



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

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

MATTER OF R-G-

DATE: NOV. 25, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an individual, seeks classification as an individual of extraordinary ability in business. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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 determined that the Petitioner had not satisfied the initial requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires a one-time achievement or evidence that meets at least three of the ten regulatory criteria. On appeal, the Petitioner submits a brief with additional material.

For the reasons discussed below, we agree that the Petitioner has not established her eligibility for the classification sought. Specifically, the Petitioner has not submitted a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or documentation 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). As such, the Petitioner has not demonstrated that she is one of the small percentage who are at the very top in the field of endeavor, 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.

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 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 a petitioner does not submit this documentation, then she must provide sufficient qualifying evidence that meets at least three of the ten categories 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 evidence 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 our 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 Criteria¹

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.

The Petitioner provided numerous articles in both a foreign language and in English. The Director determined that the Petitioner met the requirements of this criterion. We conduct appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3^d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2^d Cir. 1989). For the reasons

¹ We have reviewed all of the evidence and will address those criteria the Petitioner claims to meet or for which the Petitioner has submitted relevant and probative evidence.

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outlined below, a review of the record of proceeding does not reflect that the Petitioner submitted sufficient documentary evidence establishing that she meets the plain language of this criterion.

While the Petitioner provided documentation of published material that is about her and related to her work in the field, the record does not contain evidence to establish that these articles appeared in a professional publication, a major trade publication, or other major media as required. For example, the Petitioner did not include circulation and distribution information about the newspapers and magazines or the viewership of the websites. Accordingly, we withdraw the Director's favorable determination as it relates to this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The Director determined the Petitioner met the requirements of this criterion. The Petitioner has submitted sufficient evidence, including information relating to The Family, the entity for which she worked as Creative Director and Executive Producer/Coordinator. Therefore, she has established that she meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The Petitioner initially included a letter from [REDACTED] Executive Producer of [REDACTED] in Italy, explaining that his company intends to pay the Petitioner at the rate of \$13,750 per project, which he stated is equivalent to the rate of \$165,000 per year. [REDACTED] did not indicate within his letter how he is guaranteeing the Petitioner will complete exactly twelve projects per year, which is the number the Petitioner must complete to equal \$165,000. The Petitioner also initially provided pay information from the Bureau of Labor Statistics' (BLS) website relating to art directors, showing a median salary of \$104,630 for art directors in the motion picture or video industries. The Director issued a request for evidence (RFE) requesting corroboration of the figures presented in the initial petition filing. In response, the Petitioner offered some of her bills; receipts and invoices relating to payments by [REDACTED] two Canada Revenue Agency (CRA) printouts; a check made out to the Petitioner; her Canadian lease and checks reflecting payments to her landlord from [REDACTED] and banking statements for that company. The Director determined that the Petitioner did not meet the requirements of this criterion. On appeal, the Petitioner lists the documentation accompanying the response to the RFE and asserts it meets the definition of remuneration.

The Director correctly determined that the regulation requires evidence that the Petitioner has already commanded a high salary or significantly high remuneration. Therefore, the letter from [REDACTED] regarding future pay is not sufficient. The Petitioner's name is not depicted on the receipts to establish that she is the intended recipient or that the payments cover her personal expenses. The invoices are billed to [REDACTED] in Italy and only contain the Petitioner's email address under the heading for [REDACTED] without specifying that the Petitioner was the supplier of

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the services represented. Regarding the CRA printout, as noted by the Director, the Petitioner's name is not printed on the document; instead it is handwritten along with the month. The Petitioner does not respond to this concern on appeal with CRA forms identifying the Petitioner in the preprinted information.

While the check lists the Petitioner in the "PAY to" portion, and her employer's company name is handwritten on the item, the Petitioner has not offered corroboration that this check was processed or cancelled, which would show she actually received the stated funds from her employer. Further, the purpose of the payment that could be listed in the "RE" portion of the check is left blank. As such, the Petitioner has not established that this check represented her salary rather than the employer reimbursing her for a business expense or some other reimbursement. Assuming that the Petitioner's lease and checks from [REDACTED] to her landlord represent remuneration other than salary, the record does not contain information about other remuneration in the field for similar services to which we can compare these payments. The employer's banking statements do not correspond with payments on the above invoices, and, as discussed, the receipts do not reveal that they represent the Petitioner's personal expenses. Finally, the banking statements do not reflect that the employer paid any salary to the Petitioner.

None of the evidence the Petitioner offered confirms the salary or wage provided by her employer after her commencement of services for them in October 2011, such as tax documentation that identifies her or pay statements. Moreover, wages above the median wage are not necessarily high in relation to others in the field. With respect to any remuneration other than salary she received, she has not demonstrated that it was significantly high in comparison with other remuneration, such as typical relocation and overseas housing reimbursement, in the field. As a result, the Petitioner has not satisfied the plain language requirements of this criterion.

B. Summary

For the reasons discussed above, while the Petitioner is an experienced creative director for a distinguished company, we agree with the Director that the Petitioner has not submitted the requisite initial evidence, in this case, documentation that satisfies three of the ten regulatory criteria.

III. CONCLUSION

The documentation in support of a claim of extraordinary ability must clearly demonstrate that the Petitioner has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. Had the Petitioner submitted the requisite documents under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the Petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) that the foreign national "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see*

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also Kazarian, 596 F.3d at 1119-20. As the Petitioner has not done so, the proper conclusion is that the Petitioner has not satisfied the antecedent regulatory requirement of presenting material that satisfied the initial requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not shown the level of expertise required for the classification sought.²

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of R-G-*, ID# 14580 (AAO Nov. 25, 2015)

² We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).