



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

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

MATTER OF O-S-

DATE: JUL. 5, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an artisan, photographer and fashion designer, seeks classification as an alien 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, as required, that the Petitioner has a one-time achievement (a major, internationally recognized award) or met at least three of the required evidentiary criteria.

On appeal, the Petitioner submits additional evidence and asserts that she satisfies six of the evidentiary criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) 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).

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 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), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (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”). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Petitioner has not established that she has received a major, internationally recognized award, and so must show that she satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In her decision, the Director found that the Petitioner met only the display criterion under 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner asserts that she also satisfies the requirements of the criteria relating to media about her, contributions of major significance, leading or critical role, high salary and commercial success. We will analyze the evidence submitted under each of these criteria below.

Published material about the individual 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. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner submitted several types of evidence under this criterion, and included a chart which summarizes this evidence. In her decision, the Director found the evidence to be insufficient to establish that any of the magazine articles, Internet blogs and local television interviews, even those that were clearly about the Petitioner and her work, qualified as major professional or trade publications or other major media. The chart identified material in print publications, such as [REDACTED] and [REDACTED], as advertisements. As noted by the Director, since such evidence is either written by the Petitioner or someone on her behalf, it is considered to be self-promotional and generally not probative of eligibility under this criterion.

Additionally, the record lacks evidence to corroborate circulation figures provided on their publishers' websites, as well as additional comparative data which would allow us to determine whether these publications qualify as major media. The Petitioner also submitted articles about her and her work written in Internet blogs, but again additional evidence, such as website metrics and comparative analyses, has not been provided to establish that these blogs qualify as professional or trade publications or other major media. Similarly, the evidence accompanying transcripts of interviews of the Petitioner broadcast by local television stations does not demonstrate that these appearances about the Petitioner and her work qualify as being presented in major media. On appeal, the Petitioner states that credible circulation and related data for these different media types is not available in Ukraine. However, without additional evidence of the size of each magazine's, television station's or website's share of the media market, we are unable to determine that they meet the requirements of this criterion. For the reasons stated above, the Petitioner has not established eligibility under this criterion.

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 refers generally to "media attention" and "testimonials" as evidence of her qualification under this criterion, but also to specific examples of her artistic contributions such as her photographs appearing on several occasions on the cover of [REDACTED] magazine, and one of her prints becoming part of the permanent collection of the [REDACTED]

The letters submitted by the Petitioner generally praise her work and indicate that the writer has purchased art or clothing from the Petitioner. For example, [REDACTED] co-owner of an architectural firm in the Petitioner's home city of [REDACTED] Ukraine, states that he consults with the Petitioner for "designer advice" and that her prints have been featured in magazine photographs of his architectural designs. The Editor in Chief of [REDACTED] magazine confirms that the Petitioner's prints have been used as cover art for the magazine, that the Petitioner's clothing line was promoted in the magazine, and that the Petitioner designed the interior of her home. And [REDACTED] owner of a local café, explains that the Petitioner's redesign of the restaurant's interior, featuring her flower prints, helped to increase its popularity. This evidence establishes that the Petitioner is a well-known and successful local artist, which is also supported by the evidence of local media coverage of her exhibition of flower photographs. Her work has been purchased and utilized by several individuals and businesses, but this evidence does not demonstrate that it has influenced the broader fields of photography or fashion design.

Similarly, while the record indicates that her prints have served as the cover art for [REDACTED] magazine, it does not establish that having her work displayed in this manner constitutes a contribution to the field of photography or fashion design. In addition, while having her work become a permanent part of the [REDACTED] collection is an honor, the evidence does not demonstrate this museum's recognition or reputation in the field of photography, and thus that the display of the

Petitioner's work there can be considered to be a contribution of major significance. While the originality of the Petitioner's artistic work as a photographer and fashion designer is not in question, the record does not establish that it has impacted the work of others in those fields.

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 294.5(h)(3)(vii)

The Director determined that the Petitioner satisfied the requirements of this criterion. Upon review of the record, specifically the evidence regarding the exhibitions of the Petitioner's work [REDACTED] and [REDACTED] we agree with the Director's decision.

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 Director's decision noted that the evidence regarding the Petitioner's work for her own brands, [REDACTED] and [REDACTED] established only that she is an independent business person. On appeal, the Petitioner states that she has served in a critical capacity for organizations that used her prints "for personal marketing, pleasure, education, or therapeutic purposes," but does not identify specific organizations or establishments. She does refer to "famous restaurants" and "store openings," presumably referring to her interior design work and the use of her prints to decorate [REDACTED] and [REDACTED] stores.

In general, a critical role is one in which an individual is responsible for the overall success or standing of the organization or establishment. The evidence does not establish that the Petitioner played a critical role for [REDACTED] through installation of her flower prints in its stores. While [REDACTED] indicates in his letter that the Petitioner's work has "greatly contributed to the design of my boutiques," the record does corroborate his assertion that they have "helped to increase store revenue."

In a letter regarding the [REDACTED] indicates that the Petitioner also "rearranged the entire restaurant" and installed other decorations, and that this redesign helped lead to increased customer traffic as well as the restaurant's nomination for a national award. The record includes pictures of the restaurant featuring the Petitioner's work, information about the [REDACTED] award, and positive customer reviews of the restaurant that mention its decor. Based upon the evidence of her work with this establishment, we overturn the Director's decision and find that the Petitioner meets the requirements of this criterion.

Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

The plain language of this criterion requires evidence that the Petitioner has already commanded a high salary or other significantly high remuneration. However, as noted in the Director's decision,

much of the evidence submitted in support of the Petitioner's claim under this criterion is prospective in nature, consisting of agreements between the Petitioner and three employers in the United States for work which the Petitioner has not yet begun. As such, this evidence does not establish the Petitioner's eligibility under this criterion.

In response to the Director's request for evidence (RFE), the Petitioner also submitted copies of invoices, spreadsheets and bank statements, all of which identify the Petitioner's husband as the account holder or seller. While the Petitioner explains on appeal that her husband manages the bookkeeping for her businesses, the evidence does not clearly differentiate between income from the Petitioner's businesses and any income that her husband may have earned from other sources. We note that these unaudited financial statements appear incomplete, as they do not account for business expenses. More importantly, the evidence is not supported by verifiable business or personal tax documentation comparable to the W-2 or 1099 forms requested in the Director's RFE. Without corroborating evidence, the documents represent only the Petitioner's assertions regarding the gross income of her businesses. The record is insufficient to allow us to determine the amount of the Petitioner's actual income or remuneration, and therefore it cannot establish her eligibility under this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x)

The plain language of this criterion requires evidence of commercial success in the *performing arts*. The Petitioner does not assert that she is a performing artist, such as an actor, musician or dancer, nor has she challenged the Director's finding that she has not established that the evidentiary criteria do not apply to her occupation, so that she may submit comparable evidence under 8 C.F.R. § 204.5(h)(4). Instead, the Petitioner asserts that, despite the plain language of the criterion, evidence of the display of her work at art exhibitions should be considered under this criterion, and notes the Director's finding that she meets the requirements under 8 C.F.R. § 204.5(h)(3)(vii). However, this criterion calls for the submission of specific types of evidence. Neither the submitted evidence of the display of the Petitioner's work, nor the documents described above relating to the Petitioner's income, establish the Petitioner's eligibility under this criterion.

III. CONCLUSION

The Petitioner is not eligible because she has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we need not fully address the totality of the materials in a final merits determination. *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 level of expertise required for the classification sought.

Matter of O-S-

ORDER: The appeal is dismissed.

Cite as *Matter of O-S-*, ID# 1291424 (AAO Jul. 5, 2018)