



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

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

In Re: 33167324

Date: SEPT. 10, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a choreographer, seeks first preference immigrant 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 qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). 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 because the Petitioner did not establish that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(ii). The Petitioner also asserts that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which relates to published material about the Petitioner in professional or major trade publications or major media. However, because the Petitioner has not established that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(ii), she would not establish that she met three out of ten criteria even if we considered her claims regarding the remaining criterion at 8 C.F.R. § 204.5(h)(3)(iii). As such, we need not determine whether she meets the requirements of that criterion, nor do we need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we will reserve these issues. *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).

**I. LAW**

Section 203(b)(1) 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 a beneficiary's 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 it must provide sufficient qualifying documentation demonstrating that the beneficiary 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 demonstrates that the beneficiary 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 claims to be an individual of extraordinary ability based on her skills and experience as a professional choreographer. As a preliminary matter, we note that the Petitioner listed herself in Part 1 of the petition form, which asks for information about the person or organization filing the petition. However, when asked to provide additional information about "the Petitioner" in Part 5, No. 2 of the petition, the Petitioner listed [REDACTED] as the organization filing this petition. The Petitioner did not further explain the relationship, if any, between her and the named organization, nor did she elaborate on the work she plans to undertake under an approved petition.<sup>1</sup>

Regardless, because the Petitioner does not claim or submit evidence to show that she received a major, internationally recognized award, she must provide evidence showing that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). As previously noted, the

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<sup>1</sup> See Section 203(b)(1)(ii) of the Act, "the alien seeks to enter the United States to continue work in the area of extraordinary ability."

Petitioner claims that she meets the elements of the criteria at 8 C.F.R. § 204.5(h)(3)(i) – (iii). The Director determined that she met only one criterion, the elements of the criterion at 8 C.F.R. § 204.5(h)(3)(i). The primary issue to be discussed in this matter is whether the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(ii), which pertains to membership in professional associations. To meet this criterion, the Petitioner must show that she is a member in an association in her field, that the association requires outstanding achievements of its members, and that this requirement is judged by national or international experts in the field.

The Petitioner claims that she satisfies this criterion based on her membership in the Actors' Equity Association (AEA). As evidence of her membership in the AEA, the Petitioner submitted a letter on AEA letterhead authored by [REDACTED] who stated that the Petitioner joined the AEA on May 10, 2023. The Petitioner also submitted a document entitled "AEA Membership Information and Procedures," which provided instructions for joining the association, listed the application instructions, the initiation fee, and member dues, and elaborated on circumstances for loss of membership.

In the denial, the Director noted the AEA's role as a bargaining agent for its members but concluded that the record lacks evidence showing that in order to join the organization, prospective members must demonstrate that they have outstanding achievements as judged by recognized national or international experts in the relevant field.

On appeal, the Petitioner contends that the Director did not correctly apply the law or USCIS policy, arguing that the AEA "is a prestigious professional organization" of which she is an active member. The Petitioner also emphasizes that she gained membership in the AEA "only after she fulfilled the stringent requirements," which include attending certain workshops and accumulating a certain number of work weeks. The Petitioner also asserts that AEA applicants must "meet certain eligibility requirements and follow a specific application processes" prior to becoming members.

The Petitioner did not, however, submit sufficient evidence to support her claims. As a preliminary matter, the Petitioner did not adequately present evidence of her membership in the AEA. Although the Petitioner relies on the previously submitted letter from Ms. [REDACTED] as evidence of membership, Ms. [REDACTED] letter does not disclose her position, if any, with the AEA or state how she obtained information about the Petitioner's claimed membership.

Further, despite arguing that the AEA "requires outstanding achievements as an essential condition for membership" and does not require "mere employment or activity in the field of acting," the Petitioner does not offer evidence to support this assertion. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner's reliance on the previously submitted "AEA Membership Information and Procedures" document is misplaced, as none of the provisions in this document indicate that membership is conditional upon the applicant's ability to demonstrate outstanding achievements as judged by recognized experts in the field. The membership document shows that in addition to correctly filling out the application form and meeting required financial obligations, the applicant must demonstrate one of the following: 1) employment "under an Equity contract"; 2) prior membership in good standing in a performing arts sibling union for at least one year and prior work as a performer under one of three types of contracts; or 3) joining AEA under the "Open Access" program based on prior work as an actor or stage manager at a theater that is within AEA's

geographical jurisdiction. As correctly determined by the Director, the submitted evidence does not demonstrate that eligibility for AEA membership is conditional upon a showing of outstanding achievements by the prospective AEA member. As such, the Petitioner has not established that membership in the AEA, even if properly documented, meets the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

As previously noted, the Petitioner also asserts that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(iii), which relates to published material about the petitioner and their work in the field of endeavor in a professional or major trade publication or other major medium. However, given the deficiencies described above, we need not determine whether the Petitioner meets the requirements of these criteria, and we will reserve these issues. *See INS v. Bagamasbad*, 429 U.S. at 25-26.

### III. CONCLUSION

The Petitioner has not shown that she met either a one-time award, or three of ten initial criteria. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. 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 that she is one of the small percentage of individuals who have 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).

**ORDER:** The appeal is dismissed.