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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M-M-M-

DATE: NOV. 17, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an international trade arbitrator, seeks classification as an individual "of extraordinary ability" in "the field of business and commercial relations."[1] *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals 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 determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R § 204.5(h)(3), which requires a one-time achievement or satisfaction of at least three of the ten regulatory criteria.

On appeal, the Petitioner submits a brief and supporting documents, asserting that she meets the criteria listed under 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (v), and (viii). The Petitioner states that she has risen to the very top of her field and has sustained national and international acclaim. For the reasons discussed below, the Petitioner has not established her eligibility for the classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if –

[1] In her initial filing, the Petitioner stated that she "has established her extraordinary ability in the field of business and commercial relations" and that she "has provided key guidance for economic/commercial issues with the [redacted] the [redacted] the [redacted] and the [redacted]

(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 has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The 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 her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this documentation, then she must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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 Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming U.S. Citizenship and Immigration Services' (USCIS) proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Evidentiary Criteria[2]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not asserted or shown that she is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, she must satisfy at least three of the ten types of documentation under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

[2] We have reviewed all of the evidence the Petitioner has filed and will address those criteria the Petitioner asserts she meets or for which she has submitted relevant and probative evidence.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The Petitioner asserts that she meets this criterion because she received a scholarship from Spain's [redacted] and was named the president of an arbitration panel. The record includes filings showing that as of 2014, the [redacted] has awarded over 14,000 scholarships and grants to students and researchers from Lain America. A December 2004 diploma indicated that the [redacted] funded the Petitioner's postgraduate studies at the [redacted] Department of Political Economy, Public Finance and Tax Law of the [redacted] explained that in 2002 and 2003, the Petitioner was one of [redacted] students who received a scholarship to complete a postgraduate program. On appeal, the Petitioner states that the scholarship "is not generally given to students or early career professionals." While the Petitioner notes [redacted] affirmation that recipients may be selected based on their "professional excellence," [redacted] complete explanation is that the foundation bases their decisions on the applicants' "outstanding academic achievements *or* professional excellence with relevant leadership in their respective countries." (Emphasis added.)

The [redacted] material noted that its core activity is to train Latin American students and teachers through scholarships and grants. The record does not confirm that the Petitioner's selection for an educational scholarship from a pool of students and early career professionals, including those with some professional experience, constituted recognition of her excellence in the field. Moreover, the Petitioner has not demonstrated the recognition of the awards beyond the foundation or the university by submitting, for example, media coverage of scholarship selections.

Similarly, an appointment as the president of an arbitration panel does not meet the criterion. In a January 11, 2006, letter, the [redacted] noted that the parties involved in an arbitration process appointed the Petitioner as the president of the arbitration panel. On appeal, the Petitioner notes that [redacted] the Diplomat Service of Venezuela, asserted that the Petitioner "has been internationally recognized in professional circles with high distinctions being appointed as President of arbitration panels in Free Trade Agreements." The Petitioner states that "high distinction" is synonymous with "award" or "prize." Regardless of how [redacted] informally characterizes the appointment, an appointment to a panel is not a prize or award, which is required under the plain language of the criterion. Furthermore, the record lacks information about the criteria the administration used to select the Petitioner, and it does not demonstrate that the appointment was made to recognize the Petitioner's excellence in the field.

Finally, although there is evidence of the Petitioner's other achievements, including her completion of certain educational programs, on appeal, she has not continued to maintain that these accomplishments meet this criterion. The Petitioner has therefore abandoned this issue, as she did not timely raise it on appeal. *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to

raise them on appeal). In light of the above, the Petitioner has not documented her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. She does not satisfy this criterion.

> *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.*

The Director concluded that the Petitioner did not meet this criterion. On appeal, the Petitioner did not specifically challenge this finding or continue to maintain that she met this criterion. Accordingly, the Petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

> *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.*

The Petitioner asserts that she meets this criterion because her name was mentioned in a press release, and articles published in and The Petitioner has not demonstrated that she satisfies this criterion. First, the record does not reflect that a major media publication printed or posted the press release. A press release from the Ministry of Economy in El Salvador is not, without evidence of publication, material that appeared in a professional or major trade publication, or other major media. The regulation at 8 C.F.R § 204.5(h)(3)(iii) requires identification of the author of the material. A press release is a statement that an entity disseminates to the public rather than material from a credited journalist. Moreover, the press release, dated June 24, 2004, focused on a trade dispute resolution mechanism. It provided a comprehensive explanation on the mechanism, including a description of each of the three stages. While the press release referenced the Petitioner as one of five arbitrators in the mechanism, mentioning the Petitioner once in the context of an article that focuses on how the mechanism will work is insufficient.

Second, the Petitioner has not shown that the general news outlets are professional or major trade publications or other major media. A U.N. High Commissioner for Refugees (UNHCR) online printout noted that is a local newspaper, printed in El Salvador. The Petitioner submitted no information on circulation level or reach. Similarly, is a foreign language publication circulated in Arizona. The record does not demonstrate that these local publications constitute major media in El Salvador or the United States. In addition, neither article was about the Petitioner. Rather, they were about, and focused on, the trade dispute resolution mechanism and/or a particular arbitration process.

Third, although the record indicates that and constitute major media, the materials published in these news outlets were not about the Petitioner.

Similarly to the published materials discussed above, the articles in these publications were about either a dispute resolution mechanism or certain proceedings that were being resolved through the mechanism. The materials provided detailed descriptions on the mechanism and the proceedings, but included minimal information about the Petitioner. For example, a June 25, 2004, [redacted] article, entitled [redacted] discussed at length the tasks the arbitrators must accomplish and the seven obstacles they face. The article is not about any of the arbitrators or even the group of arbitrators. The English translation of the body of the article showed that the Petitioner was mentioned in two consecutive sentences. In short, none of the published materials was about, or focused on, the Petitioner. Rather, they were about a trade dispute resolution mechanism or arbitration cases in which the Petitioner participated as an arbitrator.

Finally, although the record includes other published materials, on appeal, the Petitioner has not continued to maintain that they meet this criterion. Consequentially, she has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9. In light of the above, the Petitioner has not submitted published material about her in professional or major trade publications or other major media, relating to her work in the field for which classification is sought. She does not satisfy this criterion.

> *Evidence of the alien'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.*

The Director concluded that the Petitioner met this criterion. The record supports this finding. The website for the Secretariat for Central American Economic Integration (SIECA) listed the Petitioner as one of its 36 arbitrators. As an arbitrator, the Petitioner has served on arbitration panels, and made conclusions and determinations on disputes over international trade policies and practices. In light of the above, the Petitioner has submitted evidence of her 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. She satisfies this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

On appeal, the Petitioner asserts that she meets this criterion because she was an arbitrator on a three-member panel that "issued the first major decision in [*sic*] for a dispute under Chapter 20 of CAFTA-DR [Central America – Dominican Republic Free Trade Agreement]" and that her decision "is a contribution of major significance in the business world as it promotes free trade in the Americas and involves billions of dollars." The Petitioner further states that the research assistance she provided for a number of publications also meets this criterion.

To meet this criterion, the Petitioner's contributions must be both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term "original" and the phrase "major significance" are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) (quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003)).

The Petitioner's contributions must be original, such that she is the first person or one of the first people to have done the work in the field, and must show that her contributions are of major significance in the field, such that her work significantly advanced the field as a whole. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-36 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

First, the Petitioner has not documented the impact of the conclusions and determinations she reached in the arbitration entitled The record does not show what impact, if any, the arbitration has had in the field of business and commercial relations, as a whole. The Petitioner has not filed any materials relating to the impact of the arbitration, including whether there has been enforcement or implementation of the panel's conclusions and determinations or whether the panel's conclusions have influenced the resolution of other trade disputes. Without evidence of impact in the field, the Petitioner has not demonstrated that her work constituted contributions of major significance in the field. Second, although the Petitioner assisted in the research for a number of publications, including a UN publication and two books, she has not shown that her assistance impacted the field as a whole at a level consistent with contributions of major significance. The Petitioner also has not documented the impact of any of the publications in the field.

Finally, although the reference letters verified the Petitioner's educational and professional achievements, they do not demonstrate that she meets this criterion. Some of the reference letters included conclusory affirmations that were not supported or explained. For example, Legal Affairs Division, stated that the Petitioner's "professional expertise in the field of international arbitration and international trade is well recognized in the Latin American region" and that she "has had impressive accomplishments in the field and her views are appreciated in the trade and arbitration community." The letter did not sufficiently support these attestations or explain how came to the conclusions. Similarly, the June 2014 letter from who had worked for did not provide evidence supporting his account that the Petitioner has made extraordinary contributions that "strengthen[ed] System Solution of Commercial Disputes, [and] help[ed] to create more confidence in both the Central American countries as [well as] those with whom they have signed international trade agreements." USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Although the Petitioner has served as an arbitrator, the record does not show that her work as an arbitrator has impacted the field as a whole at a level consistent with original contributions of major significance in the field.

Other reference letters praised the Petitioner's international trade knowledge, but did not specify what she has done that constituted original contributions of major significance. For example, a Partner at stated that the Petitioner "has achieved outstanding goals in her field" and she "is of valuable help and a useful vehicle for the

implementation of the US global trade policies." "certif[ied the Petitioner's] extraordinary qualifications," noting that her "professional and ethical qualifications [are] excellent." Lead Innovation Specialist at the indicated that the Petitioner has served as an arbitrator under and has trained "high level officials [in] Central American Countries, on behalf of and donors." a lawyer for the verified that the Petitioner has worked as an arbitrator in trade dispute resolution. Executive Director of the confirmed that the Petitioner provided recommendations and advice to its member companies. None of these letters explicitly referenced what the Petitioner has done that constituted original contributions of major significance.

Solicited letters from colleagues that do not specifically identify contributions or specific examples of how those contributions influenced the field are insufficient.[3] *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive confirmation of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Caron Int'l*, 19 I&N Dec. at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field). We have considered all the reference letters, including those not specifically mentioned. They did not sufficiently explain how the Petitioner has made contributions of major significance in the field. In light of the above, the Petitioner has not documented her original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. She does not satisfy this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The Petitioner asserts that she meets this criterion because she has held leading or critical roles for her own consulting firm, the , , the

[3] In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the Petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

[redacted] the [redacted] and [redacted]. A leading role should be evident based not only on the Petitioner's title but her duties associated with the position. A critical role should be apparent from the Petitioner's impact on the organization or establishment as a whole. To show her role, the Petitioner may submit an organization chart demonstrating how her role fits within the hierarchy of the entity.

While not all of the Petitioner's assertions are supported by the record, the Petitioner's selection by the [redacted] as the president of the [redacted] arbitration panel; her role directing, coordinating and controlling a multidisciplinary team for [redacted] a major [redacted]-funded project within [redacted] and her role as one three arbitrators for [redacted], are persuasive evidence under this criterion. Accordingly, the Petitioner has satisfied this criterion.

B. Summary

The Petitioner has been working in the area of international trade and business for a number of years, and has served as an international arbitrator for trade disputes. While she has secured positions on international panels that involve the arbitration of issues within her area of expertise, she has not demonstrated that these positions alone establish her acclaim in the field. Based on the record, and for the reasons discussed above, we agree with the Director that the Petitioner has not submitted the requisite initial evidence, in this case, documentation that satisfies at least three of the ten regulatory criteria. In addition, having considered all the filings, we conclude that the Petitioner has not demonstrated her eligibility for the exclusive classification.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must show that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. Had the Petitioner included the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the submissions in the context of whether or not she has achieved: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the [Petitioner] has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done so, the proper conclusion is that the Petitioner has failed to satisfy the antecedent regulatory requirement of satisfying the initial evidentiary requirements set forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has achieved the level of expertise required for the classification sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-M-M-M-*, ID# 14431 (AAO Nov. 17, 2015)