



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

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

In Re: 18236398

Date: SEPT. 22, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, an actor, seeks classification as an individual 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 Texas Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. 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 sustain the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals 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 international 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 criteria 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) (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).

II. ANALYSIS

The Petitioner has appeared onstage with the [redacted] acting company since 1992. She has also appeared on several television programs and in a small number of motion pictures. In 2000, she won a National Film Award for Best Supporting Actress for her work in the film [redacted]. The Petitioner has entered the United States several times since 2018, most recently in March 2020, as a B-2 nonimmigrant visitor, a classification that does not allow employment in the United States.² [redacted] Television, a [redacted] network based in [redacted] intends to feature the Petitioner in television productions once she is authorized to work in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that she 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 initially claimed to have satisfied six of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (x), Commercial success in the performing arts.

The Director concluded that the Petitioner met three of the criteria, numbered (i), (iv), and (vii). We will not disturb this conclusion. We need not address the other claimed criteria, because the three granted criteria are enough for us to proceed to a final merits determination.

¹ The record contains alternative transliterations of several names and titles, including the Petitioner's name, but in context it is evident that the different spellings refer to the same subjects.

² *See* 8 C.F.R. § 214.1(e).

B. Final Merits Determination

Because the Petitioner submitted the required initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and 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 petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have 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 1119-20.³ In this matter, we determine that the Petitioner has established eligibility.

The Director acknowledged that [redacted]'s National Film Award is nationally recognized, but the Director concluded that the award has diminished weight because "it was awarded twenty years ago for Best Supporting Actress and not for Best Actress." But the distinction between "Actress" and "Supporting Actress" concerns the nature of a given role, rather than the quality of the performance or the reputation of the actor. Casting decisions may rely on many factors unrelated to the recognition of individual actors.

The Director is correct that the Petitioner received the award 20 years before she filed the petition. As such, the award by itself does not demonstrate *sustained* acclaim. But the petition does not rest on the award alone, and the Petitioner does not place undue emphasis on it. In newspaper articles in the record, the Petitioner emphasizes that she considers herself a stage performer foremost, and the articles discuss her television work more than they discuss her infrequent film roles.

Regarding that newspaper coverage, the Director correctly found that many of the submitted articles lack the author credit required by 8 C.F.R. § 204.5(h)(3)(iii). The requirement of an author credit serves several important purposes. If the bulk of an individual's coverage comes from one reporter, for instance, then there is doubt about the breadth of that individual's recognition. Press releases written by a hired publicist can be self-serving, regardless of which publications subsequently publish them. And articles written by petitioners themselves, or by those with close ties to them, would obviously have minimal weight as evidence of acclaim. Nevertheless, we can consider the submitted articles in the holistic context of the final merits determination.

The Petitioner submits evidence establishing that the *Daily Star* is a significant newspaper in [redacted]. The record contains several *Daily Star* articles about the Petitioner, dated between 2012 and 2019. In some instances, the headlines refer to the Petitioner only by her first name, indicating an assumption that the readers would be familiar with the Petitioner and her work. Several other newspapers covered the Petitioner's work during that same span of time.

³ *See also 6 USCIS Policy Manual F.2(B)(2)*, <https://www.uscis.gov/policymanual> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

The *Daily Star* also reported frequently on productions by [redacted] calling it “one of the most notable theatre troupes in the country.” The Petitioner states that she has appeared in almost every [redacted] production since she joined the group in 1992. A founder of the group, now serving as its chief secretary, states that the Petitioner “is known all over the country as a star theater performer.”

Other high-ranking individuals in [redacted] attest to the Petitioner’s reputation in the field. Most prominently, the country’s Minister of Information calls her a “legendary actress” whose “contributions . . . are outstanding.” Top executives of various television networks make similar assertions. The contract that secured the Petitioner’s services as a judge on a talent competition called [redacted] calls her “an esteemed cultural figure in [redacted]” There is a limit to the weight we can afford to such letters, whatever their quantity. The highest levels of acclaim will produce a variety of documentary evidence prior to, and independent of, the filing of the petition; an actor whose career has left little public trace until she solicits letters specifically in support of the petition will have difficulty establishing eligibility for this highly restrictive immigrant classification. But, in this case, the Petitioner has not relied on such letters to the exclusion of more persuasive forms of evidence. Even if we set the letters entirely aside, the record presents an award-winning career that has consistently attracted media coverage.

Some of the specific claims in the record lack evidentiary support, such as assertions that [redacted] was “one of the most watched programs in television,” and that the Petitioner’s performances with [redacted] “are regularly sold out,” even as the Petitioner contends that box office figures are not available. In the absence of corroborating documentation, these assertions do not establish commercial success under 8 C.F.R. § 204.5(h)(3)(x). Nevertheless, when a petitioner has claimed to satisfy more than three of the ten baseline criteria, that petitioner need not meet all of them to establish eligibility in the final merits determination. Here, the Petitioner’s evidence suffices to establish eligibility by a preponderance of the evidence.

III. CONCLUSION

The Petitioner has presented a variety of evidence with significantly divergent weight and probative value, but as a whole, and on balance, the evidence submitted is sufficient to establish a prominent career in [redacted] that has lasted for decades. The Petitioner has established sustained national acclaim.

ORDER: The appeal is sustained.