U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35916841

Date: JAN. 31, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a dancer and choreographer, 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 Petitioner did not establish that she had received a one-time achievement (a major, internationally recognized award) or that she satisfied at least three of the initial evidentiary criteria, as required for the requested classification. The matter is now before us on appeal pursuant to 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

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the [noncitizen] 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 [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the [noncitizen'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 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 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 states that she is a professional ballroom dancer and instructor. In a personal statement, the Petitioner states that she began ballroom dancing at age 6 and taught in her own studio by age 16. She has participated in many national and international dance competitions, as well as trained and coached other dancers preparing for competition. She has also performed internationally in various dance and theater productions. She seeks to continue her career in the United States as a dancer and instructor.

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). The Petitioner initially claimed that she met eight of these criteria:

- (i), Receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published materials in major trade or professional publications or other major media;
- (iv), Participating as a judge of the work of others in the field;
- (v), Original contributions of major significance;
- (viii), Performing in leading or critical roles for organizations or establishments with a distinguished reputation;
- (ix), Commanding a high salary, or other significantly high remuneration for services, and;
- (x), Commercial successes in the performing arts, as shown by box office receipts or sales.

The Director issued a request for evidence (RFE), notifying the Petitioner that the evidence in the record was not sufficient to establish that she met any of the claimed criteria. The Director allowed the Petitioner an opportunity to submit additional evidence in attempt to demonstrate that she satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In response to the RFE, the Petitioner submitted additional evidence asserting that she meets seven of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x):

- (i), Receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published materials in major trade or professional publications or other major media;
- (iv), Participating as a judge of the work of others in the field;
- (v), Original contributions of major significance;
- (viii), Performing in leading or critical roles for organizations or establishments with a distinguished reputation, and;
- (ix), Commanding a high salary, or other significantly high remuneration for services.

In denying the petition, the Director determined that the Petitioner demonstrated that she met two of the ten criteria. Specifically, the Director concluded that the Petitioner met the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (iv), having received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor, and having participated as a judge of the work of others in the field. While we agree with the Director that the Petitioner has met these two criteria, we conclude that the record does not demonstrate that the Petitioner meets at least one additional criterion to meet the threshold for a final merits determination on whether she can establish that she is an individual of extraordinary ability in the field of dance and choreography.

A. Evidentiary Criteria

On appeal, the Petitioner maintains that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, she maintains that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (v), (viii), and (ix). For the reasons discussed below, we find that the Petitioner has not established that she meets at least three categories of evidence.

1. Membership in associations requiring outstanding achievement.

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) calls for "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."

To meet the standards of this criterion, an individual must submit evidence that 1) they are a member of an association; 2) the association is in their field of extraordinary ability; 3) the association requires outstanding achievements as a condition for membership; and 4) that the outstanding achievements are judged by national or international experts in their fields.

In support of this criterion the Petitioner asserts that she is a member of the Belarusian Dance Sports Alliance (BDSA). The Director determined that the evidence did not demonstrate that this association requires outstanding achievements and was not sufficient to establish that the Petitioner satisfies this criterion.

On appeal, the Petitioner again states that she is a member of BDSA, "a voluntary association of legal entities, including public associations, including athletes, coaches, judges and other citizens interested in the development and popularization of dance sports and acrobatic rock and roll ... to carry out activities aimed at developing and supporting dance acrobatic rock and roll in the Republic of Belarus sports." She submits an excerpt from BDSA's "Article of Association" and her dance card as evidence of her membership since 2010.

The "Article of Association" states that a candidate for BDSA membership must be a resident of the Republic of Belarus (Article 19) and must make a declaration of intentions to comply with BDSA competition rules (Article 20). Applications for admission are considered by the management board and admission decisions require a 2/3 majority vote (Article 21).

This evidence does not describe the requirements for membership as outstanding achievements in the field. Nor does the evidence demonstrate that achievements of members are judged by national or international experts in dance, choreography or instruction.

On appeal, the Petitioner does not submit additional evidence and again relies on the BDSA "Article of Association." She references Article 21 that requires the BDSA management board to vote on membership decisions. In the Petitioner's brief on appeal, her representative states, "The Board includes distinguished figures ... This process reflects that membership is highly selective, with decisions made by established professionals who judge applicants based on their alignment with BDSA's high standards." However, these statements are not supported by the record. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

The Petitioner provided a list of board members in the RFE response. However, the record includes the qualifications of only one of the board members. Further, the record does not include documentary evidence of the criteria by which the BDSA management board judges prospective candidates for membership.

For these reasons, the Petitioner has not submitted documentation that satisfies this criterion.

2. Published material about the individual.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "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."

This criterion requires evidence showing published material about the individual and their work in the field of extraordinary ability. In addition, that material must include basic information such as its title, date and author, and must have been published in professional or major trade publications or other major media.

The record includes six screenshots of and links to videos posted to YouTube of the Petitioner's performances. In the RFE, the Director noted that the record did not include transcripts of the videos and that the Petitioner did not demonstrate that the videos qualify as "professional or major trade publications."

In response to the RFE, the Petitioner referenced the same YouTube videos. She provided a transcript of one video that includes a brief interview with her discussing her dance career. She also provided the following information for the YouTube Channel that posted each video, as follows:

- The [redacted] channel, with "2,51k subscribers and 2,015 views."
- [redacted] channel, with "1,6k subscribers and 9,6k views."
- [redacted] channel, no subscriber or view statistics provided.
- The Petitioner's own channel, no subscriber or view statistics provided.

The Director determined that this criterion was not met because the Petitioner did not establish that YouTube videos qualify as a professional publication, major trade publication, or major media publication. The Director noted that "views, clicks or likes to a page, video, article can be purchased," and the number of views may be inaccurate as it does not account for replaying the video or refreshing the website. The Director concluded that this diminishes the probative value of the number of views and subscribers.

On appeal, the Petitioner again references the six YouTube videos. In her brief on appeal, the Petitioner states that the videos were "published on professional YouTube channels, which are respected sources within the dance and performance community." She further states that the videos referenced were posted on YouTube channels that "serve as digital platforms with significant circulation within the dance community, each attracting a substantial audience of viewers specifically interested in professional dance content." However, the Petitioner does not submit evidence to support her claim that each of these YouTube channels attracts an audience interested in dance and is respected in the dance community. The Petitioner does not submit any background information on the YouTube channels, including her own channel, to demonstrate that they are professional or to provide a profile of their intended audience. Nor does she submit supporting documentary evidence, such as the relative circulation, readership, or viewership. She does not demonstrate the significance of the number of subscribers and likes or how this data reflects YouTube's status as a major medium.[1]

Upon review of the record, we agree with the Director that the Petitioner has not met the plain language of this criterion because she did not establish that the published material about her qualifies as a professional publication, major trade publication, or major media publication.

[1] *See 6 USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual, (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).

We also note that of the six videos referenced, the Petitioner is not credited in three of the videos. Specifically, the Petitioner's name is not mentioned in or associated with the videos posted on [redacted] and her own channel. Therefore, we are precluded from determining whether these videos can be considered material related to the Petitioner and the Petitioner's specific work in the field of dance and choreography.

For these reasons the Petitioner did not show that she satisfies this criterion.

3. Evidence of original contributions of major significance.

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

In order to satisfy this criterion, a petitioner must establish that not only have they made original contributions, but that they have been of major significance in the field.[2] For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

In support of this criterion the Petitioner references her awards in dance competitions and letters of recommendation and support from her coaches, students and other dance professionals. The Director determined that the evidence in the record did not identify the Petitioner's original contributions in dancing or demonstrate the major significance of her original contributions to the field.

On appeal, the Petitioner again references the recommendation and support letters in the record and states that her "unique methodologies, coaching accomplishments, and transformative influence on her students' performances constitute original contributions that have significantly impacted the field." The Petitioner references letters from [redacted] Dance Champion," and student testimonials praising her coaching success.

The record includes two undated and unsigned letters from Mr. [redacted] Both letters praise the Petitioner's talent and accomplishments in ballroom dancing and her success in coaching championship ballroom dancing couples. However, neither letter explains how Mr. [redacted] has personal knowledge of the Petitioner's work as a dancer, choreographer or coach. Neither letter details the nature or significance of the Petitioner's contributions to the field of ballroom dancing, choreography and instruction as a whole. Additionally, as noted, Mr. [redacted] did not sign either letter, diminishing their evidentiary value.

The record includes undated letters from three of the Petitioner's students.[3] The letters praise the Petitioner as a coach and note the improvements that she made in their competition results. However,

[2] *See 6 USCIS Policy Manual, supra.*

[3] We note that the undated letters from student [redacted] and student [redacted] do not contain signatures.

neither letter specifically describes the Petitioner's teaching methods or details her unique contributions to the field of ballroom dancing or choreography.

The record includes additional letters from other professional dancers working with [redacted] including [redacted] Neither Mr. [redacted] or Mr. [redacted] explains how they have personal knowledge of the Petitioner's work as a dancer, choreographer or coach. Although Ms. [redacted] states that she once judged the Petitioner in a competition, she does not explain how she has personal knowledge of the Petitioner's work as a choreographer or coach. Further, none of these letters describes the Petitioner's unique contributions to the field of dance or their major significance to the field.

The recommendation letters in the record describe the Petitioner as a talented dancer and coach. However, the letters do not describe the Petitioner's dance or coaching methods in sufficient detail to identify them as unique contributions to the field. While the Petitioner's students state that they have improved their performance under the Petitioner's instruction and that they would continue to work with her, they do not explain what is unique about the Petitioner's methods that can be considered a major contribution to the field of ballroom dancing.

For these reasons, the Petitioner did not show that she satisfies this criterion.

4. Performing in a leading or critical role.

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation."

To qualify under this criterion, a petitioner must show that they played a leading or critical role for an organization or establishment, and that that organization or establishment has a distinguished reputation. When evaluating whether a role is leading, we look at whether the evidence establishes that the person is or was a leader within the organization, or a department or division thereof. A title, with appropriate matching duties, can help to establish that a role is or was leading. For a critical role, we look at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment.[4]

To support that an organization has a distinguished reputation, the relative size or longevity of an organization is considered together with other relevant information, such as the scale of its customer base or relevant media coverage. "Merriam-Webster's online dictionary defines 'distinguished' as 'marked by eminence, distinction, or excellence' or 'befitting an eminent person.'" *Id.*

The Petitioner points to her roles as coach and competitive dancer to support this criterion. Specifically, she states that she is a "leading coach at the [redacted] as stated in a letter of recommendation from her former coaches. She references letters from her students

[4] *6 USCIS Policy Manual, supra.*

describing her successful coaching. She also submits advertising posters for a dance competition in Belarus and a dance shop that feature her picture.

The Director determined that this criterion, leading or critical role, was not met because the evidence did not show that the Petitioner performed in a leading or critical role, that her contributions were of significant importance to the outcome of the organizations, or that the organizations have a distinguished reputation.

On appeal, the Petitioner does not provide additional evidence, but states, "The evidence provided, letters of recommendation, testimonials from championship-wining students, and advertising materials, illustrates the significant impact she has had in her capacity as a coach and competitor."

Upon review of the record, we agree with the Director that the Petitioner has not met the plain language of this criterion because she did not establish that she has performed in a leading or critical role for organizations that have a distinguished reputation. Other than a recommendation letter from her former coaches, the Petitioner does not submit evidence of her role as a "leading coach" with the [redacted]. The record does not include evidence of her job duties as leading coach or her contributions to the [redacted] Nor does the record include information about the [redacted] to demonstrate its distinguished reputation. With respect to the advertising posters, the Petitioner does not provide evidence to explain how her picture was selected to be featured in either advertisement and how this demonstrates her performance in a leading or critical role. Nor does she provide evidence of the distinguished reputations of either the competition or the dance shop.

For these reasons, the Petitioner did not show that she satisfies this criterion.

5. Commanding a high salary or other remuneration.

The regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field."

To establish eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(ix), a petitioner must show that they have commanded a high salary, or other significantly high remuneration for services, in relation to others in the field. Evidence relevant to demonstrating an individual's high salary may include comparative wage or remuneration data for the person's field, such as geographical or position-appropriate compensation surveys. *See generally*, 6 *USCIS Policy Manual* F.2(B)(1), *supra*.

With the initial filing, the Petitioner stated that she has commanded a high salary in relation to others in the field of professional dancing. She provided a copy her employment agreement with [redacted] for the position of dancer aboard a cruise ship beginning September 2017 at the salary of 900 euros per month or 30 euros per day. She also provided salary information from the Economic Research Institute (ERI) dated July 2023. The printout from ERI states that the average annual salary for a dancer in [redacted] Belarus is 15,039 Belarusian rubles (BYN), or 1,253 BYN per month.

In the RFE, the Director acknowledged the employment agreement and salary information submitted but determined that this evidence did not include objective earnings data to compare with those

performing similar work during the same time period. In response to the RFE, the Petitioner provided additional salary data from Paylab.com stating that the average annual salary range for a dancer in Belarus is 678 BYN to 1,776 BYN. She also provided bank statements reflecting payment from [redacted] of 900 euros per month from October 2017 to April 2018. The Director determined that the average salary statistics "do not provide the necessary range needed to show that a salary is high 'in relation to others in the field.'" The Director cited *Strategati, LLC v. Sessions,* No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *7 (S.D. Cal. May 31, 2019), in which the court agreed that average salary levels do not allow for an appropriate basis for comparison in determining a high salary "in relation to others in the field."

On appeal, the Petitioner does not submit new evidence and relies on her employment agreement with [redacted] and the salary information from Paylab.com. She states that her payment of 900 euros per month from October 2017 to April 2018 "is nearly 170% higher than the highest professional dancer's salary in Belarus." The Petitioner contends that unlike in *Strategati, LLC v. Sessions*, "the data provided [here] extends beyond mere averages."

The regulation's plain language requires the Petitioner to establish that her salary is high when compared to others in the field. Here, the Petitioner asserts that her salary during a six-month period in 2017/2018 as a cruise ship entertainer (member of a dance group) is 170% higher than a dancer in Belarus. However, the salary information from Paylab.com does not appear to relate to a position comparable to the Petitioner's position in the field of dance. The printout from Paylab.com is undated and contains salary information for a dancer in Belarus, rather than a cruise ship entertainer. Similarly, the printout from ERI is dated five years after the Petitioner's earned salary and contains information for a dancer in [redacted] Belarus. The employment agreement from [redacted] does not include any provision for work actually performed in Belarus. Because the salary information in the record is not contemporaneous with the Petitioner's actual earnings and does not relate to the geographic area where work is performed, we are precluded from determining that the Petitioner's salary is high when compared to others in the field of dance and choreography.

Upon de novo, we conclude that the Petitioner has not established by a preponderance of the evidence that he has commanded a high salary in relation to others in the field. Therefore, the Petitioner has not met the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner is not eligible because she has not submitted the required initial evidence of either a one-time achievement or documents that she meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed the record in the aggregate, and conclude that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.[5]

[5] This review included consideration of testimonial evidence that was not claimed to satisfy any particular regulatory criterion, such as letters of recommendation and letters of invitation to train and coach with professional dancers.

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 accomplishments dance and choreography 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).

III. CONCLUSION

The Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.