



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

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

In Re: 28115531

Date: MAY 05, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a costume designer for athletes and performers, 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 classification's initial evidence requirement through evidence of either a one-time achievement or which met the requirements of at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.¹

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.

¹ The Petitioner's I-290B was initially assigned receipt number . On May 4, 2023, we issued correspondence notifying the Petitioner that this had been changed to the current receipt number, . This is an internal processing change only.

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 designer of costumes worn by athletes, particularly figure skaters, ice dancers, and synchronized swimming athletes, as well theater performers. The evidence indicates that her costumes have been worn by athletes during several Olympic Games and world championships. She currently lives and works in the United States and intends to continue to design costumes.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that they received a major, internationally recognized award, they must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found in his decision that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).² On appeal, the Petitioner asserts that she meets four of the evidentiary criteria.³ After reviewing all of the evidence in the record, we find that she does not meet the requisite three criteria, and thus does not meet the initial evidentiary requirements for the requested classification.

In addition to her brief, the Petitioner also submits additional evidence in support of her claimed criteria. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19

² The Director indicated in his request for evidence (RFE) that the Petitioner met the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(vii) relating to the display of her work at artistic exhibitions or showcases, but did not mention this criterion in his decision.

³ The Petitioner does not challenge the Director’s decision with regards to the criterion at 8 C.F.R. § 204.5(k)(3)(vi), relating to her authorship of scholarly articles. In general, we will not address issues that were not raised with specificity on appeal. We will therefore consider this issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n. 2 (BIA 2009).

I&N Dec. 533 (BIA 1988). The Director's RFE spelled out the deficiencies in the evidence initially submitted and listed additional evidence which could be submitted to address those deficiencies, and the Petitioner responded with additional evidence. We therefore will not consider the evidence submitted on appeal.

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)

The Petitioner bases her claim to this criterion on evidence of her membership in two associations: the [redacted] and the [redacted]. Regarding the former, the Director acknowledged the evidence of her membership beginning in 1989 in the [redacted] as well as a letter from [redacted] former Chairman of the Moscow Board of the organization, but concluded that the letter was overly broad and did not show that the association required outstanding achievements of its members. The Director also noted information from the website of the [redacted] which indicates that it was established on [redacted] 1991, and includes a list of documentation to be submitted for membership, but determined that this did not sufficiently demonstrate that outstanding achievements are required or that the documentation was reviewed by national or international design experts.

On appeal, the Petitioner focuses on the newly submitted evidence, but as stated above we will not consider this evidence. While she asserts that the [redacted] is the legal successor to the [redacted] [redacted] this is not indicated in the [redacted] webpage.⁴ More importantly, the relevance of the evidence regarding the [redacted] is not apparent, as the Petitioner did not submit evidence of her membership in that association. [redacted] letter states that the [redacted] ceased to exist in 1991, and does not specifically mention the [redacted] or indicate whether former members of the [redacted] would have been automatically accepted by the [redacted] or would have had to submit applications. Further, we agree with the Director that his letter does not sufficiently establish that the [redacted] required outstanding achievements of its members as judged by national or international experts.

Turning to the Petitioner's membership in the [redacted] the only evidence she refers to on appeal is a letter from [redacted] who states that he was a former president of the association. [redacted] confirms that the Petitioner "has been a member of the [redacted] as an outstanding artist," and that she has created costumes for the Russian national team at the World Championships and the Olympic Games. However, he does not provide any information regarding the requirements for membership in the [redacted], nor does the record otherwise contain such evidence. The Petitioner has not established that her membership in this association meets the requirements of this criterion.

As the Petitioner has not shown that her memberships in the [redacted] or the [redacted] required outstanding achievements, she does not meet this criterion.

⁴ The Petitioner bases this assertion on the newly submitted evidence, but we note that that evidence appears to be from the website of a different association, not the [redacted]

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

In order to meet this criterion, evidence of published material must be about the individual and their work in the field, be published in one of the qualifying media types, and include the identifying information specified. While the individual and their work need not be the sole subject of the published material, it should include a substantial discussion of the individual's work and a mention of the individual in connection to that work. *See generally* 6 USCIS Policy Manual F.2, Appendices Tab. The Director concluded that, for varying reasons, none of the evidence submitted met all of these elements.

In her appeal brief, the Petitioner first addresses two articles regarding bathing suits she designed, asserting that missing pages from the article in *Where Moscow* discuss her and her work. However, the evidence in the record is not sufficient to show that this article is about her, and the evidence from *Marie Claire* consists only of a caption accompanying a photo showing one of her swimsuits being modeled. Neither of these materials includes a substantial discussion of the Petitioner's work.

The Petitioner also asserts that materials appearing in five other publications should be considered to meet this criterion, as all of the publications qualify as major media. All of these articles are about the Petitioner and her work, and include the required date, author and title. But the evidence does not establish that the websites on which they were published qualify as major media. For example, in support of the materials published on the websites of *L!FE*, *Komsomolskaya Pravda*, and *RIA Novosti*, the Petitioner submitted only pages from Wikipedia about these companies. As there are no assurances about the reliability of the content from this open, user-edited Internet site, information from *Wikipedia* will be accorded no evidentiary weight. *See Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).⁵ In addition, even if we were to consider this evidence, it does not include information showing that viewership of these websites is high when compared to other similar websites such that they can be considered as major media. *See generally* 6 USCIS Policy Manual F.2, Appendices Tab.

As none of the published materials meet all of the elements under this criterion, we agree with the Director's conclusion that the Petitioner does not meet this criterion.

⁵ See also the online content from http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on April 14, 2023, and copy incorporated into the record of proceeding is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

In support of her qualification under this criterion, the Petitioner initially submitted a letter from [redacted] [redacted] who states that he is one of the founders of the [redacted] Figure Skating Awards. [redacted] states in this letter that the Petitioner was "invited by the organizing committee as a consultant and a member of the panel tasked with selecting initial contestants in 2019-20." In response to the Director's RFE, the Petitioner submitted a new letter from [redacted] who reiterates that she was invited to be a member of the selection committee for 2020 [redacted] Skating Awards. He goes on to state that in addition to her role on the organizing committee, she conducted the preliminary selection of contestants for the "best costume" award "for subsequent voting by the audience and members of the jury, of which she was a member." However, a press release from the [redacted] Skating Awards was also submitted, and it indicates that a long list of candidates was voted on through an online system by the media, public, and ISU members, not by a jury.⁶ The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Since these materials are inconsistent regarding the judging process for the awards, we will not afford [redacted] letters evidentiary weight. Therefore, the record does not show that the Petitioner served as a judge of the work of others for the 2020 [redacted] Skating Awards.

The Petitioner also asserts that she served as a member of the organizing committee for the First [redacted] as well as on a jury which judged a competition for young fashion designers within this event. She bases this assertion upon a letter from [redacted] who states that he was head of the sports department of the newspaper which sponsored the fair. He also writes that in addition to this fair, the Petitioner was invited to "other events as a member of the jury of beauty contests and fashion designers' contests." However, this letter lacks sufficient specifics regarding these contests, such as the dates of the events, the number or age of the contestants, or any additional information about the events themselves. Depending on the specificity, detail, and credibility of a letter, USCIS 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 Director noted, there is also a lack of documentary evidence in the record to support the statements in [redacted] letters. As such, we agree that the Petitioner has not established that she meets this criterion.

⁶ The press release (issued prior to the 2020 awards) does indicate that the final awards were to be determined by a jury, but the Petitioner does not claim to have been a part of this jury.

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)

The Petitioner submitted evidence that her work has been displayed at figure skating, ice dancing, and synchronized swimming competitions, as well as theatrical performances and other artistic exhibitions or showcases. She has therefore established that she meets this criterion.

B. Final Merits Determination

Per the above, the Petitioner has established that she meets one of the five evidentiary criteria she claims on appeal. While she also asserts that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(v) relating to original contributions of major significance to her field, we need not determine whether she meets that criterion. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.⁷ Accordingly, 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 finding that the Petitioner has established the acclaim and recognition required for the classification sought.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already 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 “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 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) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that they are 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.

⁷ *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).