U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-D-R-G-C-

DATE: APR. 19, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a jewelry designer, seeks classification as an "alien of extraordinary ability." *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This classification 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, Texas Service Center, denied the petition. The Director concluded that the Petitioner had not provided documentation satisfying the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria. The matter is now before us on appeal. In her appeal, the Petitioner submits additional evidence and argues that she meets the regulatory criteria at 8 C.F.R § 204.5(h)(3)(i), (iii), and (v).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

By statute, the extraordinary ability immigrant visa classification requires that foreign nationals demonstrate sustained national or international acclaim and present extensive documentation of their achievements.

Specifically, section 203(b)(1)(A) of the Act explains that a foreign national is described as an individual 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 implementing regulation defines the term "extraordinary ability" as referring 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). To meet this definition, 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 recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the 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

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 stated 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 provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

The Director concluded that the Petitioner met the display at artistic exhibitions criterion under 8 C.F.R. § 204.5(h)(3)(vii). The record supports this finding. For example, the Petitioner submitted documentary evidence showing that she displayed her work at the [redacted] and at [redacted]

On appeal, the Petitioner specifically challenges the Director's findings relating to three criteria: the nationally or internationally recognized prizes or awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), and the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v). As the Petitioner has not argued that the Director erred in regard to, or continued to maintain that she meets, any of the other enumerated

criteria, the Petitioner has abandoned these issues. *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 positions to be abandoned as he did not raise them on appeal).

Moreover, although in response to the Director's request for evidence (RFE), the Petitioner mentioned her "pivotal role in various charitable organizations" and "remuneration" under 8 C.F.R. § 204.5(h)(3)(viii) and (ix), the submissions do not support a finding that she meets the requirements of those criteria. Specifically, while the Petitioner submitted correspondence indicating that she has donated jewelry items to various non-profit organizations, the letters do not demonstrate that she has performed in a leading or critical role for organizations with a distinguished reputation. In addition, the Petitioner's 2014 income tax filing showing adjusted gross income of $13,104 does not support a finding that her remuneration was significantly high in relation to others in the field. Accordingly, had the Petitioner not abandoned these issues on appeal, we would conclude that she did not meet the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(viii) and (ix). We now turn to the criteria at issue on appeal. For the reasons discussed below, the Petitioner has not demonstrated that she meets any of those criteria.

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

In response to the Director's RFE, the Petitioner submitted a 2014 "Recognition Award" from a non-profit charitable organization in Florida, thanking her "for her outstanding Jewelry Designs that benefited the Colombia." In addition, the Petitioner provided a December 2014 letter from founder of expressing her appreciation to the Petitioner for donating a necklace and attending the on 2014. The Petitioner received the Recognition Award after the Form I-140, Immigrant Petitioner for Alien Worker, was filed. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider any awards received after July 23, 2014, the date the petition was filed, as evidence to establish the Petitioner's eligibility at the time of filing. Regardless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the Petitioner's awards be nationally or internationally recognized in the field of endeavor, and it is her burden to establish every element of this criterion. There is no documentary evidence showing that the Petitioner's award was recognized at a level commensurate with a nationally or internationally recognized award for excellence in the field of jewelry design.

On appeal, the Petitioner argues that her "selection to create a line of jewelry to commemorate author famous book, . . . should be recognized as a nationally or internationally recognized award." The Petitioner submits four articles about and his literary work that were published on the websites of and , but none of the articles mentions the Petitioner or her excellence as a jewelry designer. The Petitioner's initial evidence included a photograph of herself with with a statement from the Petitioner indicating:

"One of the highlights of my career has been to be chosen by the Magazine for an event dedicated to . . . . The Fashion Show's objective was to celebrate the 40 years of publishing his masterpiece: The record, however, does not include any confirmation from editorial staff or other evidence reflecting the Petitioner's selection by the magazine, or documentation of her receipt of a prize or an award at the commemorative event. Statements made by the Petitioner without supporting documentary evidence are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Regardless, the Petitioner's selection to create a line of jewelry displayed at a fashion show celebrating literary work does not constitute her receipt of a nationally or internationally recognized prize or award for excellence in the field of endeavor.

In addition, the Petitioner contends that she "should be recognized as having won a nationally or internationally recognized prize or award for excellence in jewelry making/design because she is hand selected by prominent world renowned celebrities and boutiques to design custom and original pieces." For example, the Petitioner states that world renowned celebrities such as have adorned themselves with or purchased her jewelry. The Petitioner's initial submission included photographs of her with and but they did not submit any statements confirming that they had purchased or worn the Petitioner's jewelry. Nonetheless, having one's jewelry purchased or worn by various celebrities and being selected by a boutique to design jewelry do not equate to one's receipt of nationally or internationally recognized prizes or awards for excellence in the field.

Furthermore, the Petitioner indicates that her "designs have appeared on hosts for a daily entertainment and lifestyle television show appearing on and that her jewelry has "been worn by hosts who appear and broadcast[] nationally for an international television network. For instance, in response to the RFE, the Petitioner provided an unsigned March 2015 letter from a news anchor for stating that the Petitioner is her "designer and stylist for TV shows" and that she worked with the Petitioner while reporting for The Petitioner's appellate submission includes information about from and about from its website. The Petitioner contends that the television hosts' adornment of her jewelry designs through the aforementioned media programming reflects "an award of national or international acclaim." A television host appearing in the Petitioner's jewelry, however, is not indicative of receiving a nationally or internationally recognized prize or award for excellence in the field of endeavor.

Even if we were to consider the aforementioned documentation as comparable evidence for this criterion under the regulation at 8 C.F.R. § 204.5(h)(4), the Petitioner has not demonstrated that nationally or internationally recognized prizes or awards do not readily apply to her occupation. Furthermore, the Petitioner has not shown that her documentation is comparable to the evidence required at 8 C.F.R. § 204.5(h)(3)(i).

In light of the above, the Petitioner has not established that she meets this regulatory criterion.

> *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.*

In response to the RFE, the Petitioner submitted photographs of wearing the Petitioner's jewelry designs. The Director concluded that a photograph of a journalist wearing the Petitioner's jewelry is not published material about the Petitioner, and we agree with that determination.

The Petitioner also provided a 2015 article from the website of entitled Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, we cannot consider an article published after July 23, 2014, the date the petition was filed, as evidence to establish the Petitioner's eligibility at the time of filing. Although the Petitioner's appellate submission includes an English language translation for the article, there is no documentation demonstrating that website is a major trade publication or form of major media.

On appeal, the Petitioner submits photographs from various fashion magazines that feature models wearing her jewelry designs. In the appeal brief, the Petitioner argues that "[p]hotographs of public figures and celebrities should be treated as publications in this field because recognition and talent is [*sic*] determined by subjective factors." The plain language of this regulatory criterion requires "published material about the alien" including "the title, date and author of the material." The fashion magazine photographs do not meet these requirements. Moreover, even if we were to consider the aforementioned magazine photographs as comparable evidence for this criterion under the regulation at 8 C.F.R. § 204.5(h)(4), the Petitioner has not demonstrated that published material about herself in major media does not readily apply to her occupation. Furthermore, the Petitioner has not shown that the photographs are comparable to the evidence required at 8 C.F.R. § 204.5(h)(3)(iii).

In light of the above, the Petitioner has not established that she meets this regulatory criterion.

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

In the appeal brief, the Petitioner mentions various letters of support and announcements for her jewelry showings and exhibitions. For example, an interior designer in South Florida, indicated that her store was holding a trunk show to exhibit the Petitioner's jewelry collections in 2015. We cannot consider any jewelry shows occurring after July 23, 2014, the date the petition was filed, as evidence to establish the Petitioner's eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Regardless, the regulations

include a separate criterion for display of one's work in the field at artistic exhibitions at 8 C.F.R. § 204.5(h)(3)(vii), and the Petitioner has already satisfied that criterion. Evidence relating to or even meeting the display criterion is not presumptive evidence that the Petitioner also meets this criterion. Because separate criteria exist for artistic display and original contributions of major significance in the field, USCIS does not view the two as being interchangeable. To hold otherwise would render meaningless the regulatory requirement that an individual meet at least three separate criteria. Furthermore, the Petitioner has not demonstrated that any of her specific jewelry designs on display were original contributions of major significance in the field.

in the People's Republic of China, indicated that the Petitioner has "made a large contribution to the development of tailor-made jewelry in Colombia, especially because [of] the innovative and one-of-[a-]kind pieces that c[u]stomers find exotic and extremely exclusive." further stated that what attracted her to the Petitioner's fine jewelry "was the spectrum of choices she offers, using the best combinations of precious metals and gemstones to innovate original concepts and also her exceptional versatility to be a trend setter." There is no documentary evidence showing, however, that the Petitioner's jewelry designs have affected the field in a major way, have influenced trends in the industry, or have otherwise risen to the level of original contributions of major significance in the field.

The Petitioner provided March 2015 letters that she wrote to the manager of a store in and to the manager of a store in introducing herself and "requesting the opportunity to have a Trunk Show" in their jewelry department. The record, however, does not reflect that agreed to host the Petitioner's trunk shows or added her jewelry pieces to their retail product lines. The Petitioner argues that "should [her] pieces be picked up[,] they will be distributed in stores all throughout the country." The Petitioner's expectation regarding the possible future distribution of her jewelry, however, is not evidence of her eligibility at the time of filing. Regardless, there is no evidence demonstrating that the Petitioner's work was of major significance in the field.

In addition, the Petitioner submitted an unsigned February 2015 letter from Editorial Director, thanking the Petitioner for providing her a necklace and requesting that the Petitioner send high resolution photographs of her jewelry. also noted: "I, unfortunately, cannot take the pictures because I have no budget for it. But of course we need pictures to illustrate your jewelry. Let me know when you're ready." While requested photographs of the Petitioner's jewelry, there is no documentation showing that the Petitioner's designs were contributions of major significance in the field. Furthermore, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, we cannot consider any trunk shows or appearances occurring after the date the petition was filed as evidence to establish the Petitioner's eligibility at the time of filing.

International Coordinator, stated that the Petitioner "has been attending Jewelry Trade Show since 2006 as a jewelry buyer and is

reputed in to [*sic*] the industry as a designer of impeccable taste and the highest quality craftsmanship." however, does not offer any specific examples of how the Petitioner's jewelry or designs has affected the industry in a substantial way or otherwise constitutes original contributions of major significance in the field. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions" that are "of major significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original artistic or business-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

director of the indicated that the Petitioner "has participated as a vendor" for the non-profit organization's fundraisers. further stated that the Petitioner "has been the top seller" at its fundraisers and "has generously donated a few of her beautiful designs of jewelry." Although the Petitioner has participated in the fundraisers, there is no documentary evidence demonstrating that her work has impacted the field beyond the foundation such that her designs constitute a contribution of major significance in the field. The plain language of the regulation requires that the Petitioner's contributions be "of major significance in the field" rather than just to the charitable organizations with which she is involved.

A letter with an illegible signature from the head merchandiser and partner of the described the Petitioner as "an extraordinary designer with exclusive high[-]end pieces in our While the letter identified the Petitioner as "an extraordinary designer," it did not indicate how her work was of major significance in the field. It is not enough to be a talented jewelry designer and to have others attest to that talent. An individual must have demonstrably impacted her field in order to meet this regulatory criterion.

Vice President – indicated that the Petitioner "has the key characteristics to become a successful entrepreneur in the United States." further stated that the Petitioner has demonstrated "much talent and passion for her jewelry designs" and that "her jewelry is indeed extraordinary," but did not mention any of the Petitioner's specific designs or explain how they were of major significance in the field. Vague, solicited letters that do not explain how the petitioner's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the individual's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

commented that the Petitioner "is talented, professional and has opened her way into the U.S. market with unique pieces that use luxury materials and stones such as emeralds, pearls amethysts and gold and silver, that are very exotic for the U.S. market customer." There is no documentary evidence showing, however, that the jewelry designed by the Petitioner has outsold

those of competing designers, has affected market trends, or was otherwise of major significance in the industry.

The Petitioner submitted letters of varying probative value. We have addressed the specific contentions above. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated statements are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the Beneficiary's eligibility. *Id. 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").

On appeal, the Petitioner states: "The requirement that USCIS is seemingly imposing seeking affirmative statements of originality cannot be found in the plain language of the regulations." The plain language of this regulatory criterion, however, requires evidence of "original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Regardless, the Director did not challenge the originality of the Petitioner's work. Rather, the Director concluded that the evidence submitted for this criterion did not show that the Petitioner's work constituted contributions of major significance in the field. Without additional, specific evidence showing that the Petitioner's work has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, she has not established her eligibility for this regulatory criterion.

B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3).

III. CONCLUSION

Had the Petitioner included the requisite material under at least three evidentiary categories, in accordance with the *Kazarian* opinion, our next step of analysis would be a final merits determination that considers all of the submissions in the context of whether she has achieved: (1) a "level of expertise indicating that [she] 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 her "achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done so, the

proper conclusion is that she has not satisfied the antecedent regulatory requirement of presenting initial evidence set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x). *See 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 does not support a finding that the Petitioner has achieved the level of expertise required for the classification. The Petitioner has not demonstrated by a preponderance of the evidence that she is an individual of extraordinary ability in the field of jewelry design. A review of the submissions in the aggregate does not confirm that she has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The Petitioner, therefore, has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of L-D-R-G-C-*, ID# 16573 (AAO Apr. 19, 2016)