



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

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

In Re: 31160572

Date: JUNE 11, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a television producer, seeks first preference immigrant 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 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).¹ The matter is now before us on appeal pursuant to 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 because the Petitioner did not establish that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(ii) – (v) and (vii). The Petitioner also asserts that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(vi) and (viii), which relate to authorship of scholarly articles and performance in a leading or critical role for distinguished organizations or establishments, respectively. However, because the Petitioner has not established that meets five of the seven evidentiary criteria claimed on appeal, she would not establish that she met three out of ten criteria even if we considered her claims regarding the two remaining criteria. As such, we need not determine whether she meets the requirements of these two criteria, nor do we need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we will reserve these issues. *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).

¹ In analyzing the criteria listed at 8 C.F.R. § 204.5(h)(3)(ii) and (iii) the Director incorrectly determined that various website printouts that the Petitioner provided as supporting evidence required certified English translations which the Petitioner did not provide. However, because the Director fully discussed the contents of the respective documents and explained how they are deficient aside from the translation issue, the Director's errors did not materially alter the outcome of denial and need not be further addressed.

I. LAW

Section 203(b)(1) 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 international recognition of a beneficiary's 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 it must provide sufficient qualifying documentation demonstrating that the beneficiary 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 demonstrates that the beneficiary 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 claims to be an individual of extraordinary ability based on her skills and experience as a producer. She intends to use her skills and experience to advance her production company – [REDACTED] – and states that her goal is “to develop and support projects and programs that contribute to the spread of modern communication models.”

A. Evidentiary Criteria

The Petitioner does not claim or submit evidence to show that she received a major, internationally recognized award. She must therefore provide evidence showing that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Petitioner claims that she meets the

elements of seven of these criteria, which are summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the Petitioner;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (vii), Display of the Petitioner’s work at artistic exhibitions; and
- (viii), Performance in a leading or critical role for distinguished organizations or establishments.

The Director determined that the Petitioner did not satisfy any of the claimed criteria. On appeal, the Petitioner maintains that she satisfied all seven criteria.²

In the discussion below, we will address five of the claimed criteria, starting with the criterion at 8 C.F.R. § 204.5(h)(3)(ii), which pertains to membership in professional associations. To meet this criterion, the Petitioner must show that she is a member in an association in her field, that the association requires outstanding achievements of its members, and that this requirement is judged by national or international experts in the field.

The Petitioner claims that she satisfies this criterion based on her membership in the Union of Journalists of the Republic of Kazakhstan. Although the Director acknowledged the Petitioner’s union membership card, the Director observed that this document’s issue date included only the year of issue – 2021. The Director also discussed the Petitioner’s submission of printed material from the union’s website, which shows that in addition to certain biographical documentation, the prospective member is required to submit three to five publications or recordings of radio or television programs and either two recommendation letters from existing union members or one letter from the editor-in-chief of the publication where the prospective member works. The Director found that the union’s membership criteria does not include a requirement that its members demonstrate outstanding achievements as judged by recognized national or international experts in the relevant field.

On appeal, the Petitioner contends that implicit in the union’s requirement of publications and professional recommendations is the further requirement that the union member “should possess prior experience in journalism and the production of radio and TV programs” and that the member’s work “must garner high regard from at least two current members of the union.” However, because the Petitioner’s membership card shows that she became a member of the listed union in 2021, she was not yet a member in 2020 when this petition was filed. *See* 8 C.F.R. § 103.2(b)(1). Nor has the Petitioner established that the union’s requirement of prior experience and “high regard” from existing union members is synonymous with requiring “outstanding achievements . . . as judged by recognized national or international experts” in the field of journalism. As such, the Petitioner has not established that membership in the Union of Journalists of the Republic of Kazakhstan meets the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

² At the time of the petition filing, the Petitioner claimed to meet the elements of the five criteria listed at 8 C.F.R. § 204.5(h)(3)(iii) - (vi) and (viii) but in her response to the second of two requests for evidence the Petitioner claimed two additional criteria – those listed at 8 C.F.R. § 204.5(h)(3)(ii) and (vii) – for a total of seven criteria.

Next, we will discuss the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which requires evidence that material about a petitioner and their work in the field of endeavor has been published in a professional or major trade publication or other major medium.

In the denial, the Director discusses the Petitioner's published interview with an online newspaper – KazUnite. The Director points out the newspaper article's absence of an identified author as required by 8 C.F.R. § 204.5(h)(3)(iii), and notes that the article's publication date – [] 2022 – indicates that it was published after this petition's filing in 2020. The Director further pointed to the publication's lack of circulation and comparative data in the record, thereby leading the Director to conclude that KazUnite has not been established as a major trade publication in the Petitioner's field.

On appeal, the Petitioner reiterates that KazUnite is published in the United States “and broadcasts” in multiple countries in Europe. She asserts that because of the “significant number” of Kazakh nationals residing outside of Kazakhstan, the noted publication “enjoys substantial popularity within the **Kazakh community**” and has “extensive reach and influence” due to its Instagram following of 7,292. (Emphasis in original). However, the Petitioner does not adequately address the evidentiary deficiency that the Director noted – namely, that the article was not published as of the date this petition was filed and that the record lacks circulation and comparative data. While the Petitioner recognizes that the article in question did not exist at the time of filing, she claims that it serves as “supplementary evidence” of her compliance with the criterion at 8 C.F.R. § 204.5(h)(3)(iii). It is unclear how such evidence establishes the Petitioner's eligibility under this criterion at the time of filing. 8 C.F.R. § 103.2(b)(1). Nor do the Petitioner's ambiguous parameters, such as “substantial popularity” and “extensive reach and influence,” adequately address the record's lack of circulation and comparative data to support the claim that KazUnite qualifies as a major trade publication.

The Petitioner also claims that she qualifies for the criterion at 8 C.F.R. § 204.5(h)(3)(iv), which requires evidence of a petitioner's participation as a judge assessing the work of others in the same or allied field of specialization. The phrase “as a judge” in the regulations implies a formal designation in a judging capacity, either on a panel or individually; the regulation also requires evidence showing that the Petitioner actually participated in judging the work of others “in the same or allied field of specialization.” *Id.*

As evidence to claim that the Petitioner met the provisions of this criterion, she provided a letter and corresponding event information showing that she had been approved as a member of a judging panel for a competition that was due to take place in June, July, and August 2022.

In the denial, the Director once again pointed out that the submitted documents did not establish the Petitioner's eligibility at the time of filing because they discussed the Petitioner's participation in an event that took place several years after the petition was filed. On appeal, the Petitioner explains that her participation as a jury member, despite the date of the event, is relevant because it underscores her “contributions and accomplishments in television program production.” We note that the Petitioner's claims are not relevant here, where the Petitioner's “participation, either individually or on a panel, as a judge” is the critical component of the criterion in question, which this evidence would not meet at the time of filing. *Id.* Likewise, while the Petitioner highlights evidence demonstrating that she “taught and evaluated coursework” and worked with student internships, it too does not demonstrate

that she met the regulatory criteria, as these activities would not meet the defined judging criteria. For the reasons discussed herein, the Petitioner has not overcome the Director's adverse finding regarding this criterion.

Next, we will discuss the criterion at 8 C.F.R. § 204.5(h)(3)(v), which requires evidence of the Petitioner's original contributions of major significance in the field. Regarding this criterion, not only must the Petitioner establish that she made original contributions, but also that the contributions have been of major significance in her field. The Director determined that while the Petitioner made original contributions, she did not clarify how her contributions were of major significance.

On appeal, the Petitioner argues that the Director did not adequately consider previously submitted documents that were part of her response to the first of two requests for evidence (RFE). Namely, the Petitioner discusses a recommendation letter from [redacted] head of broadcasting and public relations at a production studio, where the Petitioner's "active engagement" is claimed to have resulted in the production of "a multitude of television projects." While the recommendation letter praises the Petitioner's work and contributions to the organization, it does not list the Petitioner's specific contributions or establish that her contributions were of major significance to the field. The Petitioner also asks for further consideration of a document issued by the Ministry of Information and Public Development of Kazakhstan, which contains a list of approved television and radio channels. She asserts that her "active engagement" resulted in government endorsement of various television projects and channels. The government issued document does not, however, recognize the Petitioner's specific work and contributions, nor does it indicate that the contributions resulted in government approval of the various listed channels.

The Petitioner also asserts that the Director did not properly assess exhibits 6 and 9 in her first RFE response, claiming that the former exhibit includes evidence that a project she worked on was used as instructional material by the [redacted]. However, a review of the single-page printout from the university's website lists the video tutorials in a foreign language. Because the Petitioner did not submit a properly certified English language translation of the foreign language content within this document, we cannot meaningfully determine whether the foreign language material supports the Petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3).

Further, the Petitioner argues that the previously submitted recommendation letters, such as the one in exhibit 9, "explicitly delineated the distinct accomplishments and outcomes resulting from the [Petitioner]'s role as a producer of diverse media content." However, as indicated in the denial, the issue of whether the Petitioner made original contributions to organizations where she worked is not in contention. Rather, the Director recognized that the Petitioner made original contributions that were valued at the organizations where she worked but noted that originality is only one of the elements comprising this criterion. As stated above, the Petitioner must also demonstrate that her contributions were of major significance in the field. The Petitioner has not explained either with her initial filing, or on appeal how her contributions were of major significance in her field. For the reasons discussed above, the Petitioner has not established that she has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(v).

Lastly, we will address the criterion at 8 C.F.R. § 204.5(h)(3)(vii), which requires evidence that the Petitioner's work in the field has been displayed at artistic exhibitions. We note that the Petitioner did not include this criterion as part of her initial claim and only listed it in response to the first RFE.

Aside from listing the criterion, however, the Petitioner did not further discuss it, explain how she satisfied the criterion's key elements, or mention this criterion in response to the second RFE.³ While the Petitioner now claims that she meets this criterion, she has only done so for the first time on appeal.

Therefore, while we acknowledge the Petitioner's discussion on appeal regarding the criterion at 8 C.F.R. § 204.5(h)(3)(vii), the Petitioner neglected to address this criterion when given the opportunity to do so in response to the second RFE. 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, we will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). If the Petitioner had wanted consideration of her qualifications under the criterion in question, she should have laid out her claim in response to the second RFE, where the issue was initially raised. *Id.* Because the Petitioner effectively raises claims pertaining to this criterion for the first time on appeal, we need not and do not consider the sufficiency of her assertions.

B. Reserved Issues

As previously noted, the Petitioner also asserts that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(vi) and (viii), which relate to authorship of scholarly articles and performance in a leading or critical role for distinguished organizations or establishments, respectively. However, given the deficiencies described above, we need not determine whether the Petitioner meets the requirements of these criteria, and we will reserve these issues. *See INS v. Bagamasbad*, 429 U.S. at 25-26.

III. CONCLUSION

The Petitioner has not shown that she met either a one-time award, or three of ten initial criteria. 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 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.

³ Because the Petitioner had not included the criterion at 8 C.F.R. § 204.5(h)(3)(vii) as part of her original claim, the Director did not discuss it in the first RFE. Rather, the Director discussed it in a second RFE, after reviewing the Petitioner's initial RFE response, where this criterion was mentioned for the first time.