



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

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

In Re: 7185767

Date: APR. 23, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a dancer and choreographer, 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 that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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 their 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 they 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).

II. ANALYSIS

The Petitioner is a co-founder and co-artistic director of [REDACTED] and she has also taught at various dance schools.

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 Petitioner claims to have met four criteria, summarized below:

- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director found that the Petitioner met two of the evidentiary criteria, numbered (iii) and (iv). On appeal, the Petitioner asserts that she also meets the other claimed evidentiary criteria.

After reviewing all of the evidence in the record, we find that the Petitioner has satisfied two criteria, numbered (iv) and (vii). We explain our findings below.

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. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner submitted copies of several articles from various sources. The Director found, without comment, that the Petitioner satisfies this criterion. We disagree.

Many of the submitted articles are reviews or previews of local performances, and a substantial number of the submitted articles do not mention the Petitioner's name at all; instead, they mention schools or events that involved the Petitioner. Many more identify her in relation to various dance companies, but only four articles devote enough attention to the Petitioner to qualify as being *about* her as the regulation

requires. Very few of the submitted articles devote significant attention to the Petitioner, and the Petitioner did not establish that the articles about her appeared in major media.

One of the articles about the Petitioner appeared in a newspaper focused on [redacted] and the surrounding area (the article's headline emphasizes that the Petitioner is from [redacted] ranked 8431 among "News and Media" websites and 2819 overall in Spain. The Petitioner did not establish that these figures are consistent with major media. Also, the article from the [redacted] newspaper does not identify an author as the regulation requires. This omission is of particular concern because the article refers to the Petitioner's "unstoppable success" in [redacted], an assessment not evident in the other published materials.

The other online articles about the Petitioner are from lesser sources, such as a blog post by the Petitioner's yoga teacher, or are promotional rather than journalistic in nature (such as an interview with the Petitioner on the website of an organization that sponsored her work). A print article about the Petitioner appeared in a Basque-language magazine that distributes 6000 free copies in Northern Spain. The Petitioner did not submit comparative evidence to establish that this magazine constitutes major media.

Screen captures show the Petitioner on a local NBC affiliate, discussing the then-upcoming [redacted] Tap Festival. The submitted image includes the web address for the video clip, enabling us to view the video for context. The video begins with an interview with the artistic director of the [redacted] [redacted], after which the Petitioner and two other dancers perform a brief demonstration of tap dance. The interviewer then speaks to the three dancers. The complete exchange with the Petitioner is as follows:

REPORTER: And this young lady, here, just quickly, how did you start?

PETITIONER: I think it was when I saw [redacted], actually, and then . . .

REPORTER: Great Broadway show, lot of fun, lot of tap.

PETITIONER: Yes, and . . .

REPORTER: Thank you all for being with us.

This interaction lasts for about 10 seconds of the 5:26 video clip. By comparison, the interview with the Foundation's artistic director lasts for nearly two and a half minutes. The Petitioner's participation in a group demonstration and her two brief, interrupted comments do not establish that the news story is about the Petitioner, relating to her work in the field. Rather, she appeared as one of several examples of tap dancers who would participate in the festival.

The Petitioner has not satisfied the requirements of this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner served as a judge at a number of what appear to be regional dance competitions. This activity is sufficient to satisfy the wording of the regulation. Had the case proceeded to a final merits determination, we would have considered evidence (or the lack thereof) regarding the scope and reputation of these competitions and the criteria for selection as a judge.

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

The Petitioner states that she satisfies this criterion because “[s]he has performed in numerous special events and showcases that have specially exhibited her talents.” The Director stated that “[n]ot every performance is an artistic exhibition designed to showcase the performer’s art,” and noted the existence of a separate criterion relating to the performing arts at 8 C.F.R. § 204.5(h)(3)(x).

As the Petitioner observes on appeal, criterion (x) pertains to commercial success in the performing arts, not mere participation in the performing arts. As such, the consideration of performance as display under certain circumstances would not make criteria (vii) and (x) indistinguishable from one another. The evidence submitted is sufficient to establish the display of the Petitioner’s work at artistic exhibitions and showcases.¹ For example, the [redacted] Dance Invitational selected a work that the Petitioner co-choreographed as an example of [redacted]’s best in regional dance.” This event was not simply a self-organized performance by the Petitioner’s dance company, but rather an externally curated event with competitive entrance requirements. The organizer’s description of the event as “regional” would be a factor to consider in the final merits determination.

The Petitioner satisfies the requirements of this criterion.

Evidence that the alien 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 claims to have “held a number of highly important positions within highly recognized dance organizations.” The Director found that the record lacks “detailed and probative information that specifically addresses how [the Petitioner’s] role was leading or critical for an entire organization or establishment.”

Photocopies of programs identify several productions in which the Petitioner danced, or which she choreographed. Without explanation and context, these materials show that the Petitioner is active in the arts but do not establish the leading or critical nature of her role or the distinguished reputations of the organizations that presented the productions.

The Petitioner identifies dance schools where she has taught. Serving on the faculty of an educational institution is not inherently a critical role; an instructor’s direct impact is concentrated on specific classes, and the Petitioner has not shown that she has greater responsibilities at the organizational level. The Petitioner’s faculty positions appear to be part-time, coinciding with her ongoing work with [redacted]
[redacted]

¹ In contrast, correspondence from an organizer of the Jazz Dance Festival [redacted] indicates that the Petitioner participated in that event as a teacher, with “a little routine” performed “at the student showcase on the last day.” This evidence suggests that the Petitioner’s role was more educational than artistic, with the closing routine serving more as a demonstration than as an artistic work.

The Petitioner performs in a leading role for [redacted] as one of its artistic directors, but the record does not establish that [redacted] has a distinguished reputation among dance companies. Documentation of performances by the company do not establish such a reputation.

Furthermore, much of the evidence the Petitioner submitted as evidence of various organizations' distinguished reputations is in the form of promotional material issued by those organizations. Promotional materials, being inherently self-serving, are not objective evidence of an organization's reputation.

Letters from the [redacted] indicate that the Petitioner has served as a "team leader" and "Rehearsal Director for . . . [redacted]" an annual event held by the Foundation. It is evident from the record that there are several team leaders and rehearsal directors, who serve as assistants to the choreographer. The letters call the Petitioner "an important asset to [the] organization," but the record does not show that her activities amount to a leading or critical role for the Foundation.

The Petitioner has not satisfied the requirements of this criterion.

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. The Petitioner has established a viable career in dance in [redacted] but that level of success is not tantamount to the acclaim that the statute demands. She 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). We find the record insufficient to demonstrate that the Petitioner has sustained national or international acclaim and is among the small percentage at the top of her field. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

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.

ORDER: The appeal is dismissed.