



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

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

MATTER OF C-T-

DATE: NOV. 19, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a jewelry designer, seeks classification as an individual “of extraordinary ability” in the arts. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, revoked the approval of the petition. The matter is now before us on appeal. The appeal will be sustained.

The classification the Petitioner seeks makes visas available to foreign nationals 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 initially approved the employment-based immigrant visa petition on February 21, 2012. On April 24, 2014, the Director revoked the approval after issuing a notice of intent to revoke (NOIR). The final decision included “a finding of fraud or willful misrepresentation of a material fact,” which did not identify a basis for that finding. The Director also determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires proof of a one-time achievement or evidence that meets at least three of the ten regulatory criteria. Subsequently, on June 30, 2014, the Director reaffirmed the revocation in its entirety on motion. The Petitioner appealed the Director’s June 30, 2014, decision to us on July 18, 2014.

In Part 3 of her Form I-290B, Notice of Appeal or Motion, the Petitioner indicated that she would submit a brief and/or additional evidence to us in support of her appeal within 30 days. She, however, did not respond during that period. While the appeal was pending, on July 28, 2014, the Director reopened the matter on his own motion and withdrew his “original decision,” including the “finding of fraud.” The Director stated that the record did not reflect the Petitioner had established her eligibility for the petition. The Director then granted the Petitioner 30 days to supplement the record, noting that a “final decision will be made at that time.” In a letter dated August 29, 2014, the Petitioner responded to the Director’s July 28, 2014, decision. The Director forwarded the matter to us without issuing any additional notices or decisions.

On January 8, 2015, we issued a request for evidence (RFE), finding that the Director erred in reopening the matter on his own motion during the pendency of the appeal. Specifically, under the regulation at 8 C.F.R. § 103.3(a)(2)(iii), after a petitioner files an appeal, the Director may only reopen the matter to “take favorable action,” and “to make a new decision favorable to [the petitioner].” As the Director did not reopen the matter to take favorable action, i.e., approve the

petition or withdraw his decision revoking the approval of the petition, the Director erred in reopening the matter on July 28, 2014. In addition, in our RFE, we withdrew the Director's finding of fraud or willful misrepresentation of a material fact, because the Director never explained the basis of his finding.¹ Finally, in our RFE, we afforded the Petitioner an opportunity to file an appellate brief or a statement in support of her appeal, requested that she include any additional evidence not already in the record, and provided a non-exhaustive list of relevant items that she could submit to help demonstrate her eligibility. On February 25, 2015, the Petitioner responded to our RFE, providing her response brief and additional evidence, most of which she had previously submitted.

For the reasons discussed below, we sustain the Petitioner's appeal because she has established her eligibility for the exclusive classification sought. Specifically, the Petitioner has submitted evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). In addition, she has demonstrated that she is one of the small percentage who are at the very top in the field of jewelry design, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3).

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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.

¹ The Petitioner points out in her appellate brief, filed subsequent to our RFE, that the Director previously withdrew the "fraud/misrepresentation finding." As discussed above, however, the Director erred in reopening the matter on July 28, 2014, while the matter is pending before us. As such, the Director's withdrawal of the finding of fraud or willful misrepresentation of a material fact in his July 28, 2014, decision is without legal effect.

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The term “extraordinary ability” refers only to those individuals in that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The 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 her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this documentation, then she must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this 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 satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming USCIS’ proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that U.S. Citizenship and Immigration Services (USCIS) appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. On appeal, she asserts that her selection as a finalist for the [REDACTED] from the [REDACTED] [REDACTED] qualifies under this provision. The Petitioner’s filings do not include an [REDACTED] [REDACTED] or an explanation on how her finalist status constituted receipt of a major, internationally recognized award. The plain language of the regulation requires the Petitioner’s actual receipt of a qualifying award. The Petitioner has not presented a one-time achievement as defined under the regulation at 8 C.F.R. § 204.5(h)(3). Notwithstanding this finding, as discussed below, the Petitioner is eligible for the exclusive classification sought, because she meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x), is one of the small percentage who is at the very top in her field of endeavor, and has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3).

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

² We have reviewed all of the filings and will address those criteria the Petitioner asserts that she meets or for which the Petitioner has submitted relevant and probative evidence.

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evidence shall include the title, date, and author of the material, and any necessary translation.

The Petitioner submitted a [REDACTED] article that satisfies this criterion. The record contains an August 2010 article entitled [REDACTED]

[REDACTED] The article included an interview with the Petitioner. The record contains information from [REDACTED] relating to [REDACTED] circulation level, which demonstrated that the publication is a major trade publication in China. Accordingly, the Petitioner has presented published material about her in professional or major trade publications or other major media, relating to her work in the field for which classification is sought and, therefore, has met this criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The Petitioner meets this criterion because of her work in the area of Ammolite design. To meet this criterion, a petitioner must demonstrate that her contributions are both original and of major significance. 8 C.F.R. § 204.5(h)(3)(v). The term “original” and the phrase “major significance” are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) (quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003)). Contributions of major significance connotes that her work has already significantly impacted the field. See *Visinscaia*, 4 F. Supp. 3d at 135-36.

According to a January 9, 2014, letter from [REDACTED] President of [REDACTED]

[The Petitioner] was one of the first, and is still one of the extremely few, jewelry designers who are able to use the unique light and color possibilities of [Ammolite, a] relatively rare and new material[,] to create effects that can be found in few, if any, other types of jewelry. She does this through [certain] design techniques and methods, using special customized tools which she created specifically for designing Ammolite jewelry, and which are now used by all other designers working in this field.

[REDACTED] noted that the Petitioner worked with an ironsmith and created Ammolite pliers, a new industry tool used to set Ammolite stones into the bezel. [REDACTED] indicated that the Petitioner has designed and built Ammolite bezels that other designers have used. Similarly, according to a December 13, 2011, letter from [REDACTED] Vice-President, [REDACTED] the Petitioner “master[ed] Ammolite design and manipulation” and developed tools for Ammolite design. [REDACTED] stated that the Petitioner’s innovation “has vastly influenced and improved today’s international jewelry design industry.”

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██████████, Senior Head Designer at ██████████, stated that the Petitioner's "jewelry [had] evolve[d] into some of the most original work out there today." ██████████ continued that he had "encountered numerous designers who are quite obviously being influenced by [the Petitioner's] work and through her concepts and creations are having a strong impact on other artists, she is the true originator, a master among designers today." The record establishes that the Petitioner, specifically in the area of Ammolite design, has presented evidence of her original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field, and, therefore, has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The Director concluded that the Petitioner met this criterion. The record supports this conclusion. Specifically, the evidence, including a December 20, 2011, letter from ██████████ confirms that the ██████████ finalists for the ██████████ including the Petitioner, exhibited their work in a yearlong traveling tour. Her jewelry designs were showcased at the ██████████ for Japan charity event at ██████████ in ██████████ and at the ██████████. Accordingly, the Petitioner has presented documentations verifying the display of her work in the field at artistic events and, therefore, has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will conduct a final merits determination that considers the entire record in the context of whether or not she has demonstrated: (1) that she enjoys a level of expertise indicating that she is one of a small percentage who have risen to the very top of the field of endeavor, and (2) that she has sustained national or international acclaim and that her achievements have been recognized in the field of expertise. Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Based on the filings and consistent with *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm'r 1994), the Petitioner has made the requisite showing.

The Petitioner, a Japanese designer, has been featured in ██████████ a Chinese major trade publication that named her as one of the top four jewelry designers in Japan. The article stated that she "has proven to be one of the premier Japanese Jewelry Artists on the international stage today" and that she "continues to actively innovate and develop the changing frontier of jewelry arts, as it makes its way into the opening years of 21st century art, design, and fashion." The Petitioner and her work have also been featured in other trade publications including ██████████ and ██████████ both Japanese publications. These materials, published in and outside of her country of origin, support a finding that she has sustained national and international acclaim.

In addition, the Petitioner's work includes the ██████████ a necklace that incorporated 18k gold along with 114 pieces of diamonds through a hand weaving technique. This item was named a finalist for the ██████████ "Belgium's most prestigious diamond jewelry award," and was the only jewelry design piece sold at the event. The record contains a letter from ██████████

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Managing Director of [REDACTED] which bought the necklace. [REDACTED] marveled that the design included “amazingly unique weaving technique as something only [the Petitioner] can do” and that her “unique jewelry is virtually impossible to copy or replicate.” [REDACTED] then confirmed that the item “garnered [the Petitioner] very significant acclaim from many international jewelry experts worldwide when her necklace toured 10 cities all over the globe in 2007 and 2008.” Her work has also been recognized with the [REDACTED] the [REDACTED], and at the [REDACTED]

Moreover, the Petitioner’s membership and involvement in the [REDACTED] supports a finding that her achievements have been recognized in the field. [REDACTED] President of the association, stated that when the Petitioner joined in 2005, [REDACTED] required its members “to be artists with at least 5 years of professional experience with success obtaining at least three awards or competition victories of great significance.” [REDACTED] Director of [REDACTED] confirmed that [REDACTED] members comprise [of] a group of elite, exceptionally skilled experts in the field of jewelry design” and that its “senior members, [the Petitioner] included, have served as distinguished, top level art and jewelry panel judges, professors, and museum administrators [and] are today considered experts in the field.” A March 18, 2013 [REDACTED] article, which discussed the jewelry industry in Japan, used [REDACTED] as one of its sources, quoting the association’s vice president on the growth in jewelry sales in Japan.

Finally, many industry experts have submitted reference letters, attesting to the Petitioner’s status as one of the small percentage who is at the very top of her field and verifying her sustained national or international acclaim. For example, [REDACTED] Curator of Jewelry, [REDACTED] in [REDACTED] affirmed that the Petitioner “has an extraordinary artistic vision,” has “an incredible work ethic, and devotes her life to contributing to society and culture with her superb artwork.” [REDACTED] Assistant to the Chairperson of Department of Fine Arts, [REDACTED] asserted that the Petitioner conducted a graduate level lecture series on contemporary jewelry in May 2010, during which she “presented exceptionally original jewelry work that combines complex aesthetic principles of East and West.” According to [REDACTED] Owner of [REDACTED] the Petitioner’s “work is of the highest artistic quality and has been very popular with [REDACTED] customer base.” [REDACTED] Vice President of [REDACTED] explained that the Petitioner’s “work has become very popular with [the company’s] customers” and “[s]ales of her work are exceptional.” Finally, [REDACTED] General Manager of [REDACTED], concluded that her work is notable for “its exceptional originality and first rate design concepts. By incorporating a wide array of non-traditional materials [the Petitioner] fuses form, function, and fashion into exceptionally significant and meaningful jewelry work.”

The record in the aggregate, including published materials featuring the Petitioner and her work, her contributions in Ammolite design, the showcases of her design pieces, and her involvement with [REDACTED] confirms she enjoys a level of expertise that is consistent with a finding that she is one of a small percentage who have risen to the very top of the field of endeavor, that she has sustained national or international acclaim and that her achievements have been recognized in the field of

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expertise. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Accordingly, the Petitioner has established by a preponderance of the evidence that she is eligible for the exclusive classification sought.

III. CONCLUSION

The materials supporting a claim of extraordinary ability must establish that the Petitioner has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of his or her field of endeavor. She has submitted qualifying evidence under at least three of the ten evidentiary criteria and has documented that she has a “level of expertise indicating that [she] is one of that small percentage who have risen to the very top of the field of endeavor” and “sustained national or international acclaim.” The Petitioner’s achievements have been recognized in her field of expertise. She has shown that she seeks to continue working in the same field in the United States and that her entry into the United States will substantially benefit prospectively the United States. Therefore, the Petitioner has demonstrated her eligibility for the benefit sought under section 203 of the Act.

In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of C-T-*, ID# 12391 (AAO Nov. 19, 2015)