



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

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

In Re: 30233212

Date: APR. 03, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a videographer, seeks classification as an individual of extraordinary ability. 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 had satisfied at least three of ten initial evidentiary criteria, as required. 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 withdraw the Director's decision and remand this matter for the entry of a new decision consistent with the following analysis.

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 is a videographer who has worked on camera crews for many productions, including for a major motion picture and for television and streaming series with a major production company. The Petitioner is a graduate of a directing program at [REDACTED] and intends to continue her work in the United States in the field of television and film production.

As a preliminary matter, we acknowledge that the Petitioner has been the Beneficiary of an approved O-1B petition. Although USCIS has approved at least one O-1B nonimmigrant visa petition filed on behalf of the Petitioner, this prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations, and case law. The nonimmigrant and immigrant categories have different criteria, definitions and standards for persons working in the arts. “Extraordinary ability in the field of arts” in the nonimmigrant O-1B category means distinction. 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, “extraordinary ability” reflects that the individual is among the small percentage at the very top of the field. 8 C.F.R. § 204.5(h)(2).

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 Director determined that the Petitioner met one of the criteria she claimed to have satisfied: participation as a judge of the work of others in her field. *See* 8 C.F.R. § 204.5(h)(3)(iv). The record supports this determination. The Director concluded, however, that the Petitioner did not establish that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (vii), or (viii). On appeal, the Petitioner asserts that she meets three of these criteria, and she contends that the Director disregarded certain evidence and made significant factual errors in reviewing it, including making assertions that are contrary to the evidence submitted. Upon review, we conclude that the Petitioner has met the criteria at 8 C.F.R. § 204.5(h)(3)(iii) and (vii).

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).

On appeal, the Petitioner does not address the Director’s analysis of her eligibility under this criterion. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

Published material about the individual in professional or major trade publications or other major media, relating to the individual’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).

The Petitioner has submitted articles showing that she has been interviewed and her work has been discussed in at least one major trade publication, *ICG Magazine*, which discusses the Petitioner's transition from China and her work on several productions. We note that, in denying the petition, the Director did not acknowledge evidence submitted regarding *ICG Magazine*, stating only that evidence did not establish that it is a professional or major trade publication or other major media. Information from the publisher and from California State University's Entertainment Alliance provide details concerning the magazine's significance to the film and television industries. As such, we consider this magazine to be a major trade publication.

Covering similar material, the record includes an article in *World Journal*, a Chinese language newspaper published in North America. While the record includes documentation concerning the newspaper's history and distribution, we take administrative notice that open-source searches demonstrate that the newspaper is one of the largest Chinese language newspapers in the United States with independent operations in several major cities in North America and worldwide circulation. As such, we consider this publication to constitute major media. The article discusses the Petitioner's family's history working as directors; her own work in television, streaming, and film; and the screening of her work at several film festivals. In denying the petition, the Director characterized *World Journal*—without explanation—as a “web portal” that is “open to user-created and marketing content.” The record initially included the printed article and certified translation which both depicted a link to the story at the publication's website. In a request for evidence (RFE), the Director pointed out that the link was not functional and, as such, the article could not be verified. In response the RFE, the Petitioner submitted the same article as printed from a separate link on the publication's website, stating that this was the “updated” link to the article. The Petitioner also submitted the same certificate of translation showing the original translation date and the original link. The Director dismissed the evidence as having “no probative value for this proceeding,” alleging that the article had been deleted and revised. Upon review, the foreign-language articles appear identical in content; the main difference is that the order of photos of the Petitioner has changed slightly. We see no reason to question the credibility of this article. The evidence of record meets the plain language of this criterion.

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner asserts that independent film projects that she has written and directed have been exhibited at several film festivals. The record includes documentation about these festivals and lists the films included, as well as email messages informing the Petitioner of the festivals' intent to screen her films. The record also contains numerous letters from managers in the industry who have worked with the Petitioner attesting to the inclusion of her work in these festivals. The evidence of record meets the plain language of this criterion.

We note that, in denying the petition, the Director appears to argue that the Petitioner's various titles of “videographer,” “1st assistant camera,” and “focus puller” are not artistic in nature and therefore disqualify her from meeting this criterion; the Director states, “You are not a cinematographer; you

are a videographer, which is not an artist.” Contrary to evidence in the record explaining both the technical and artistic nature of a videographer’s role—as well as the roles of others on production sets—the Director implies that the Petitioner has conflated cinematographers and videographers in order to demonstrate the artistic nature of her work.

On appeal, the Petitioner explicitly disagrees with the Director’s characterization, challenging it as, “at best, a clear misunderstanding” of the titles and evidence as presented and, “at worst . . . a clear mistake of fact.” The evidence does not demonstrate that the Petitioner claimed to be a cinematographer; conversely, the record includes expert opinion letters and independent documentation describing various roles related to the intricacies of television and film production—including the fact that production participants may take on multiple roles regardless of title and that titles may have different meanings depending on the project. The record shows that the Petitioner has worked in production roles working as a focus puller, overseeing camera crews, and writing and directing independently, offering an example of how—as demonstrated by the evidence—many enthusiasts enter the production industry learning the technical and organizational aspects of a production set and industry to further develop the artistic elements of their roles. Because the record shows that the Petitioner’s independent work in the field of film production has been displayed at artistic showcases, she meets the plain language of this criterion.

III. CONCLUSION

The Petitioner has met the requisite three of ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(iii), (iv), and (vii). We therefore need not consider whether she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii).

We will withdraw the Director’s denial of the petition and remand the matter for further review and entry of a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this case on remand. On remand, the Director should conduct a final merits review of the evidence of record. The new decision should include an analysis of the totality of the evidence evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim, her status as one of the small percentage at the very top of her field of endeavor, and that her achievements have been recognized in the field through extensive documentation. *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.

ORDER: The Director’s decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.