U.S. Citizenship and Immigration Services

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

In Re: 34070948

Date: JAN. 08, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, an actress, 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 (EB-1) 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 the record did not establish that the Petitioner had satisfied at least three of the ten initial evidentiary criteria for this classification, as required. The matter is now before us on appeal.

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

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 sustained acclaim and the recognition of their 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 they must provide sufficient qualifying documentation that meets at least three of the ten categories 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 stated that she worked as an actress abroad and that she was a "Kazakh Heritage Expert" who studied at the [redacted] specializing in theatre and film acting. The Petitioner explained that she had performed in numerous theatrical, television, and film performances in Kazakhstan since 2006. The Petitioner asserted that she planned to establish a "Cultural Exchange & Artistic Immersion Program" facilitating collaboration between actors, artists, and creative professionals from Kazakhstan and the United States.

### A. Evidentiary Criteria

Because the Petitioner 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). On appeal, the Petitioner asserts that she meets the 8 C.F.R. § 204.5(h)(3) evidentiary criteria relating to awards (i), membership (ii), published material (iii), original contributions (v), display of work (vii), leading or critical role (viii), and high salary (ix). She does not assert her eligibility on appeal under judging (iv), authorship (vi), or commercial success (x) criteria. Therefore, we deem these issues to be waived and will not address these criteria in our decision. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). While we may not discuss every document in the record, we have reviewed and considered each one. Based on our de novo review, we conclude that the Petitioner has not established that she meets the requirements of at least three 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).

The Petitioner claims to meet this criterion based on her receipt of "diploma for Best Performance at the 9th International Festival [redacted] awarded by the [redacted]

[redacted] The Petitioner indicated that she was a "key performer" in this production. Further, the Petitioner pointed to her winning the "Grand Prix Award for vocal performance at the [redacted] International Music Festival" in [redacted] 2023. The Petitioner also emphasized that the Petitioner received the "Unity and Friendship Badge" from the [redacted] "recognizing [her] active involvement in advancing international relations and promoting Kazakh heritage through her artistic contributions." The Petitioner stated that this demonstrated her excellence in the performing arts, including acting.

In concluding that the Petitioner did not establish this criterion, the Director stated that the submitted evidence did not reflect she was the direct recipient of the diploma for best performance at the 9th International Festival of [redacted]. The Director also reasoned that the Petitioner received the grand prix award for vocal performance at the [redacted] International Music Festival after the date the petition was filed, and therefore, this did not demonstrate her eligibility for this criterion as of the date the petition was filed. The Director further determined that the unity and friendship badge from the [redacted] did not establish she received the prize or award in the field of acting and that she was national or internationally recognized for excellence in this endeavor.

On appeal, the Petitioner again points to the previously asserted awards and contends these demonstrate her eligibility under this criterion. More specifically, the Petitioner states that the diploma she received for best performance "reflects her individual contribution to the success of the performance" at the 9th International Festival of [redacted] The Petitioner also contends that the Director should consider her award for best vocal performance at the [redacted] International Music Festival, noting this reinforces her "pattern of extraordinary ability rather than constituting a new basis for eligibility." In addition, the Petitioner discusses a "Certificate of Honor from [redacted] she received for her "outstanding performance at a prestigious event" reflecting her "contributions to the performing arts…including acting."

Upon review, we agree with the Director that the Petitioner did not demonstrate eligibility under this criterion. First, the Petitioner did not submit sufficient evidence to establish that the awards she received were reflective of excellence in the field of acting. For instance, as noted by the Director, the award the Petitioner received for a vocal performance at a music festival in the United States, is not indicative of being recognized nationally or internationally for excellence in the field of acting. As also noted by the Director, this award was received after the date the petition was filed in August 2023 and is therefore not relevant to demonstrating her eligibility under this criterion. The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.").

The Petitioner also did not sufficiently establish that the award for best performance at the 9th International Festival of [redacted] was a nationally or internationally recognized award for excellence in the field of acting. As discussed by the Director, the award for best performance was given for the performance [redacted] but there is no indication this award was given specifically to the Petitioner for excellence in acting. The Petitioner

also provides little support for a conclusion that this award is recognized nationally or internationally as an award reflecting excellence in the field of acting.

Likewise, the "Unity and Friendship Badge" from the [redacted] recognizes her achievement in "advancing international relations and promoting Kazakh heritage through her artistic contributions." However, this badge is not an award specific to the field of acting and for excellence in this field of endeavor. Further, the certificate of honor the Petitioner received from [redacted] again generally acknowledges her "contributions to the performing arts," rather than demonstrating her receipt of an award recognizing excellence in acting. The Petitioner also did not sufficiently document her receipt of this asserted award, nor did she articulate how this reflected an award for excellence in the field of acting and how this award was nationally or internationally recognized.

Accordingly, the Petitioner did not show that she fulfills the criterion at 8 C.F.R. § 204.5(h)(3)(i).

> *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).

The Petitioner claims she fulfills criterion based on her membership in the Union of Theater Workers of Kazakhstan "a professional organization dedicated to the development and promotion of theatrical arts in Kazakhstan." The Petitioner asserts that membership in this organization requires the approval of an application, recommendations from existing members, verification of education and professional experience, and approval by a board or central commission. The Petitioner contends that "these stringent requirements ensure that only members with significant achievements and contributions in the field of theater are accepted as members."

In the denial decision, the Director determined the Petitioner did not meet this criterion stating that the provided digital printouts and letter without an author did not sufficiently establish her membership in the Union of Theater Workers of Kazakhstan. The Director further reasoned that the Petitioner did not submit evidence establishing that the association's constitution or bylaws required outstanding achievements in the field as judged by national or international experts.

Upon review, we concur with the Director's determination that the Petitioner did not demonstrate eligibility under this criterion. In response to the Director's request for evidence (RFE), the Petitioner submitted a translated document showing the requirements for membership in the Union of Theater Workers of Kazakhstan reflecting this required the applicant be 18 years old, a citizen of Kazakhstan, a creative worker in the field of theatre art, and either three years of work experience with a special theatre education or at least five years of work experience without special theatre education. However, there was no indication in this document that membership in the Union of Theater Workers of Kazakhstan required outstanding achievements of their members as judged by recognized national or international experts in the field of acting, but only require the applicant meet certain basic requirements along with work experience in the field.

For the reasons discussed above, the evidence submitted here does not show that the Petitioner has a membership in an association that satisfies all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

> *Published material about the noncitizen in professional or major trade publications or other major media, relating to the noncitizen'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).

To establish this criterion, the Petitioner must demonstrate that there was published material about her in professional or major trade publications or other major media, including the title, date, and author of the material.[1] If the record supports those regulatory requirements, we will then decide whether professional or major trade publications or other major media published those materials.

The Director determined that the Petitioner did not establish this criterion since she submitted digital printouts of articles that did not reflect the full website address in order to be sufficiently identified. The Director also concluded the Petitioner did not demonstrate that Kazakh Literature, a publication including an article about the Petitioner, was a professional or major trade publication, or other major media.

On appeal, the Petitioner points to an interview published in Alash Ainasy (Alash Mirror) in [redacted] 2024 asserting that it is a "well established republican socio-political informational newspaper in Kazakhstan." The Petitioner asserts that it is major media since it has a "substantial circulation of 10,000 copies" and published five days per week. The Petitioner further emphasizes another interview titled [redacted] published in Qazaq Abebieti (Kazakh Literature) in [redacted] 2022. The Petitioner indicated that this publication "is a highly regarded newspaper dedicated to literature, culture, and art in Kazakhstan" with a circulation of 14,799 copies weekly.

Although we acknowledge that the articles discussed by the Petitioner on appeal discuss her and her work as an actress, she submitted insufficient evidence to establish that these articles were published in professional or major trade publications or other major media. Notably, the Petitioner did not submit objective circulation statistics to support its assertions regarding the claimed circulation of the Alash Mirror and Kazakh Literature. For instance, the Petitioner did not properly articulate and support how 10,000 copies per week for the Alash Mirror and 14,799 copies weekly for Kazakh Literature demonstrated that they were major trade publications or other major media in that country. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Upon review of the evidence submitted in support of this criterion, the Petitioner has not met her burden of proof to demonstrate his eligibility under 8 C.F.R. § 204.5(h)(3)(iii).

> *Evidence of the individual'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)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only have they made original contributions, but that the contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented

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

throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.[2] In denying the petition, the Director stated that submitted support letters, including one discussing her work with the [redacted] did not sufficiently establish that her contributions were original and of major significance in the field.

On appeal, the Petitioner emphasizes several provided letters from "industry experts" and asserts they demonstrate "her significant and original contributions." For instance, the Petitioner again points to the letter from T-A-, from the [redacted] discussing her "adaptability and range as an actress" and her portrayal of "complex and emotionally resonant characters," noting this underscores her growing influence and major significance of her contributions to the field. Likewise, the Petitioner emphasizes a letter from A-M-, the general producer and scriptwriter of the film [redacted] a movie within which the Petitioner played a main character. The producer and scriptwriter of this film praised the Petitioner's performance, its "nuance and emotional resonance," "depth and authenticity," and emphasized the film's participation in various international film festivals reflecting "its cultural relevance and global appeal." The Petitioner also discusses another support letter from A-B-M-, a Kazakh film and theatre actor, who highlighted the Petitioner's "memorable and high-paying roles in many performances and films," showing her "significant cultural influence and respect among colleagues and the public." Further, the Petitioner pointed to a letter from A-P- LLP attesting to her "extensive experience and popularity as a theatre and cinema actress" and "her responsibility, dedication, and success of her roles in various television and film projects." In sum, the Petitioner contends that these letters, among other provided support letters, reflect her original contributions and their major significance within the field of acting.

The submitted evidence does not sufficiently establish that the Petitioner's performances represented original contributions amounting to major significance in the field. As discussed, the Petitioner relies on recommendation letters from colleagues within the Kazakh acting community and these letters are complimentary of the Petitioner's talents and ability, but they do not sufficiently articulate how her work represented original contributions of major significance within the field. For example, the provided letters mostly discuss the Petitioner's talents and ability as an actress, such as her "adaptability and range," portrayal of "complex and emotionally resonant characters," "nuance and emotional resonance," "depth and authenticity," as well as her "cultural influence and respect among colleagues and the public." However, beyond explaining her talents and attributes, the submitted letters provide little detail as to how her contributions to the field were original or how they had major significance within the field. For instance, the letter from A-B-M-, the Kazakh film and theatre actor, emphasizes her "significant cultural influence and respect among colleagues and the public," but does not explain in detail this cultural influence and the record does not otherwise document how her performances had major significance within the field of acting.

Because the Petitioner has not established that her achievements were original contributions that had of major significance within the field of acting, we conclude that he does not meet the criterion at 8 C.F.R. § 204.5(h)(3)(v).

[2] *See 6 USCIS Policy Manual* F.2.

*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)(ix).

In order to meet this criterion, a petitioner must demonstrate that her salary or remuneration is high relative to the compensation paid to others working in the field. The Petitioner claims eligibility for this criterion based on salary records "demonstrating her higher-than-average salary in relation to other theatre actors in Kazakhstan," reflecting "her exceptional status and recognition in the field." The Petitioner asserts that her salary record "consistently reveals that [she] consistently earned a higher salary compared to her peers." The Petitioner provided two "salary certificates" from [redacted] in Kazakhstan reflecting the annual salaries and taxes she paid from January 2020 to February 2023.

However, here, the Petitioner did not indicate how these listed salaries compared to that of other actors within Kazakhstan with similar experience to demonstrate that her salaries were high in relation. The Petitioner only states that her salaries were consistently higher that her peers but provides no objective support for this conclusion.[3] The Petitioner must resolve ambiguities 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). She has not done so here. Therefore, the Petitioner did not establish that she satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

B. Summary and Reserved Issue

The record does not establish that the Petitioner meets at least three of the initial evidentiary criteria discussed above. As such, the Petitioner has not met the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Therefore, detailed discussion of the remaining criteria at 8 C.F.R. § 204.5(h)(vii) and (viii) cannot change the outcome of the appeal. Therefore, we reserve and will not address these remaining criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

## 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 do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the material in the aggregate, concluding that while the Petitioner has achieved some success as an actress, the record does not support a conclusion that she 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. Here, the Petitioner

[3] Evidence regarding whether the person's compensation is high relative to that of others working in the field may take many forms. Examples may include, but are not limited to, geographical or position-appropriate compensation surveys and organizational justifications to pay above the compensation data. *See* 6 USCIS Policy Manual F.2(B)(1)

has not shown the significance of their 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 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 his eligibility as an individual of extraordinary ability.

**ORDER:** The appeal is dismissed.