



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

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

In Re: 35563226

Date: DEC. 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner describes herself as an artist, designer, and inventor. She seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate “sustained national or international acclaim” and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner met one of ten initial evidentiary requirements – two less than needed for a final merits determination. On appeal, the Petitioner asserts her satisfaction of five other evidentiary criteria.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, see *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she submitted documentation satisfying two additional evidentiary criteria: participation as a judge of other’s work in her field; and display of her work at artistic exhibitions or showcases. We will therefore withdraw the Director’s decision and remand the matter for a final merits determination and entry of a new decision.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term “extraordinary ability” means expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Evidence of extraordinary ability must initially demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x).¹ If a petitioner meets either evidentiary standard and the other statutory requirements, U.S. Citizenship and Immigration Services (USCIS) must then make a final merits determination as to whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010);² *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. Facts and Procedural History

The record shows that the Petitioner, a Nigerian native and citizen, received a bachelor of science degree in sociology from a university in her home country. While still in school, she created her own fashion line, establishing a company to make handbags and accessories. Her [REDACTED] [REDACTED] and designed to raise awareness of women's issues, has drawn attention. Although lacking formal art education or training, she has branched out from handbags to designing sculptures and other artwork.

The Petitioner states that, in the United States, she plans to continue her work in her field. She states: "I intend to continue in my creative endeavors and working towards major collaborations: licensing and distributing my works throughout the United States and globally."

The record does not indicate – nor does the Petitioner claim – receipt of a major internationally recognized award. She must therefore meet at least three of the ten evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i-x).

The record supports the Director's finding that the Petitioner submitted published material about herself relating to her work in her field. *See* 8 C.F.R. § 204.5(h)(3)(iii). She claims that she also provided evidence of:

- Her receipt of nationally or internationally recognized awards for excellence in her field;
- Her membership in professional associations in the field requiring their members' outstanding achievements;
- Her participation as a judge of others' work in the field;
- Her original contributions of major significance in the field; and
- Display of her work at artistic exhibitions or showcases.

¹ If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

² The record shows the Petitioner's residence within the ninth federal judicial circuit. Thus, we must follow applicable precedent decisions of the U.S. Court of Appeals for the Ninth Circuit in this matter. *See Jama v. Immigr. & Customs Enft*, 543 U.S. 335, 350 n.10 (2005) ("With rare exceptions, [a federal agency] follows the law of the circuit in which the individual case arises").

See 8 C.F.R. § 204.5(h)(3)(i), (ii), (iv), (v), (vii). The Petitioner’s evidence must “objectively meet[] the parameters of the regulatory description that applies to that type of evidence.” 6 *USCIS Policy Manual* F.(2)(B).

B. Judge of Others’ Work

To meet this requirement, a petitioner must submit evidence of their “participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.” 8 C.F.R. § 204.5(h)(3)(iv). A petitioner must show that they not only received an invitation to judge others’ work in the same or allied field, but also that they actually participated in the judging. 6 *USCIS Policy Manual* F.(2)(B)(1).

The Petitioner stated that several art galleries and artists contracted her to review art and mentor artists. She provided letters from gallery owners and other organizations stating her work for them as a reviewer and mentor. She also pointed to copies of newspaper articles that she claims confirm her work as an art reviewer and judge.

As the Director found, the newspaper articles do not meet this evidentiary requirement. The articles consist of the same piece about the Petitioner published in three different newspapers. In relevant part, the piece states:

A designer and innovator of great repute, [the Petitioner] wields an overwhelming influence in the art and creative firmament in Nigeria as she has worked herself to the top, becoming a go-to person for those still learning the rope[s] and others seeking to broker new grounds through insightful knowledge in the industry.

The piece’s plain language states that the Petitioner has influenced and helped others in her field. But the piece does not establish that she “judged” their work. The newspaper articles therefore do not meet the evidentiary requirement. See *Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, *3 (D. Nev. Sept. 9, 2008) (holding that an employer’s letter describing a petitioner as “a consultant for the examination committee” did not demonstrate the petitioner’s claimed judging activities in the role).

The Director discounted the letters from art gallery owners, finding that they lacked supporting evidence of the Petitioner’s claimed judging activities. But we do not generally require corroborating evidence of such non-party letters. Cf. *In re Soffici*, 22 I&N Dec. 158, 164-65 (Assoc. Comm’r 1998) (requiring documentary evidence to support a *petitioner’s* assertion).

A letter from one of the art gallery owners states that the Petitioner:

has helped to develop and judge Sculptural works created by me and other partnered Artists as well as other Artwork contracted to us by Private Individuals and Government Agencies: I have engaged her knowledge[,] skill and expertise in determining the final outcome.

We would prefer a more detailed letter. But we find the document sufficient to meet this evidentiary requirement.

The Petitioner submitted evidence of her participation as a judge of others' work in her field. We will therefore withdraw the Director's contrary finding.

C. Display at Artistic Exhibitions or Showcases

This criterion requires “[e]vidence of the display of the [noncitizen]’s work in the field at artistic exhibitions or showcases.” 8 C.F.R. § 204.5(h)(3)(vii). USCIS first determines whether the displayed materials constitute a petitioner’s work product. *See generally* 6 USCIS Policy Manual F.(2)(B)(1). Second, the Agency determines whether the venues that displayed a petitioner’s work were artistic exhibitions or showcases. *Id.* In this context, the term “exhibition” means “a public showing (as of works of art . . .).” *Exhibition*, Merriam-Webster.com, www.merriam-webster.com.

The Director found the Petitioner’s evidence insufficient to demonstrate displays of her work at artistic exhibitions or showcases. The Director, however, disregarded printouts of art gallery websites showcasing the Petitioner’s work. USCIS policy specifies that artistic exhibition and showcase venues may be “virtual or otherwise.” 6 USCIS Policy Manual F.(2)(B)(1). The printouts submitted by the Petitioner were from “artistic” websites. They therefore constitute evidence of displays of her work at artistic exhibitions or showcases.

The Petitioner submitted evidence of her work’s display in the field at artistic exhibitions or showcases. We will therefore withdraw the Director’s contrary finding.

D. Remaining Issues

The Petitioner has satisfied at least three of the ten initial evidentiary requirements for the requested immigrant visa category. We therefore need not reach and hereby reserve consideration of her appellate arguments regarding the other evidentiary criteria she claims to have met. *See INS v. Bagambashad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make “purely advisory findings” on issues unnecessary to their ultimate decisions).

USCIS must now make a final merits determination on the Petitioner’s filing. The Director did not make such a finding. Rather than decide the issue in the first instance, we will remand the matter.

On remand, the Director must determine whether the Petitioner has demonstrated sustained national or international acclaim and recognition for her achievements in her field commensurate with one of that small percentage who has risen to the field’s very top. *See generally* 6 USCIS Policy Manual F.(2)(B)(2). The Director should consider any potentially relevant evidence of record, even if it does not fit one of the regulatory criteria or was not presented as comparable evidence. *Id.* The petition’s approval or denial should depend on the evidence’s type and quality. *Id.*

III. CONCLUSION

The Petitioner has met the requisite three evidentiary criteria. USCIS must now make a final merits determination on the petition.

ORDER: The Director's decision is withdrawn. The matter is remanded for a final merits determination and entry of a new decision consistent with the foregoing analysis.