



U.S. Citizenship
and Immigration
Services

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

MATTER OF K-T- INC.

DATE: MAR. 26, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a theater company, seeks classification of the Beneficiary as an individual of extraordinary ability in the arts. *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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that the Beneficiary met only one of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that the Beneficiary meets three 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 two options for satisfying this classification’s initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

Where a 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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner, a theater company, seeks classification of the Beneficiary, a theater actor, producer, and translator, as an individual of extraordinary ability. As the record does not establish that the Beneficiary has received a major, internationally recognized award, the Petitioner must demonstrate that the Beneficiary satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

The Director held that the Beneficiary only met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner asserts that the Beneficiary also meets the criteria for published material, original contributions of major significance, display, and leading or critical role at 8 C.F.R. § 204.5(h)(3)(iii), (v), (vii), and (viii). Here, we conclude that the Petitioner has established that the Beneficiary meets the criteria for judging, display, and leading or critical role.

Specifically, the record reflects that the Beneficiary has judged the work of others in her role as the executive producer of the [REDACTED] in selecting the top six plays from which the winner of the [REDACTED] would be selected. For display, the Beneficiary has performed as an actor in plays and theatrical festivals. And with respect to a leading or critical role for an organization with a distinguished reputation, the record establishes that the Beneficiary has met this criterion as a literary and production director, as a literary translator, and as a leading actor in many of the Petitioner’s

productions.¹ Accordingly, we will evaluate the totality of the evidence in the context of the final merits determination below.²

B. Final Merits Determination

As the Petitioner has established that the Beneficiary meets the requisite initial proof, we will evaluate whether the evidence establishes, by a preponderance of the evidence, that the Beneficiary has sustained national or international acclaim, that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a beneficiary's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not established the Beneficiary's eligibility.

The record reflects that the Beneficiary is a theater actor, producer, and translator for the Petitioner, an Italian theater company in [REDACTED] and that she is the executive producer for the Petitioner's [REDACTED]. As mentioned above, the Beneficiary judged the work of others within her field, displayed her work at artistic exhibitions, and performed a leading or critical role for an organization with a distinguished reputation. The record, however, does not demonstrate that her achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding the Beneficiary's experiences judging the work of others, an evaluation of this practice is acceptable under *Kazarian*, 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. The record reflects that the Beneficiary was responsible for judging and selecting the shortlist of plays for the [REDACTED] playwriting competition, which is part of the Petitioner's [REDACTED].³ The Petitioner also describes this as a competition in which the [REDACTED] award is presented to "the author of an original play in Italian or Italian dialect, never-before produced or published." After the Beneficiary selects the top six plays, they are then presented to a jury, and ultimately to [REDACTED] himself until a finalist is selected.

The record contains a letter from [REDACTED] in support of the Beneficiary's petition, attesting to her role in this process. However, the record does not establish that the Beneficiary garnered wide attention from the field based on her work as a shortlist judge. Instead, most of the evidence in the record about this competition focuses on [REDACTED]. For example, the Petitioner provided a Broadway World article, which states that the [REDACTED] award is "[p]resented annually to an emerging Italian

¹ The record reflects that the Petitioner is a theater in residence at [REDACTED]. The record contains sufficient additional evidence demonstrating that it has a distinguished reputation.

² As the Petitioner also references the criteria relating to published material at 8 C.F.R. § 204.5(h)(3)(iii) and contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), we will consider the evidence relating to these criteria in our final merits determination as we assess whether the Beneficiary has sustained national or international acclaim and has risen to the very top of her field.

³ The record reflects that [REDACTED] is an internationally renowned Italian playwright, having won seven [REDACTED] awards, among other awards, and having written over 100 plays.

playwright” and that the award is named after the “internationally acclaimed playwright and drama critic.” This article only briefly mentions the Beneficiary as the official translator of the winning play.

Several other provided articles similarly focus on [REDACTED] but only briefly mention the Beneficiary. [REDACTED] a member of the Petitioner’s advisory board, states in her letter that the Beneficiary’s “selections have been a critical factor in making the competitions so successful,” but the record does not contain evidence demonstrating acclaim to the Beneficiary for her role as a shortlist judge. Even the article discussing the 2016 [REDACTED] Award from the [REDACTED] website states the members of the jury for this competition but does not reference the Beneficiary’s role as a shortlist judge. Accordingly, while we note the importance of the Beneficiary’s role as the shortlist judge of emerging Italian playwrights who have not previously published a play, the record does not reflect that her role in this competition rises to the level of the necessary acclaim for this classification. Without evidence that sets her apart from others in her field, such as evidence that she served as a judge of acclaimed individuals or of prestigious national or international competitions, it has not been established that she “is one of that small percentage who [has] risen to the very top of the field of endeavor.” *See* 8 C.F.R. § 204.5(h)(2).

As to the display of the Beneficiary’s work, the record reflects that she has performed as a theater actor in [REDACTED]. As it is expected that actors would exhibit their artistic work in front of audiences, we will evaluate the extent to which the display of her work is reflective of acclaim consistent with this classification. The Petitioner states that the Beneficiary has performed in over 40 plays,⁴ seven of which were leading roles in the [REDACTED] but the evidence in the record has not established that her performances are indicative of her status as an actor at the very top of her field. The record does not demonstrate that her performances brought wide praise from critics, drew notable crowds, raised attendance, or were responsible for the success or standing of the events. Without evidence distinguishing her work from others in her field, the record does not demonstrate that she “is one of that small percentage who [has] risen to the very top of the field of endeavor.” *See* 8 C.F.R. § 204.5(h)(2).

For leading or critical role, the Petitioner first describes the Beneficiary’s role within its organization as its literary and producing director. Specifically, the Petitioner describes the Beneficiary’s role as “sourcing and selecting plays for production since 2012,” developing and maintaining relationships between the Petitioner’s organization and acclaimed actors as well as the [REDACTED]

[REDACTED]
among others.

However, the Petitioner has not established that the Beneficiary’s role as its literary and production director, or her role in forming these relationships, demonstrates that the Beneficiary has received national or international acclaim. For instance, in a letter from [REDACTED] director of [REDACTED] for the Italian cultural center at [REDACTED], he states that the Beneficiary “has contributed to each stage of [the Petitioner’s] productions, from the initial selection of plays to be performed to the arrangements with venues to the promotion of the shows,” but he does not indicate how well-known the Beneficiary has become for this role. While [REDACTED] states that

⁴ The Petitioner has not identified on appeal the details of these 40 plays and where they were performed.

the Petitioner's Italian theater festival is the only one that operates in all five boroughs of [REDACTED] this tends to demonstrate acclaim to the Petitioner but not to the Beneficiary. Similarly, the record contains a letter from [REDACTED] the attaché for cultural affairs at the [REDACTED] of New York, who also refers to the acclaim to the Petitioner and not the Beneficiary. Specifically, he states that the Petitioner is "New York's premier Italian theater company." And while he states that the Beneficiary "has been essential in producing Italian plays in New York" as the Petitioner's literary and production director, he does not state how the Beneficiary's role in this respect has resulted in her acclaim.

With respect to the Beneficiary's work in the Petitioner's [REDACTED] the record reflects that the Beneficiary helped this festival grow from having three shows in 2013 to having 12 shows in 2018. In the letter from [REDACTED] she states that the Beneficiary has arranged for award-winning individuals from Italy to perform in the [REDACTED] she has read and reviewed the submissions each year, she has overseen the translations and publications for the festival, and she has created partnerships with the organizations discussed above, such as the [REDACTED] the [REDACTED] [REDACTED] and others. [REDACTED] further states that the Beneficiary has overseen the hiring of interns and has liaised with a press representative prior to the festival each year. Much of the Beneficiary's work with the [REDACTED] has occurred largely behind-the-scenes in producing this festival. While many of the letters demonstrate the Beneficiary's renown within the [REDACTED] area, the Petitioner has not shown how these activities have resulted in national or international acclaim. Accordingly, the record does not establish that the Beneficiary's experiences discussed above place her at the very top of her field of endeavor. 8 C.F.R. § 204.5(h)(2).

Next, regarding the Beneficiary's leading role in the Petitioner's performances, the Petitioner states that the Beneficiary performed a leading role in [REDACTED] during the [REDACTED] in collaboration with [REDACTED]. We note that an article entitled, [REDACTED] published by La Voce di New York, further elaborates on this collaboration with [REDACTED] stating that this performance took place at [REDACTED] as part of a month-long program [REDACTED] dedicated to [REDACTED]. The evidence in the record does not show that the Beneficiary's performances in this play are indicative of national or international acclaim, such as through press coverage of a national or international level. We note that the evidence in the record does not distinguish the Beneficiary's performances from others in her field or show that they reflect a "career of acclaimed work in the field." H.R. Rep. No. 101-723 at 59.

Beyond the three criteria that the Beneficiary has satisfied, we have also considered the additional documentation in the record to determine whether the totality of the evidence demonstrates that she has national or international acclaim and has risen to the very top of her field under 8 C.F.R. § 204.5(h)(2)-(3).

For published material, the majority of the publications in the record about the Beneficiary have not been properly translated. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Here, the translations do not contain a certification from the translator, and the translations appear to be excerpts of the original articles. Accordingly, these translations do not

comply with the requirements of 8 C.F.R. § 103.2(b)(3), and we are unable to meaningfully consider this documentation as evidence.

The publications that are in English include Broadway World articles, Theater Mania articles, a slideshow from the website villagevoices.com, an article from theaterscene.net, a Playbill article, the transcription of a Salon Radio podcast, articles from i-Italy, and a New York Cool interview. However, the Petitioner has not established that the content of these publications demonstrates the required acclaim to the Beneficiary. Specifically, the majority of these publications mention her role in certain plays, but the Petitioner has not shown that this rises to the level of national or international acclaim. We note that the Salon Radio podcast does not contain a complete transcription or establish this radio program as having a national or international audience, and the Petitioner has not shown that the New York Cool interview has brought national or international acclaim to the Beneficiary.

Overall, the publications in the record contain brief references to the Beneficiary, and those that discuss her work more extensively, such as Salon Radio and New York Cool, appear to constitute regional press coverage.⁵ The Petitioner has not shown that the reputation, circulation, and overall reach of these publications establish her national or international acclaim. In addition, the Petitioner has not shown that this evidence demonstrates a level of success consistent with being among “that small percentage who [has] risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Regarding the Beneficiary’s contributions in the field, the Petitioner states that the evidence in the record establishes the Beneficiary’s eligibility for her roles in distinguished theatrical performances as a producer, translator, and actor. Specifically, the Petitioner states that the Beneficiary has developed the content of productions for the [REDACTED] she has translated at least 13 new plays “from Italy’s most important contemporary and classical playwrights, many of which have never been produced in the United States previously,” and has demonstrated that she is a “powerful, intelligent stage performer” who is “entirely fluent in English and Italian without a hint of accent in both languages.” We note that the Beneficiary’s role in developing content, translating plays, and performing in many of them for the [REDACTED] represents important work for these productions, but the Petitioner has not shown how the Beneficiary has received acclaim for these activities. The publications that discuss the [REDACTED] focus on the productions or the [REDACTED] competition and only briefly mention the Beneficiary. While we acknowledge the Beneficiary’s contributions to the Petitioner’s [REDACTED] the record does not establish that the Beneficiary has received national or international acclaim for this work.

With respect to her contributions as an actor beyond her roles in the [REDACTED] the majority of the publications in the record discuss her roles briefly and do not reflect national or international acclaim on account of her contributions as a performer. As stated above, the Petitioner has not shown how the Salon Radio podcast and the New York Cool article represent publications that are indicative of national or international acclaim. In his letter, [REDACTED] states that the Beneficiary is “an actor of phenomenal creative strength and depth.” He also discusses the roles she has performed in his plays, noting that she performed as part of the cast with three Broadway actors in [REDACTED], but the record does not contain evidence demonstrating that the Beneficiary received national or international acclaim from these performances.

⁵ While we discuss a sampling of the publications in the record here, we have reviewed and considered all of them.

For example, the record does not contain evidence of publications showing the Beneficiary's acclaim from having performed with these Broadway actors, or evidence of similar recognition. [REDACTED] also praises the Beneficiary's expertise as an actor, stating in his letter that he admires "[her] ability to shed new light on the complexity and contradictions that often underlie human interactions with each of her fully developed characters." He adds that whenever the [REDACTED] has needed an actress to perform there, the Beneficiary has been his first choice. This evidence reflects that the Beneficiary's role as an actor has been noticed by those who are involved with Italian theater in [REDACTED] but the Petitioner has not presented other evidence that establishes the Beneficiary's national or international acclaim as an actor.

The Petitioner cites several letters in the record that summarize the Beneficiary's contributions. In a letter from the Petitioner's president and artistic director, [REDACTED] she states that the Beneficiary "has made a substantial and valuable contribution to Italian theater in the United States by significantly expanding the number and quality of plays by leading contemporary Italian playwrights enjoyed by American audiences."⁶ In addition, the record contains a letter from [REDACTED] stating that he has known the Beneficiary for many years, having collaborated with her as an actor, producer, and translator. He states that the Beneficiary "has been singularly effective in bringing key contemporary Italian works to American audiences, as a translator, producer and actor," noting that her skillset in these areas is rare. Specifically, [REDACTED] states that she is "an imaginative and skilled producer," a "sensitive and skilled translator," and "an actor of phenomenal creative strength and depth."

Similarly, in a letter from award-winning Italian-American playwright [REDACTED] he states that the Beneficiary "has, through her unique and important set of skills, talents, accomplishments and expertise, been responsible for significant headway in bringing new Italian theater to American audiences." He adds that she "has been a relentlessly energetic, creative producer of [the Petitioner's] shows and festivals, to expand their audiences beyond academic circles that would naturally follow classical and modern Italian theater in translation." This evidence in the record shows the recognition that the Beneficiary has received among those involved with Italian theater in [REDACTED] but this does not establish that she has national or international acclaim.

In summary, the letters from [REDACTED] and [REDACTED] discuss the important role the Beneficiary has performed within the Petitioner's organization in helping to bring more Italian theatrical performances to audiences in the United States. The letters from [REDACTED] and [REDACTED] praise the Beneficiary's level of expertise as a performer, and [REDACTED] in particular praises her skillset as a literary translator. Together, these letters, and the evidence in the record, demonstrate that the Beneficiary is a talented theater actor, producer, and literary translator and that she is well-respected within the niche of Italian theater in [REDACTED]. The evidence in the record demonstrates that the Beneficiary's work involves both behind-the-scenes work in bringing more Italian works to American theaters in [REDACTED], as well as her leading performances as an actor for the Petitioner in presenting many of these works. However, the Petitioner has not shown that her achievements at this point of her career are indicative of one who has risen to the very top of her field of endeavor with sustained national or international acclaim, as required. 8 C.F.R. § 204.5(h)(2)-(3).

⁶ Although we discuss a sampling of letters in this decision, we have reviewed and considered each one.

III. CONCLUSION

For the foregoing reasons, the Petitioner has not shown that the Beneficiary qualifies for classification as an individual of extraordinary ability. The Beneficiary 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 the Beneficiary’s accomplishments 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 Beneficiary has garnered national or international acclaim and that 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).

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 Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of K-T-Inc.*, ID# 2383508 (AAO Mar. 26, 2019)