukraine for the television program [redacted] but that the evidence does not establish that it is nationally or internationally recognized. However, we disagree in both respects. The evidence sufficiently demonstrates that the Teletriumph awards are Ukraine's only television awards and are presented jointly by TIC, a professional association in the television industry, and the national government body with oversight of the television industry. As such, they are nationally recognized in the Petitioner's field.

However, the evidence does not demonstrate by a preponderance that the Petitioner received the referenced Teletriumph award. The evidence relating to this award includes a page from TIC's website, photographs of the award trophy and the Petitioner holding it, and a letter from [redacted] [redacted] a filmmaker from Kazakhstan. The website states that the recipient was "New Channel," and does not mention the Petitioner. And although a caption to the photograph of the Petitioner holding the trophy indicates that she received it, this assertion is not supported in the record. While a letter from [redacted] director of the Petitioner's former employer [redacted] [redacted] in Ukraine, states that she worked as the director of "the awarding concert-ceremony [redacted]" his statement that she and [redacted] received the Teletriumph award for this work directly contradicts the evidence from the awarding entity's website.

The Petitioner also asserts on appeal that the Director did not properly consider the awards received by several films in which she states she was involved. These include [redacted] [redacted]. As noted by the Director, the evidence does not show that the Petitioner received an award for her involvement in the making of these movies. While the Petitioner argues that directors and producers play an integral part in the success of films, it is the awarding entities who decide which individuals or groups to recognize. Further, the section of the Petitioner's response to the Director's request for evidence (RFE) that she refers to on appeal includes several webpages and articles about both of these movies, including listings of the individuals who had important roles in their production, but none of this material mentions the Petitioner.

Regarding two additional awards claimed by the Petitioner, these are evidenced by a certificate and badge given to the Petitioner by a committee called "Revolution Guard" for "outstanding contribution to the liberation of Ukraine" and a photograph of a medal or pin from the Professional Football League with the notation "10 Years." On appeal, the Petitioner refers only to [redacted] letter for support that the certificate and badge from the "Revolution Guard" committee were given to her for excellence in the field of filmmaking, and as with the Teletriumph award, he does not claim to have been involved with the awarding entity or the project for which the Petitioner asserts she received this award. As for the Professional Football League award, the Petitioner asserts that since she produced work regarding or for the Professional Football League, the pin must have been given to her in recognition of that work. Beyond a statement from her former employer that she served as a director for an award ceremony held by the league, there is no further evidence in the record regarding this medal or pin. In addition, we agree with the Director that the record is insufficient to show why the Petitioner received either of these awards, and add that it is also insufficient to show that they are nationally or internationally recognized.

For all of the reasons given above, the Petitioner has not established that she meets this criterion.

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 have they made original contributions, but also that the 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. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

The Petitioner asserts that she has made three original contributions to the field of movie and television production and direction. The first is a “vanishing effect” she states that she created for a concert movie for the band [REDACTED] in 2008. In his letter, singer and musician [REDACTED] describes a “unique technical solution” employed by the Petitioner in creating this concert movie which made the performer disappear and reappear elsewhere on the stage. While [REDACTED] does not claim to possess technical expertise in lighting, cinematography, production, or direction of movies, he states that he has worked with many creative producers and directors over the course of his career, and that he had not observed other directors “achieve anything which would be even close to what she did.” He goes on to state that other bands and directors thereafter used this technical solution, but he does not provide any specifics.

Another letter which addresses this claimed original contribution was written by [REDACTED] a photographer. She writes that this effect was invented by the Petitioner and was “truly innovative,” and names two other video directors who subsequently “borrowed” it from the Petitioner for use in their own works. Also, [REDACTED] states in his letter that the Petitioner was the director for the television version of the [REDACTED] show and edited the concert film, but he does not mention the Petitioner’s use of the effect discussed in the other two letters.

While this evidence, particularly [REDACTED] letter, shows by a preponderance that the Petitioner worked as a director for the [REDACTED] concert movie, it does not establish that she invented the “vanishing effect” used in the movie as she claims. Notably, the two writers who make this assertion were not involved with the concert or its filming in any respect, and thus have no first-hand knowledge of the details of its production and direction. More importantly, their claims that this effect was the Petitioner’s innovation is not supported by documentary evidence, which given the writer’s lack of first-hand knowledge or technical expertise, and thus the credibility of these letters, is particularly needed. Depending on the specificity, detail, and credibility of a letter, we may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). As the record lacks such evidence, we agree with the Director that the Petitioner has not shown that her use of the “vanishing effect” was an original contribution to the field of film production and direction, or that it was of major significance.

Another original contribution claimed by the Petitioner is her book, [REDACTED]. [REDACTED] The translated excerpts showing the title page and introduction to the book are sufficient to establish that the Petitioner authored the book, and that it is a scholarly study of Ukrainian films made during the period referenced in the title. On appeal, the Petitioner submits new evidence consisting of a statement from [REDACTED] that this book “is included in the mandatory program of students at the faculty of cinema and television from 09.01.2017.” Because she was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. See 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial”). However, even if we were to consider this statement, it is not sufficient to show that the book has been widely implemented or had remarkable influence in the field of filmmaking.

The Petitioner also refers to an article from the website of *Woman* magazine which discusses her book and includes a picture of her holding the book. We first note that this article includes neither the date on which it was published or posted or the name of the author who wrote it, thus lowering its evidentiary value. Further, the submitted content of the article, which indicates that the book is intended for professionals in the movie industry and is original since it fills a gap in literature about this period of filmmaking in Ukraine, does not suggest that it has already been influential in the field of filmmaking. Similarly, a letter from [REDACTED] who states that he is a journalist, producer, and radio and television host, describes the book in detail and comments upon its originality, but then arrives at the conclusion that it is “an original contribution of major significance to the field of filmmaking” without support in the record. Repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof, as specifics are an important indication of whether the Petitioner meets this criterion. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990).

Finally, based solely upon a letter from [REDACTED] the Petitioner asserts that her teaching of a course on animation directing at the school is an original contribution of major significance to her field. As the record lacks evidence of the originality and significance of this eight-month course, this assertion is unfounded.

Based on the above analysis, we conclude that the Petitioner does not meet 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)

This criterion requires a Petitioner to establish that their work has been displayed, and that the display took place in artistic exhibitions or showcases. In her decision, the Director noted that the evidence submitted about the films [REDACTED] did not show that she was listed in the credits for these movies, and thus that the display of these works at film festivals was not the display of her work. On appeal, the Petitioner acknowledges the Director’s conclusion, but states only that a cinematography professional’s work is displayed at film festivals, and that the evidence previously submitted showed that works produced by her were displayed at film

festivals. This evidence includes screen prints from websites including imdb.com and Wikipedia.com, some of which list the cast and crew. The Petitioner's name is not listed in this evidence.

The evidence of record also includes the letter from [redacted] which the Petitioner asserts on appeal "provides detailed information regarding [the Petitioner's] work as a creative producer and her films which were displayed at a number of international movie festivals." As previously stated, [redacted] does not indicate that he was involved with the making of these films, so his accounts of the Petitioner's activities and roles are not based upon first-hand knowledge or observation of that work and are thus of little evidentiary value. In addition, despite the assertion that his letter provides detailed information regarding her work on these films, it simply lists a job title for each film. Even if the materials above showed that the Petitioner was credited for work in these films, the record lacks sufficiently detailed evidence showing that it was her work that was displayed at film festivals. Accordingly, she has not established that she meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

To qualify under this criterion, a petitioner must establish that they played either a leading or critical role for an organization or establishment, or a department or division thereof, and that that organization, establishment, department, or division has or had a distinguished reputation. For a leading role, a title and appropriate matching duties may help to show that a role is or was leading. In the case of a critical role, the evidence should show that the individual contributed in a way that is of significant importance to the outcome of the organization's or establishment's activities. It is not the title of an individual's role that makes it critical, but the individual's performance in that role. *See generally 6 USCIS Policy Manual F.2, Appendices tab, www.uscis.gov/policy-manual.*

Here, the Petitioner asserts that she played a critical role for both [redacted]. Regarding her role at [redacted] neither of the materials she references demonstrates that her role as the creator and instructor of a class on animation directing was critical for the university. The first, signed by [redacted] confirms that she created and directed the course and that [redacted] was pleased with her performance in this role. The second letter is from director and producer [redacted] a director and producer who states that he is a graduate of [redacted] and opines that the course taught by the Petitioner "played a critical role in the curriculum of the University." He also lists several reasons why he believes that the Petitioner's role was critical to the university, including that it allowed the university to expand its student base. However, [redacted] does not explain the source of this information, as he does not claim to be employed by [redacted] or have any relationship with it other than as a graduate, and he does not claim to have observed the Petitioner's class or its impact on the university. While letters from those with personal knowledge of a petitioner's leading or critical role for an organization or establishment are particularly helpful in demonstrating qualification for this criterion, letters from those with no personal knowledge are not. *Id.*

[redacted] letter about the Petitioner's role for [redacted] states that she was employed by the company as a director and creative producer since 2004. We first note that despite this statement, the letter is unclear about the dates of her employment. The letter goes on to state that the Petitioner worked on multiple productions for the company between 2005 and 2007, and then goes on to describe projects she completed with various other channels and companies between 2005 and 2008, and then

between 2012 and 2014. [redacted] does not indicate whether the Petitioner remained employed with [redacted] while working on these projects, nor does he explain the gap between 2008 and 2012 or if or when she ceased working for [redacted]

[redacted] describes several projects on which the Petitioner worked, and states that her role for [redacted] was critical because she led the company's "most complex a[nd] prestigious projects, all of which resulted in the highest ratings of our broadcasts. However, he does not provide any ratings data to support this assertion, whether for these projects or for the company overall. He also credits the Petitioner with directing the [redacted] project, but his claims that this resulted in her and [redacted] receiving the Teletriumph award are not supported in the evidence, as discussed above concerning the lesser awards criterion. In addition, he cites the Petitioner's use of an overhead camera on rails as innovative and an example of her technical solutions which were "quite ahead of their time," but does not refer to evidence supporting this statement or explain how her use of this technique was critical to [redacted] business. As such, this letter is insufficient to show that her role was critical to [redacted]

The Petitioner also relies upon [redacted] statements in attempting to establish that [redacted] has a distinguished reputation, but a reputation is a reflection of the views and opinions of others in a certain field. For this reason, [redacted] assertions alone are insufficient, and they are not supported by evidence that others in the filmmaking industry consider the company as marked by eminence, distinction, or excellence. *Id.* Further, while he claims that [redacted] is the largest television and media production company in Eastern Europe, this is also not supported with documentary evidence, and the size of an organization is not determinative when considering its reputation. *Id.*

For all of the reasons discussed above, we conclude that the Petitioner has not established that she meets 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 criteria. Although she claims to meet an additional evidentiary criterion relating to published material about her and her work, because she has met only one of the other criteria she claims, she cannot meet the requisite three criterion needed to satisfy the initial evidence requirement for this classification. Accordingly, we need not reach, and therefore reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof). Although we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, we have nevertheless reviewed the entire record and conclude that it does not establish that the Petitioner has 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 those 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 have 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).

ORDER: The appeal is dismissed.