



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

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

In Re: 8867558

Date: NOV. 30, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a maternal and child health specialist, 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 met the initial evidence requirements either through a one-time achievement or meeting the requirements of at least three of the criteria under 8 C.F.R. § 204.5(h)(3). In addition, the Director found that the Petitioner had not established that she is coming to the United States to work in her area of expertise, and that her entry would not substantially benefit prospectively the United States.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* 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) 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).

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 indicates that she serves as the principal of the [redacted] Occupational (sometimes translated as “Vocational” in the record) Technical Training School ([redacted] School”), and writes, teaches and participates in Chinese government initiatives to promote and provide information about breastfeeding.¹ She states that she intends to establish a similar education and training company devoted to maternal and child health in New Jersey.

A. Translation of Foreign Language Material

In his decision, the Director noted that a translation of foreign language evidence, specifically an article published in the *Beijing Evening News* on [redacted] 2013 that the Petitioner asserts is about her, “uses the term “prostitute” as a synonym for “prolactinist” in two instances,” and goes on to state that this inconsistency casts doubt on the reliability of this evidence. On appeal, the Petitioner argues that she is not responsible for the mistakes made by a third-party translator, and that despite these mistakes, the article as a whole is about the Petitioner and her work as a prolactinist. We agree that the errors in this translation referred to in the Director’s decision do not materially affect the meaning of the article. However, after review, we note that this is not the only translation in the record which contains errors or discrepancies.

For example, the Petitioner submitted a reference letter from [redacted] who states that he is a graduate of [redacted] Medical College. [redacted] then goes on to describe the Petitioner’s background and career accomplishments, stating that she “has been engaged in maternity, medical and scientific research for 40 years.” He also lists several other positions and accomplishments, including [redacted] of the Department of Obstetrics and Gynecology of [redacted] Health Science Center, appointment as an expert of the [redacted] Children’s Fund, and serving on the boards of two medical journals. As the record does not include evidence of any of the positions and accomplishments listed, and the Petitioner could not have had forty years of medical and scientific experience given her age at the time of filing, it is likely that this portion of the original letter describes [redacted]’s career,

¹ The Petitioner’s statements and evidence in the record use the terms “prolactinist” and “prolacer” to describe a breastfeeding consultant.

not the Petitioner's. We also note that [redacted] is referred to as a professor in the Department of Obstetrics at [redacted] Hospital in an article about a breastfeeding knowledge and skills competition posted on the hospital's website on August 13, 2018. However, the translation of his letter clearly attributes these accomplishments to the Petitioner, reflecting either unsupported claims in the content of the original letter or, more likely, an erroneous translation.

Another example of erroneous translations was completed by a different translator than in the above examples. The Petitioner submitted three certificates which the translations indicate were issued to her by the "Education and Training Center of the Ministry of Human Resources and Social Security." The translations identify these as "certification letters" for "Child EQ Instructor Post Training Project Cooperation," "Senior Prolactin Post Training Project Cooperation," and "Maternal and Child Care Nurse Job Training Project Cooperation." The translations also indicate that all three certificates were signed on July 14, 2015 and refer to the "cooperation period" as being from July 20, 2015 to July 19, 2017. However, the dates on the original certificates can be easily understood as they are written numerically, and none match the dates shown on the translations.

The regulation at 8 C.F.R. § 103.2(b)(3) states that any document in a foreign language must be accompanied by a full English language translation. 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 required translators' certifications have been submitted along with the foreign language material, but the above examples reveal a pattern of inaccuracy in the English translations. Although each of these examples can individually be explained as simple error, together they cast significant doubt as to the reliability of all of the translations in the record. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* The examples given above are apparent without knowledge of Chinese language or writing, but they lead to questions about the existence of material translation errors that are less visible without that knowledge. Accordingly, while we note that the Petitioner has submitted a corrected translation of the *Beijing Evening News* article on appeal, we will consider the evidentiary value of all other translated material in the record to be significantly reduced.

B. Evidentiary Criteria

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 Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to published material about her and her work, and her participation as a judge of the work of others in her field. We will not disturb the Director's conclusions regarding these criteria. On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to a leading or critical role for an organization with a distinguished

reputation.² After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that she meets the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii).

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)

In order to meet the requirements of this criterion, a petitioner must establish that they served in a qualifying role for an organization or establishment, and that the organization or establishment enjoys a distinguished reputation. If a leading role, the evidence must establish that the petitioner is (or was) a leader. A title, with appropriate matching duties, can help to establish if a role is (or was), in fact, leading. If a critical role, the evidence must establish that the petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the petitioner's performance in the role is (or was) important in that way. It is not the title of the petitioner's role, but rather their performance in the role that determines whether it is (or was) critical.

Here, the Petitioner asserts that she meets this criterion based upon her roles with two organizations: [redacted] School and the [redacted]. Regarding her position with [redacted] she submitted a certificate indicating that she was appointed as [redacted] of the organization's Maternal and Child Health and Education Committee (MCHEC) on July 18, 2018 for a period of four years. An organizational chart submitted with this certificate in response to the Director's request for evidence (RFE) shows the Petitioner as the leader of this committee, with three unnamed deputy directors reporting to her. Those deputy directors in turn lead several departments of unknown staffing levels, including an "International Breastfeeding Department" and a "Maternal-Child Nursing Department," as well as a "Baby Swimming Department" and an "Infant Sports and Health Department." The evidence also includes a letter with the seal of the committee, describing her duties in managing the various departments listed on the organizational chart. However, as noted by the Director, this letter is not signed by an individual having higher authority within [redacted] and so its authenticity cannot be verified. Since neither the organizational chart nor the letter indicate that the Petitioner reports to a higher authority within the committee, this letter can be considered to have been composed and stamped by her, and thus to have limited evidentiary value.

More importantly, the record includes evidence which contradicts the Petitioner's claim to the leading role for this committee. An article which was posted on a website labelled as the "China Maternal and Child Professional Network" discusses a ceremony and lecture in [redacted] 2018 which was co-hosted by the MCHEC and other organizations. This article includes a long list of attendees, including the Petitioner, who is identified as the [redacted] of Maternal and Child Health Special Fund of the China Scholarship Foundation.³ Another individual, [redacted], is named as the [redacted] of

² The Petitioner does not challenge the Director's negative finding regarding four other evidentiary criteria (8 C.F.R. §§ 204.5(h)(3)(i), (ii), (v), and (vi) on appeal, nor does she renew her claim to comparable evidence under 8 C.F.R. § 204.5(h)(4). We therefore consider these issues to be abandoned. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

³ This organization is identified by several different names in the record, including the China Student Health Development

the MCHEC, a position which does not appear in the organizational chart submitted by the Petitioner. This article does not identify any role for the Petitioner with the MCHEC one month after she is claimed to have been appointed as its leader, and names another individual as occupying a leadership position for the committee.

Another article, from the website of an organization with a similar name, the China Maternal and Child Health Association, contains similar information regarding a meeting held to establish the MCHEC in [redacted] 2018. This article identifies the Petitioner as the [redacted] of the Management Committee of the China Student Health Development Foundation, but it does not indicate that she has any role with the MCHEC. In addition, [redacted] is named as the [redacted] of the foundation, and a photograph and caption shows him receiving a plaque on behalf of the MCHEC.

As noted above regarding the inconsistencies in the English translations in the record, it is the Petitioner's burden to resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591. Here, these two articles, in addition to the previously mentioned article from the website of [redacted] Hospital which also fails to mention her claimed role with the MCHEC, directly contradict the Petitioner's claims and other evidence in the record. We therefore find that she has not established that she plays a leading or critical role for the MCHEC, or for [redacted] overall.

Regarding her role as a founder and principal at [redacted] School, the Petitioner asserts on appeal that the Director erred in discounting the letter from the school's human resources manager. We agree that the Director's statement that "he or she will write whatever [the Petitioner] tells him or her to write" indicates that he failed to properly consider this evidence. The letter indicates that the Petitioner has served as vice principal or principal at the [redacted] School since 2007 and provides an extensive list of duties that she performs in this role. However, we note that the "Private Non-enterprise Unit Registration Certificate" submitted by the Petitioner lists only [redacted] as a legal representative, and the Petitioner has not submitted other business documentation (such as articles, minutes or bylaws) which confirms her leading role with [redacted] School. In addition, a promotional brochure from the school lists the Petitioner's short biography along with others under the heading of "International Faculty," and does not otherwise indicate that she acts as the school's principal as opposed to only a faculty member. Further, the article appearing in *Beijing Evening News* states that "Before becoming a professional prolactin trainer, she was a trainer in a state-owned enterprise," and notes that she resigned from her work in 2010 and only gained certification to train other prolactinists two years later. This evidence is not consistent with her claimed performance in a leading or critical role at [redacted] School since 2007, as indicated in the letter from the human resources manager.

We note that another article, published on the website of China Radio International on [redacted] 2018, is titled [redacted] [Petitioner]." However, it does not include quotations from the Petitioner, or a list of questions and answers, but instead consists of a detailed and glowing account of the Petitioner's career and the

Foundation, the China Scholarship Development Foundation and the China Overseas Study Talent Development Foundation. However, on appeal the Petitioner does not base her claim to this criterion on a leading or critical for this organization, nor does she provide evidence in support of its reputation.

school's activity, repeatedly reminding the reader that she is the leader of [redacted] School. In other words, the content of this article is not consistent with its identification as an interview in the title. Also, although the author is given as "North Country Network" and an editor named, the article's tone is entirely self-promotional, and refers to the school as "we" in the fifth paragraph. As the true source of this material is questionable, it is insufficient to overcome the discrepancies listed above.

In addition, the evidence does not establish that [redacted] School has a distinguished reputation. The Petitioner initially submitted several certificates received by the school, including "2013 [redacted] [redacted]" issued by *China's Health Research* magazine. Also submitted were certificates showing awards for "2015 [redacted] [redacted]" from the China Health Management Forum Committee, and in the same year, "[redacted]" from the National Medical Education Development Center. However, little information was provided in the record about these awards, and inconsistencies appear here as well. An article posted on the web portal *finance.ifeng.com*, which lists as its source "China Commercial Telecommunications" and its editor as "robot," indicates that the 2013 award was given to the [redacted] School at the "[redacted] [redacted]" It also states that despite the name of the award, it was the only training school awarded. However, a copy of the certificate which is included in this article is substantially different from what the Petitioner asserts is the same certificate elsewhere in the record. Therefore, due to the discrepancies in the certificate and the lack of information regarding the source of the article, this evidence does not show that the school enjoys a distinguished reputation.

Other evidence includes a webpage concerning the 2015 China Health Management Forum, where the evidence indicates that [redacted] School received the [redacted] award mentioned above. While this document provides information about the forum and its focus on healthcare management, it does not mention any awards given at the event. In the absence of further information about this certificate, why the school received it, and how many other certificates were awarded at this event, we do not find that this evidence establishes the school's distinguished reputation.

For all of the reasons given above, we find that the Petitioner does not meet 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. 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 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); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, 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).

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.