



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

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

In Re: 20631438

Date: JUN. 30, 2022

Appeal of Nebraska 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements of this classification through either evidence of a one-time achievement (a major, internationally recognized award) or meeting three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) 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 international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the 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 is an artist who specializes in [REDACTED] painting. 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).

Initially, the Petitioner claimed that she could satisfy the following criteria:

- (i), Lesser nationally or internationally recognized awards;
- (ii), Membership in associations that require outstanding achievements;
- (iv), Participating as a judge of the work of others in the field; and
- (x), Commercial Success

The Director concluded that the record did not establish that the Petitioner had received qualifying awards, that she is a member of an association that requires outstanding achievements, or that she has participated in qualifying judging activities, and therefore found that she did not satisfy the criteria at 8 C.F.R. § 204.5(l)(3)(i), (ii) and (iv). The Director further determined that the Petitioner, in responding to a request for evidence (RFE), did not pursue her initial claim that she could meet the criterion relating to commercial success in the performing arts at 8 C.F.R. § 204.5(h)(3)(x). Accordingly, the Director did not address this criterion in the final decision.

On appeal, the Petitioner maintains that she qualifies for the requested classification based on her receipt of nationally recognized awards, membership in national artists’ associations that require outstanding achievements, and based on her participation as a judge for artistic exhibitions and competitions. She also asserts that the Director erred by failing to consider evidence of the income she has received from the sale of her artwork. We have reviewed all the evidence in the record and conclude that the Petitioner has not established that she meets the requirements of at least three criteria.

Documentation of the individual'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).

This criterion contains several evidentiary elements the Petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the Petitioner is the recipient of the prizes or the awards, that the awards are nationally or internationally recognized, and that each prize or award is one for excellence in the field of endeavor.¹

At the time of filing, the Petitioner stated that she had received nationally and internationally recognized artistic commendations and awards, as well additional awards at the “local level.”² She provided copies of the following certificates:

- [] Certification issued by the National Art Museum []³
- First Prize at the [] Arts Exhibition of the National Art Museum [] in 2019;
- Second Prize at the [] Art Festival in 2016;
- First Prize at the [] Painting and Calligraphy Association in 2017;
- Third Prize at the [] Museum in 2015;
- Third Prize at the [] Art Exhibition sponsored by the [] Art Palace and [] Young Artists Association (no date provided).

The Petitioner's letter in support of the petition briefly described the venues, exhibitions and exhibition sponsors referenced above without citing any sources. The initial evidence did not include supporting documentation that could assist in establishing that the certificates she received are nationally or internationally recognized awards for excellence in her field.

In the RFE, the Director requested English translations of the submitted [] language award certificates. The RFE advised the Petitioner that she had not demonstrated that the claimed awards were nationally or internationally recognized and requested additional documentary evidence in support of her eligibility under this criterion. The Director stated that such evidence should demonstrate the criteria used to grant the awards, their significance (including the national or international recognition associated with the awards), the reputation of the organization or panel granting the awards, the geographic scope of the awards and any limitations on competitors, the

¹ See also 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (noting relevant considerations in determining if the award or prize meets this criterion, include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients, as well as any limitations on competitors).

² While we will discuss only those awards the Petitioner identified as nationally or internationally recognized awards or prizes, we have reviewed and considered evidence related to her “local level” awards in determining whether she meets the requirements of this criterion.

³ The Petitioner indicates that this certificate was issued in 2016 and recognizes the inclusion of her painting [] in the museum's collection as part of a young artists exhibition. The certificate does not include a date, the Petitioner's name, the name of the referenced painting, or the name of the exhibition.

number of awards or prizes granted, evidence related to previous award winners, and public announcements of the awards.

The Petitioner's response included the requested English translations of the award certificates. However, she did not provide any additional documentary evidence related to the exhibitions or competitions at which she received awards or prizes in support of her claim that the awards are nationally or internationally recognized. The Director concluded that simply providing evidence of her receipt of an award certificate is insufficient to demonstrate the award's national or international recognition for excellence in the field. On appeal, the Petitioner generally asserts that she established the significance of her awards, noting that her work "has been collected by the top-ranked National Art Museum [redacted] which is enough to show my personal artistic achievements."

We agree with the Director's determination. Although the Petitioner demonstrated that she received the above-referenced awards, the record is insufficient to support her assertions regarding the prestigious nature of the exhibitions and contests at which she received those awards or her claims regarding the national or international recognition associated with the awards. A petitioner's unsupported statements normally will be insufficient to carry their burden of proof. The Petitioner did not support her assertions regarding her awards with relevant, probative, and credible evidence, even when given the opportunity to provide supplemental evidence prior to the adjudication of the petition. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

On appeal, the Petitioner asserts that the fact that her awarded work was exhibited in the National Art Museum [redacted] should be sufficient to establish the national recognition of her award. However, the record contains no supporting documentation regarding the museum, the exhibition, or the recognition associated the specific award she received, such as evidence that the exhibition participants and award winners were announced in the media or otherwise recognized outside of the exhibition itself.

For the reasons discussed, the Petitioner did not establish that her prizes and awards are nationally or internationally recognized for excellence in the field. Accordingly, we conclude that she did not demonstrate that she meets this criterion.

Documentation of the individual'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).

To satisfy this criterion, a petitioner must provide evidence of their membership in an association and demonstrate that such membership is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.⁴

The Petitioner asserts that she meets this criterion based on her membership in the [redacted] Calligrapher's Association and her membership in the [redacted] Association of Women Painters.

⁴ See 6 USCIS Policy Manual, *supra*, at F.2 appendix (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

In her supporting letter, the Petitioner stated that the [redacted] Calligrapher's Association admits only the "highest level of professional painter." She indicated that new members must meet requirements that include obtaining the recommendation of three existing members, displaying work at prefectural-level calligraphy and painting exhibitions that meets certain conditions, or winning a "national-level qualification" in a painting contest. She indicated that the [redacted] Association of Women Painters is a national level group associated with the [redacted] and that membership requires display of one's work in a national level exhibition or winning a national award competition. She did not provide supporting evidence from these associations supporting her claims regarding their respective membership requirements.

Further, the Petitioner did not submit documentation of her membership in either of these associations. She submitted a membership certificate indicating that she has been a member of the [redacted] Artists Association" since July 2007.⁵ She did not provide any information or evidence relating to this association or its membership requirements.

In the RFE, the Director advised the Petitioner that the evidence she submitted did not establish that she is a member of an association in which membership is conditioned on outstanding achievements in the field of endeavor as judged by recognized national or international experts in the field. He requested: additional evidence to establish that the individuals who review prospective members' applications are recognized as national or international experts; the sections of the associations' bylaws which discuss the criteria for membership; and the sections of the bylaws discussing the qualifications required of those who review membership applications.

The Petitioner's response to the RFE included a certified English translation of her membership certificate issued by the [redacted] Artists' Association but did not include any additional evidence relating to this criterion. The Petitioner submitted a letter in which she repeated her earlier statements regarding membership requirements for the [redacted] Calligraphers' Association and the [redacted] Association of Women Painters, but as noted above, the record did not document her membership in either of these associations.

The Director acknowledged the Petitioner's claim that she is a member of these two associations but emphasized that she did not provide the associations' constitutions or by-laws or any other objective evidence that would demonstrate how prospective members' applications are reviewed or what qualifications were required for membership. As such, the Director concluded that the evidence did not confirm that membership in these associations is conditioned on an applicant having outstanding achievements as judged by recognized national or international experts in the field of art.

On appeal, the Petitioner maintains that the [redacted] Calligraphers' Association and the [redacted] Women Painters Association" are "national-level artist groups in [redacted] She submits excerpts from both associations' websites, accompanied by partial English translations, as well as an English translation of the "association charter" for the [redacted] Women Painters Association.

⁵ It appears that this certificate may have been submitted as evidence of her claimed membership in the [redacted] Calligrapher's Association, but she provided no explanation or evidence to establish that the [redacted] Calligrapher's Association" and the [redacted] Artists' Association" are the same entity.

We agree with the Director's determination that the Petitioner did not submit evidence demonstrating that she meets this criterion. First, the record does not contain documentary evidence of the Petitioner's membership in the [] Calligrapher's Association or the [] Women Painters Association. Accordingly, even if we reviewed the newly submitted evidence and found it sufficient to establish that membership in these associations is conditioned on a prospective member's outstanding achievements as judged by national or international experts in the field, the evidence would be insufficient absent documentation of the Petitioner's actual membership. Further, the Petitioner had an opportunity to provide evidence such as association bylaws and other evidence of membership requirements in response to the Director's RFE. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The only membership the Petitioner documented was her membership in the [] Artists' Association. The record contains no information or supporting evidence regarding the membership requirements for that association and therefore does not establish that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(ii) based on such membership. For all the reasons discussed, the record does not establish that the Petitioner satisfies this criterion.

Evidence of the individual'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).

To satisfy this criterion, a petitioner must show that they have not only been invited to judge the work of others, but also that they actually participated in the judging of the work of others in the same or allied field of specialization.⁶ The Petitioner indicates that she has participated as a judge at two juried art exhibitions. She submitted the following evidence in support of her claim:

- Employment Certificate issued to the Petitioner by [] University Art School in January 2006. The certificate addresses the Petitioner and states that the university "decided to invite you to serve as a member of the selection committee for the <silent theme> invitation exhibition."
- Employment Certificate issued by [] Art Museum in June 2018. The certificate states that "[the Petitioner] is hereby invited to be the jury member of the 2018 [] Contemporary Women's Art Research Competition."

The Petitioner's supporting letter included some information regarding the exhibitions and exhibition sponsors, but she did not cite any sources for this information, nor did she provide any supporting documentation confirming her participation in judging activities that satisfy this criterion.

In the RFE, the Director advised the petitioner that her narrative description of these exhibitions is not considered sufficient objective evidence of the nature of her judging activities. The Director also emphasized that "a judge" implies a formal designation in a judging capacity, while the submitted evidence suggests that she may have been a hired employee. The Director requested additional

⁶ See 6 USCIS Policy Manual, *supra*, at F.2 appendix.

evidence to establish that she participated in judging the work of others in her field. The Petitioner's response included English translations of the above-referenced certificates but did not include any additional evidence regarding her judging activities. According, the Director determined that the Petitioner did not overcome the evidentiary deficiencies raised in the RFE.

On appeal, the Petitioner asserts that is customary in [] for an individual invited to participate in judging activities to be paid for such activities. She emphasizes that such temporary judging activities are distinguished from her day-to-day work and not part of her regular job duties. Finally, she states that she acted independently to "review every entry in the competition with [her] own artistic level and thinking."

While we do not find that the Petitioner's receipt of payment would necessarily be disqualifying, the record lacks sufficient evidence to document the Petitioner's participation as a judge of the work of others in her field. The two "employment certificates" confirm that the Petitioner was *invited* to participate as a judge of artistic exhibitions or exhibitions. The record does not contain evidence from the exhibition sponsors or organizers, or other objective evidence, confirming that she accepted the invitation and participated in judging the exhibitions, nor is there any supporting documentation related to those exhibitions and the role of the judges in selecting exhibitors or prize winners. Without additional documentation confirming both her participation as a judge and the nature of her judging activities, the Petitioner has not met her burden to demonstrate that she has judging experience that satisfies the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

B. Summary

Based on the foregoing discussion, we agree with the Director's determination that the Petitioner did not submit sufficient evidence to satisfy the criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii) and (iv).

On appeal, the Petitioner asserts that the Director failed to consider bank transaction records demonstrating that she received high income from the sale of her artwork. While the Petitioner submitted copies of these bank transaction records prior to the denial of the petition, she did not previously articulate a claim that she can satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence that the individual has commanded a high salary, or other significantly high remuneration, in relation to others in the same field.

The Petitioner submitted three pages from a [] Bank Statement and included annotations identifying four of the listed transactions as income she received from the sale of her paintings. The Petitioner submitted no additional evidence to corroborate these claimed sales, such as invoices or receipts issued to buyers, tax documentation, or other objective evidence showing the source of the highlighted credits to her bank account. Further, the record contains no comparative evidence in support of her claim that these transactions establish her "high salary or significantly high remuneration" in relation to other painters in []. The bank records referenced on appeal are therefore insufficient to establish that the Petitioner meets the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

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 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.