



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

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

In Re: 9252257

Date: JULY 1, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a singer, seeks 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 petition, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria for this classification, of which she must meet at least three. The Director further determined that the Petitioner did not establish that she is coming to the United States to continue work in her area of expertise.

On appeal, the Petitioner submits additional evidence and asserts that she meets six evidentiary criteria and is otherwise qualified for the requested classification.

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). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. *See 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

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 sustained acclaim and the 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 categories 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).

II. ANALYSIS

The Petitioner is a pop singer who was performed in her native country of [redacted] and as a contestant on the [redacted] edition of [redacted]

A. Evidentiary Criteria

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). The Director determined that the Petitioner met two out of six claimed criteria, relating to lesser nationally or internationally recognized awards and published materials.¹ *See* 8 C.F.R. 204.5(h)(3)(i) and (iii).

On appeal, the Petitioner asserts that the Director erred in determining that she does not meet the evidentiary criteria relating to judging the work of others in her field and display of her work in artistic exhibitions and showcases. *See* 8 C.F.R. § 204.5(h)(3)(iv) and (ix). She also claims for the first time that she meets the criteria relating to original contributions of major significance and leading and critical roles for organizations or establishments that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(v) and (viii). After reviewing all the evidence in the record, we find the Petitioner has not demonstrated that she meets three of the ten criteria, as required.

¹ The Petitioner previously claimed to meet the criterion relating to authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi) based on an interview that appeared in a magazine and the criterion relating to commercial successes in the performing arts at 8 C.F.R. § 204.5(h)(3)(x) based on her *YouTube* views. The Director determined that she did not satisfy these two criteria and the Petitioner does not contest that determination on appeal. Therefore, we deem these issues to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

Documentation of the individual'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 met this criterion. Based on our *de novo* review, we disagree and withdraw that determination for the reasons discussed below.

In order to fulfill this criterion, the Petitioner must demonstrate that she received a prize or award, and that the award is nationally or internationally recognized for excellence in her field of endeavor.² Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.³

The Petitioner claims eligibility under this criterion based on her third-place finish at the [redacted] International Music Festival. She submitted a copy of her award certificate indicating that she placed third in the soloist category in her age group (15 to 17 years), in 2013. In addition, she provided some background regarding the competition from the festival's website (www.[redacted]) and excerpts from media coverage promoting the 2014 edition of the event. While the record demonstrates the Petitioner's receipt of the award, she did not demonstrate that it is a nationally or internationally recognized award for excellence in her field.

According to information from [redacted]'s website regarding the 2014 and 2015 events, the music festival's amateur competition was first held in 2012 and is "part of the activities organized to celebrate [redacted] in the city of [redacted]." The record reflects that the competition is held as part of a larger city festival alongside cultural events and "concerts by established artists and bands." Singers ages 15 to 35 are invited to submit entries to the competition, and up to 40 singers are selected to perform in the finals, where their live performances are judged by "international music personalities."

The Petitioner provided evidence that a press release announcing the 2014 [redacted] festival was circulated by several [redacted] media sources. The press release indicated that finalists selected in 2014 came from eight countries and would be competing for the main prize consisting of the [redacted] trophy, a sum of 3000 lei, and production of a song by [redacted] valued at €2000. This evidence establishes that the 2014 edition of the event was promoted within [redacted].

However, the record does not include any media coverage of the actual contest or its results from 2013 or other years in support of the Petitioner's claim that her third place finish in her age-restricted category is a nationally or internationally recognized prize or award. The media coverage the Petitioner provided mentions only the main prize, which the Petitioner did not win. The fact that the contest was international in nature based on the nationality of its contestants and judging panel does

² See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

³ *Id.*

not establish that the festival's lesser, age-based award certificates are nationally or internationally recognized prizes or awards within the meaning of the criterion at 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner also provided evidence that she reached the women's semifinals in the 2014 [] World Championships, along with information about the competition from the competition organizer's website. However, in order to meet this criterion, she must establish that she received an award or prize. The Petitioner did not establish that she received an award or prize as a semifinalist or that she proceeded further in the competition.

Accordingly, the Petitioner has not established that she meets this criterion.

Published material about the individual in professional or major trade publications or other major media, relating to the individual'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)

Although the Director determined that the Petitioner satisfied this criterion, we disagree and withdraw the Director's determination. Specifically, the Petitioner did not demonstrate published material about her in professional or major trade publications or other major media, which include the title, date, and author.⁴

The Petitioner provided an article titled "[]" which was published online by the [] entertainment publication *Shok!* (www.shok[]). The article is about the Petitioner's successful audition for [] and appears to include an embedded video clip of the audition. The article is not dated and does not identify the author of the material. The Petitioner also submitted search results for her name on the *Shok!* website which retrieved additional articles that appear to be about her. However, she did not provide complete copies of these articles and we cannot determine whether they meet all elements of this criterion, such as inclusion of the title, date and author of the material.

Further, the Petitioner did not demonstrate that *Shok!* qualifies as professional or major trade publication or other major medium consistent with this regulatory criterion.⁵ The Petitioner submitted a September 2016 analysis of the website's rankings from *SimilarWeb*. According to this document, *Shok!* had a global rank of 986,363, a country rank of 2,436 in [] and a category rank of 1,603. The Petitioner did not explain how this evidence establishes that *Shok!* is highly circulated or distributed in comparison to other online media.

The Petitioner also submitted a [] 2013 article titled "[]" which appeared on the website of [] women's magazine *Aquarelle*.⁶ While this article is about the Petitioner, it does not relate to her work as a singer or musician, and it does not

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

⁵ *Id.* (providing that evidence of published material in professional or major trade publications or in other major media publications about the petitioner should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience).

⁶ According to the online article, the full version of this interview with the Petitioner was to appear in the [] 2013 print edition of *Aquarelle*. However, the Petitioner did not provide a copy of the article from the print edition.

identify the author of the material. Rather, the articles indicate that the Petitioner was the winner of a contest for readers ([redacted]) for which the prize was an opportunity to appear on the magazine's cover. The article does not mention that the Petitioner is a singer or discuss her activities as a performing artist. The Petitioner also provided a screenshot from *YouTube* indicating that she was interviewed by a [redacted] news channel regarding her "[redacted]" title, but she did not provide a transcript of the interview.

Further, the Petitioner did not establish that Aquarelle's website (aquarelle[redacted]) qualifies as a professional or major trade publication or other major medium. According to the submitted information from *SimilarWeb*, the website has a global rank of 690,268, a country rank of 1,735, and a category rank of 1,167. The Petitioner did not provide comparative distribution information for the print version of the magazine in support of her claim that it is a major medium. Based on the submitted description of the publication as a "women's magazine," it is not a professional or trade publication.

The Petitioner provided evidence that her [redacted] audition video and a brief article were posted by a website called *KanKan*. The submitted screenshot does not include a URL for this online publication or identify the author of the material. Further, the Petitioner did not submit comparative data regarding the online circulation of this website in comparison to other publications.

Finally, while some of the submitted testimonial letters indicate that the Petitioner has been featured in publications such as [redacted] *Today*, *Komsomolskaya Pravda* and *SPLENDID* magazine, she did not submit copies of articles from these or any other additional sources and we therefore cannot evaluate this media coverage to determine if it meets the requirements of this criterion.

For the reasons discussed above, the Petitioner did not demonstrate that she meets this criterion.

Evidence of the individual'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)

The Petitioner did not initially claim to meet this criterion, so it was not directly addressed in the Director's request for evidence (RFE). Nevertheless, in response to the RFE, the Petitioner provided a letter from [redacted] of National Philharmonic [redacted] of the [redacted] [redacted] confirmed the Petitioner's participation as a judge in the 2015 [redacted] competition and explained that it is organized as a collaboration between the National Philharmonic and a festival organizer.

The Director found [redacted]'s letter insufficient, noting that "[t]he evidence sought in the present matter is not the type for which documentation is typically unavailable; moreover, the statute specifically requires "extensive documentation" to establish eligibility."

On appeal, the Petitioner argues that [redacted] is a credible source who, based on his position, has knowledge of her participation as a judge in the [redacted] event, an annual vocal contest for children and adolescents. The Petitioner provides additional evidence including an affidavit in which she explains that [redacted] was willing to provide the confirmation letter because he had first-hand knowledge of her participation as a judge in the 2015 [redacted] event. She also provides an e-

mail message she received from [] who advised that he could not provide copies of the referee tables from the 2015 event but was able to find the template used by her and the other judges. The table indicates that the judges scored the competitors in the [] vocal competition based on their timbre, diction, originality, presentation, repertoire difficulty and interpretation.

Finally, the Petitioner provides a media article about the competition, and a letter from singer [] who states that she is aware that the Petitioner replaced her as a judge in the competition when she was unable to attend due to a schedule conflict.

Upon review, the Petitioner has established by a preponderance of the evidence that she participated as a judge at the 2015 [] competition. Accordingly, this criterion has been met.

Evidence of the individual'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)

On appeal, the Petitioner asserts for the first time that she meets this criterion and indicates that she is submitting two new expert opinion letters.⁷

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions, but that they 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.

The Petitioner submits a letter from [] who states that he is a singer and entertainer who judged the Petitioner in the 2014 [] World Championships. He states that he finds the Petitioner's "singing manner and performance to be very remarkable" and praises "her unique tone of voice, very deep with strong tops" and notes her "distinctive" sound and improvisational skills in melismatic singing. The above-referenced letter from [] also praises the Petitioner's "melismatic vocal" and "unique voice" noting that she is "working hard on her new album which is an interesting project with Jazz and R&B accents." The Petitioner's vocal coach, [] states that the Petitioner is "a very intelligent personable young woman who is gifted a clear, strong sopranic voice" and is "a strong, recognizable vocalist." [] a producer and director for a [] television network, states that the Petitioner is "an extraordinary vocal talent" with "a range and stage presence far beyond her years."

While these and other letters praise the quality of the Petitioner's voice and her vocal technique, they do not identify an original artistic contribution that can be attributed to her or demonstrate how she has made a contribution that remarkably impacted or influenced her field. Having a recognizable voice or singing style is not a contribution of major significance in-and-of-itself. Rather, the record must be

⁷ The record reflects that the Petitioner's initial submission included seven expert opinion letters submitted as "comparable evidence" of her eligibility, pursuant to 8 C.F.R. § 204.5(h)(4). The Director did not address this evidence or comparable evidence claim in the RFE or in the denial decision. We will review the letters under the criterion at 8 C.F.R. § 204.5(h)(3)(v). A petitioner may submit comparable evidence if the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to their occupation. The Petitioner here did not claim that the ten objective criteria at 8 C.F.R. § 204.5(h)(3) are inapplicable to singers or performing artists.

supported by evidence that the Petitioner has already used her skills and abilities to impact the field at a significant level.

Here, the Petitioner's letters do not contain specific, detailed information identifying her original contributions and explain the unusual influence her musical work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.⁸ Letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.⁹ Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). While the Petitioner has competed in singing competitions and performed at concerts, festivals and galas, she has not shown how these activities equate to "original" artistic contributions of major significance in the field. Therefore, the Petitioner has not established that she meets this criterion.

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

The Petitioner claims that she meets this criterion based on her performances at concerts, galas, and festivals. The Director determined that she could not meet this criterion as a performing artist because singers perform their work, rather than display it. We disagree with the Director's interpretation that the plain language of the regulation renders this criterion inapplicable to performing artists. The regulation requires only that the work displayed be a given petitioner's own work product and that the venues at which the individual's work was displayed be artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).¹⁰

As certain exhibitions or showcases featuring performing artists meet the plain language of this regulation, the Director should not have summarily disregarded the Petitioner's evidence. The record contains sufficient evidence to establish that the Petitioner meets this criterion.

Evidence that the individual 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)

The Petitioner did not claim to meet this criterion previously but claims on appeal that she "was a 'creative force' in a fundraising project in town of [REDACTED] in 2014."

As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading. Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization's or establishment's activities. It is not the

⁸ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁹ *Id.* at 9.

¹⁰ *Id.* at 9-10 (stating that officers should use the common dictionary definitions of "exhibition" and "showcase" in evaluating this criterion).

title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.¹¹

In support of this criterion, the Petitioner submits a letter from [redacted] who states that he is the founder and event organizer for [redacted] which he describes as "the largest public organization in [redacted]." He states that in [redacted] 2014, he "met with [the Petitioner] several times to accommodate her needs for a big charity event in support of the orphanage in countryside [redacted] in [redacted]." [redacted] states that the Petitioner was "a creative force behind that event." He attributes the success of the event to the Petitioner's "skillful presentation and performance as well as her ability to bring known performers for such event."

The Petitioner maintains that [redacted] qualifies as a distinguished organization because it "is the largest public organization in [redacted]" and indicates that she played a leading or critical role for a "key function or component of the organization." However, [redacted]' letter does not provide detailed information demonstrating that she performed in a leading or critical role or clarify how her contributions were significantly important to the organization, rather than to an event.¹² The limited information he provided indicates that the Petitioner performed at one charity event organized by [redacted]. While [redacted] indicates that her performance contributed to the success of that fundraising event, he does not explain how she served in a leading role for the organization by performing at one event, or how this performance was critical to the outcome of [redacted]'s activities as an organization.

Finally, the Petitioner does not provide supporting evidence demonstrating that [redacted] has a distinguished reputation. The Petitioner simply states that it is "the largest public organization" in [redacted] without providing, for example, evidence showing how its reputation compares to similar establishments, or how its successes or accomplishments relate to others, signifying a distinguished reputation consistent with the regulatory criterion. Accordingly, the Petitioner did not establish that she satisfies this criterion.

B. O-1 Nonimmigrant Classification

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *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). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has

¹¹ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

¹² *Id.*, at 10 (stating that individuals with personal knowledge of the significance of the alien's leading or critical role can be particularly helpful to USCIS officers in making a determination regarding this criterion as long as the letters contain detailed and probative information that specifically addresses how the alien's role for the organization or establishment was leading or critical).

approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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 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.

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 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 she is one of the small percentage who has 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).

Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding whether she is coming to the United States to continue work in her area of expertise, as required by section 203(b)(1)(A)(ii) of the Act. *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 an applicant is otherwise ineligible).

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