



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

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

In Re: 21983241

Date: FEB. 3, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the Petitioner did not establish that she received a major, internationally recognized award, nor did she demonstrate that she met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner holds a bachelor’s degree in media communications and a fine arts degree in film production. She has worked in the film industry in her home country as a director and a producer. Her work in the industry led to her founding a film festival in the United States in the genres of horror, science fiction, and suspense short films.

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). Before the Director, the Petitioner claimed she met several of the regulatory criteria. The Director decided that the Petitioner satisfied the criterion relating to judging, and we agree with that assessment. But the Director determined she had not satisfied the criteria associated with prizes or awards, membership, published material, authorship of scholarly articles, or a leading or critical role.

On appeal, the Petitioner maintains that they meet each of those except for published material. As the Petitioner does not contest the published material criterion on appeal, she has abandoned those claims within these proceedings. *See Matter of Zhang*, 27 I&N Dec. 569, 569 n.2 (BIA 2019) (finding that an issue not appealed is deemed as abandoned). After reviewing all the evidence in the record, we conclude she has not met the antecedent procedural step of satisfying at least three regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x).

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).

The Director determined that the Petitioner did not meet the requirements of this criterion. The Director indicated some of the Petitioner’s claims were inadequate as she was not the recipient of the accolades and instead the recognition was directed towards productions in which she was associated. The Director broadly decided that none of the evidence the Petitioner provided demonstrated the prizes or awards were nationally or internationally recognized for excellence in her field. The Director specifically noted the record only established the piece the Petitioner co-produced, [REDACTED] that was recognized for best editing and best topical documentary at the Emmy [REDACTED] 2019 competition, only amounted to regional recognition because the “[REDACTED] Chapter is the regional

chapter of the National Academy of Television Arts and Sciences that represents” a segment of the southeast portion of the United States.

On appeal, the Petitioner offers a biography of Adam Sharp, President and Chief Executive Officer of the National Academy of Television Arts and Sciences. The explanation the Petitioner provides for this evidence is that Mr. Sharp oversees “the annual presentation of the coveted Emmy Awards . . . proving that [redacted] regional Emmy Awards is part of the National Academy of Television Arts & Sciences.”

Simply because the [redacted] regional awards program is in some way associated with this prestigious entity is not adequate to meet the regulations mandate here. This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the foreign national is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

The [redacted] Regional Emmys are awards granted by the [redacted] Chapter of the National Academy of Television Arts and Sciences. The [redacted] Chapter is one of 19 regional chapters and the [redacted] Regional Emmy Awards are distinct from the Emmy Award which corresponds with the Academy, Tony, or Grammy Award. The National Academy of Television Arts and Sciences website reflects that “[e]ach Chapter awards Emmys in their region . . .” *A few Words About Our Regional Chapters*, National Academy of Television Arts and Sciences (Feb. 1, 2023), <https://theemmys.tv/chapters/>.

Therefore, the Petitioner has not demonstrated honors issued by this regional chapter carry the level of recognition of a high-level award from The Academy. The evidence the Petitioner presents on appeal continues to demonstrate the 2019 competition was regional in nature, and they have not explained or offered evidence demonstrating this accolade is nationally or internationally recognized. Additionally, the record lacks the criteria this regional entity relied upon to select the winners of this accolade. Based on the lack of relevant evidence, the Petitioner also has not demonstrated this award was for excellence in the field, and we agree with the Director that she has not satisfied this criterion’s requirements.

Documentation of the alien’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).

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that she is a member of an association in her field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

On appeal, the Petitioner claims her membership of the [redacted] and the [redacted]. The Director identified her claims associated with the [redacted] but did not directly name any other entity. Regarding the other claimed associations, the

Director noted an absence of primary evidence such as bylaws or constitutions to establish each entity's membership requirements, and they ultimately determined that the evidence did not meet the requirements of this criterion.

As it relates to the [redacted] the Director evaluated this entity's constitution and found it does not reflect that outstanding achievements are required as an essential condition of membership for individual members. On appeal, the petitioner states this association is a confederation of journalists' trade unions. She claims the [redacted] is the world's largest organization of journalists, and she recounts the entity's history. However, she does not address the regulatory requirement that this association require outstanding achievements of its members by those recognized as national or international experts in the field. As a result, the Petitioner has not demonstrated the [redacted] will serve to satisfy this criterion's requirements.

For the [redacted], the Petitioner's appeal mentions a letter from the president of this association that she claims she offered in her response to the Director's request for evidence. We reviewed the entire record and found no such letter, and the only material from the president was offered with the initial petition submission in which a document he signed certifies her membership in this entity. The record lacks support for this association to meet this regulation's requirements.

The Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Director only considered scholarly material as it relates to the academic arena and determined that she did not meet the requirements of this criterion. However, those outside of academia may also qualify under this criterion. In non-academic arenas, a scholarly article should be written for learned persons in that field. "Learned" is defined as "having or demonstrating profound knowledge or scholarship." Learned persons include all persons having profound knowledge of a field. *See generally 6 USCIS Policy Manual F.2 (Appendices)*, <https://www.uscis.gov/policymanual>.

On appeal, the Petitioner contests the Director's decision and she offers two bases. First, she presented a book she authored relating to television and film production. However, she does not offer any additional arguments for this evidence for the prospect that it was written for learned persons in her field.

Second, she claims her service as a special guest at a seminar in which she was one of five presenters where she discussed her experience and knowledge as a director and producer in television and film. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and network with other professionals. Professional associations, businesses, educational institutions, and government agencies promote and sponsor these conferences. Here, the Petitioner does not posit that presenting orally at a conference equates to authorship of a scholarly article, nor does she establish that such a conference amounts to a professional or major trade publication or other major media. The record lacks proof that her work was introduced at the conference and was published

in any conference proceedings. We therefore determine that the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

While the Petitioner argues and submits evidence for one additional criterion on appeal relating to performing in a leading or critical role at C.F.R. § 204.5(h)(3)(viii), it is unnecessary for us to reach a decision on this additional ground because she cannot numerically meet the required number of criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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. As a result, we do not need to 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 it does not support a finding 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 that goal. U.S. Citizenship and Immigration Services 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 the significance of their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their 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.