



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

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

In Re: 29045946

Date: DEC 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a craftsperson, 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 the record did not establish that the Petitioner satisfied the initial evidence requirements for this classification by demonstrating her receipt of a major, internationally recognized award or by submitting evidence to satisfy at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 exhibited her artwork in Uzbekistan, Russia, and Spain. Because she 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). In denying the petition, the Director determined that the Petitioner submitted evidence related to all of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and concluded she satisfied only one criterion. Specifically, the Director concluded that the Petitioner met her burden to demonstrate display under 8 C.F.R. § 204.5(h)(3)(vii). As indicated above, the Petitioner has exhibited her work at artistic exhibitions and showcases. Accordingly, we concur with the Director's finding for the display criterion.

On appeal, the Petitioner asserts that she also provided evidence of her membership in associations sufficient to meet the criterion at 8 C.F.R. § 204.5(h)(3)(ii).¹ For the reasons discussed below, we find that the documentation does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner maintains that she meets this criterion based on membership with the Artists Trade Union of Russia (ATUR) and the Eurasian Art Union (EAU) (also referred to in the record as the Professional Union of Artists of Russia). In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international

¹ On appeal, the Petitioner does not dispute the Director's finding that she had not established eligibility under 8 C.F.R. 204.5(h)(3)(i), (iii), (iv), (v), (vi), (viii), (ix) or (x). Therefore, we consider these issues to be abandoned. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding plaintiff's claims abandoned as he failed to raise them on appeal to the AAO).

experts as having outstanding achievements in the field for which classification is sought.² The Director determined that the Petitioner did not submit documentary evidence demonstrating that outstanding achievements are required for membership in those organizations, or that they rely on recognized national or international experts to determine which individuals qualify for membership.

Pertaining to ATUR, within her initial submission, the Petitioner provided her ATUR membership card and membership certificate, both dated July 1, 2021. She also submitted two certificates dated July 24, 2021, from the chairman of ATUR, certifying, respectively, that ATUR included her in the United Register of the Professional Artists and its Rating Centre gave her “the Rating category 6-B (a professional artist).”

Within her response to the Director’s request for evidence, the Petitioner submitted the ATUR statute, which indicates:

3.1. Professional painters, graphic artists, sculptors, masters of decorative and applied arts, photo artists, designers, architects, art historians, gallery and museum workers, journalists, other persons associated with professional interests in the field of culture and art, who have reached the age of 18, can be members of the Trade Union, sharing the goals of the Trade Union, recognizing the charter of the Trade Union and taking a personal part in the work of the Trade Union.

3.2. Membership in the Trade Union is voluntary. Individuals are accepted as members of the Trade Union on the basis of a personal appeal in writing.

It is evident that inclusion in the United Register of the Professional Artists and receipt of the rating category 6-B (professional artist) are not a condition for membership; the Petitioner obtained them after her ATUR membership occurred. Absent evidence to the contrary, it appears that membership in the organization is held by artists who have reached the age of 18 and who have submitted a written application. Thus, the documentation submitted does not show that ATUR requires outstanding achievements of those accepted for admission, as judged by recognized national or international experts in the field.

Regarding EAU, the Petitioner initially provided her membership card dated December 21, 2021. However, an additional form related to the Petitioner’s EAU membership indicates her “date of entry” to be December 21, 2020. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(1). As the Petitioner filed her petition in November 2021, and as she has not submitted verifiable and consistent evidence of the date her membership in EAU occurred, she did not demonstrate sufficiently that her membership with EAU occurred prior to or at the time of her initial filing.

² See generally 6 USCIS Policy Manual, F.2(B)(1), <https://www.uscis.gov/policy-manual> (providing guidance for the evaluation of evidence submitted under 8 C.F.R. § 204.5(h)(3)(i)-(x)).

Notwithstanding the above, the Petitioner also submitted the statute of the EAU, which states as follows:

4.1. The following persons can be members of the Organization: Citizens of the Russian Federation, foreign citizens and stateless persons legally staying in the Russian Federation who have reached the age of 18, except in cases established by international treaties of the Russian Federation or federal laws and being professional and amateur artists, designers, photographers, art historians, artisans who have created original works of independent creative significance, as well as artists and individuals who have made a significant contribution to culture and art, who have widely recognized outstanding achievements and who promote folk arts, acknowledging and implementing this Statute.

4.2. Admission to membership is performed by the EAU's Presidium on the basis of a personal written application of the candidate with the presentation of his creative works, recommendations from three members of the EAU, the decision of the governing body of the creative section and other documents specified in the "Regulations on the Procedure for Admission and Exclusion from the EAU."

4.3. Decisions of admission to EAU's membership are taken by a simple majority of votes of the members of the EAU's Presidium participating in the meeting.

The EAU statute does not define the terms "works of independent creative significance" or "significant contribution to culture and art." Although the EAU statute uses the regulatory term "outstanding achievements," it does not contain detailed, specific information defining what constitutes outstanding achievements. Reviewed in its totality, the evidence does not demonstrate that membership in EAU requires outstanding achievements as judged by recognized national or international experts in the Petitioner's field or discipline. First, the Petitioner has not shown that EAU's requirement that prospective members provide evidence of "works of independent creative significance" or "significant contribution to culture and art" is tantamount to imposing an "outstanding achievement" requirement for membership. The statute does not indicate which factors are considered in establishing outstanding achievement in the membership process, or otherwise indicate the process by which prospective members are evaluated.

Moreover, the Petitioner did not establish that recognized national or international experts judge the outstanding achievements for membership.³ As indicated above, the EAU statute reflects the organization's Presidium votes for membership. The Petitioner did not provide information about the Presidium members showing that they qualify as recognized national or international experts.⁴

³ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

⁴ Further, we note that the record contains a second "Reply to a Request for Additional Evidence," dated after the Director's denial decision, in which the Petitioner provided additional materials, including under this criterion information regarding EAU members; EAU meeting minutes concerning membership, the board of trustees, and regional representative offices; information from the ATUR website on how to become a member; and information about the reference book *United Art Rating* describing the artist rating system. The Director acknowledged but did not consider these materials as they were received after the issuance of denial decision. As the Petitioner was put on notice and given a reasonable opportunity to

For these reasons, we agree with the Director's finding that the Petitioner did not establish that she meets 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. 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

provide this evidence we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaighena*, 19 I&N Dec 533 (BIA 1988).