



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

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

In Re: 28424522

Date: NOV. 1, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an artist, 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 the Petitioner had not established eligibility as an individual of extraordinary ability, either as the recipient of a major, internationally recognized award, or by meeting at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). 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

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) 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 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, 1121 (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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner states she will continue to work in the United States as an artist-in-residence in her own studio and art gallery.

The Director concluded that the Petitioner has not established that she has received a major, internationally recognized prize or award under 8 C.F.R. § 204.5(h)(3) and that the evidence in the record demonstrates that she only meets one of the ten alternate criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), of which he must meet at least three. Specifically, the Director held that she met the criteria for the display of her work in the field at artistic exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner contends that the Director erred in finding that she is not an individual of extraordinary ability, and that the Director omitted several documents in support of her extraordinary ability such as an expert opinion letter. In addition, the Petitioner maintains that she met the evidentiary criteria relating to each of the areas upon which the Director issued an adverse determination and provides additional information.

Upon review, we find that the Director’s decision reflects a careful and thorough review and analysis of the Petitioner’s claims and supporting evidence including the expert opinion letter. Therefore, we adopt and affirm the Director’s decision with the added comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that has squarely confronted this issue”); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration” to the case).

A. Major International Award

The Director determined that the record did not establish that the Petitioner earned a one-time achievement of a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3). The Petitioner

does not contest this determination on appeal and therefore we consider the Petitioner to have waived appeal on this issue.¹

B. Evidentiary Criteria

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

In support of her claim to the criterion at 8 C.F.R. § 204.5(h)(3)(i), the Petitioner provides information regarding the art events including the number of exhibits and artists present, and the exhibition judge. However, this new information does not show that the Petitioner's awards commanded a level of recognition beyond the events where they were presented. For example, there is no evidence showing that the Petitioner's awards were announced in major media or in some other manner consistent with national or international acclaim.

Without more, the Petitioner has not established that any of the awards she received are nationally or internationally recognized as prizes or awards of excellence in her field of endeavor.

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).

On appeal, the Petitioner provides copies of emails and membership cards to establish that she is a member of several associations. However, the evidence does not demonstrate that the associations require outstanding achievements of their members, and that membership eligibility is judged by recognized national or international experts in their field.

Therefore, the Petitioner does not establish that she meets this criterion.

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)

On appeal, the Petitioner provides additional information regarding some of the articles submitted including the title, date, and author, as well as the circulation figures. However, the Petitioner does not demonstrate the significance of these circulation figures or establish that such data reflects status as a professional or major trade publication or other major media.²

¹ 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. US. 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) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

² See 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

The Petitioner does not provide any new evidence or arguments which overcome the Director's determination. Therefore, the Petitioner does not establish that she meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner does not provide any new evidence or arguments which overcome the Director's determination. Therefore, the Petitioner does not establish that she meets 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 does not contest the Director's conclusions regarding this determination on appeal and therefore we consider the Petitioner to have waived appeal on this issue.³

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(viii)

On appeal, the Petitioner states that in Canada, she "commanded high managerial salaries from Art Director to senior Creative Pre-planner positions" and she provides copies of her 2004 executive employment contract and Canada pension plan contributions. However, the Petitioner did not submit evidence to show that her salary or remuneration was high relative to the compensation paid to others working in the field.

Accordingly, we conclude the Petitioner did not establish she commanded a high salary in relation to others in the same position. Therefore, the Petitioner does not establish that she meets this criterion.

III. CONCLUSION

Although the Petitioner is a talented artist, she 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 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 that goal. 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).

³ See *Matter of R-A-M*, 25 I&N Dec. 657, 658 n.2 (BIA 2012).

Here, the Petitioner has not shown that the significance of her artwork is indicative of the required sustained national or international acclaim, 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 they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) 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.