MATTER OF C-M-

DATE: FEB. 19, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a dancer and choreographer, seeks classification as an individual of extraordinary ability in the arts. *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.

On April 15, 2015, the Petitioner filed a Form I-140, Immigrant Petition for Alien Worker. 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 requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires proof of a one-time achievement or items that meets at least three of the ten regulatory criteria. On appeal, the Petitioner submits a brief with additional materials.

For the reasons discussed below, we agree with the Director that the Petitioner has not established his eligibility for the classification sought through qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or documentation that satisfies at least three of the ten regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, in our *de novo* review, we find that the Petitioner has performed in a critical role for an organization with a distinguished reputation pursuant to 8 C.F.R § 204.5(h)(3)(viii), but has not satisfied any of the other criteria, including the published material criterion at 8 C.F.R § 204.5(h)(3)(iii) that the Director found met. As such, the Petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3).

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--

> (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 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 his or her 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 he must provide at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Meeting 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 evidence is first counted and then, if satisfying 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 our 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 U.S. Citizenship and Immigration Services (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[1]

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

The Petitioner has provided multiple examples of achievements that he indicates meet the awards criterion. The Director determined that the Petitioner did not meet the requirements of this criterion because the accomplishments were not prizes or awards in recognition for his excellence in the field.

[1] We have reviewed all of the evidence the Petitioner has submitted and will address those criteria he indicates he meets or for which he has filed relevant and probative documentation.

On appeal, the Petitioner contests the Director's determination relating to two achievements, his involvement in the [redacted] and the [redacted]

With respect to the [redacted] thanked the Petitioner for his involvement in the program. A Certificate of Appreciation expressed the U.S. State Department's gratitude for the Petitioner's "contribution to the success of [redacted] by sharing [his] time and professional experience." The certificate and other documentation show that the Petitioner, at the State Department's request, met with foreign visitors selected for the [redacted], a cultural exchange program that offers participants an opportunity to "experience [the United States] firsthand and cultivate lasting relationship with their American counterparts." During these visits, the foreign visitors "learn about the American culture and businesses" and "share their culture." The Petitioner has not established that being asked to meet with foreign visitors as an [redacted] participant constitutes his receipt of a prize or an award. Moreover, whether an honor is nationally or internationally recognized is determined through the awareness of the accolade in the field. Proof of this recognition or awareness includes evidence of national or international media coverage of the event. The Petitioner has not indicated that his selection for involvement in the [redacted] garnered any media attention, or that people in his field consider his selection to be a nationally or internationally recognized commendation for excellence in his field.

Regarding the [redacted] project, an international arts education program that the [redacted] created, the Petitioner asserts that the program itself is an award-winning initiative receiving tributes from global foreign entities. The record consists of pamphlets and fliers relating to the project and various performances showing the Petitioner as a participant, and printouts from the [redacted] website. This material does not demonstrate that the Petitioner's involvement in the project constitutes his receipt of a prize or award. The record lacks documentation memorializing the Petitioner's receipt of a prize or award in the context of his work in [redacted] Consequently, the Petitioner has not submitted evidence that meets the plain language requirements of this 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.*

The Director determined that the Petitioner established eligibility for this criterion. The plain language of this criterion requires the Petitioner to submit "[p]ublished material about [him]" in one of the required publication types. We conduct appellate review on a *de novo* basis. For the reasons outlined below, a review of the record of proceeding does not reflect that the Petitioner has provided sufficient documentary evidence demonstrating that he meets the plain language of this criterion and the Director's favorable determination on this issue is hereby withdrawn.

Although the Petitioner provided articles appearing in publication types that may meet the regulatory requirements for major media or for a professional or major trade publication, the published material

itself was not about the Petitioner. For example, the article titled [redacted] appearing in [redacted] on [redacted] 2009, was about a dance company's performance and an accompanying Creole band. Although the Petitioner was mentioned once in the caption of a photograph and once in the body of the article as a performer in the show, this limited reference did not qualify as published material about him. A second [redacted] article, titled [redacted] was about [redacted] choreography in the dance performance [redacted], in which the Petitioner was a performer. The article was not about and did not focus on the Petitioner. Another example was an article from the [redacted] 2015 quarterly issue of [redacted] titled [redacted] Although the article's author, [redacted] penned a statement relating to the Petitioner's significance within the article, a review of the article revealed that the article was about dramaturgy and works from [redacted] especially focusing on [redacted] The Petitioner's name appeared in the captions of photographs taken during the performance. Captions accompanying photographs that identify the petitioner as one of multiple dancers did not establish that the published material was about the Petitioner as required under the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The record contains other published materials, including articles from [redacted] and [redacted] The Petitioner has submitted limited information about these publications, and has not proved that they are professional or major trade publications, or major media. Similarly, although the Petitioner has provided [redacted] 2010 article entitled [redacted] he has not revealed if the article has been published in a qualifying publication or major media. The Petitioner has also offered youtube.com printouts relating to a video entitled [redacted] which was viewed 353 times. The Petitioner has not established that a posted video, on a website that is openly accessible to post and share videos, meets this criterion. The Petitioner has not demonstrated a video on such a site constitutes published material. In short, the Petitioner has not filed evidence that meets the plain language requirements of this criterion and we withdraw the Director's favorable determination.

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

To meet this criterion, the evidence must establish that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. 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 (3d Cir. 1995), *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 135-36. The Director determined that the Petitioner did not meet the requirements of this criterion.

On appeal, the Petitioner submits a May 15, 2015, letter from his employer, [redacted] Executive and Artistic Director of [redacted] Within this letter, [redacted] confirmed that the Petitioner inspired him to create a solo for the Petitioner in an

upcoming performance, praised the Petitioner's artistic ability and talents, indicating that the value and necessity of artists of the Petitioner's caliber is irreplaceable. did not, however, describe the manner in which the Petitioner has already exhibited a significant impact within the field of dance or choreography, which is required by the regulation. While it is notable that the Petitioner has inspired to choreograph a solo performance, it does not prove the Petitioner's impact in 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 134-35 (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).

Within the appeal, the Petitioner also resubmits letters from experts that the Director found insufficient. The Petitioner discusses one such letter from Professor of English, Theater and Performance Studies at dated April 1, 2014. indicated that the Petitioner is an exceptional talent and a vital contributor to contemporary dance, but she did not specify how the Petitioner has impacted the field of contemporary dance as a whole. Being a skillful artist, without showing impact to the field, is insufficient to meet this criterion, which requires original contributions of major significance in the field as a whole. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

In her letter, also discussed the Petitioner's outreach efforts to introduce dance to underserved populations. Office of Human Resources Management, similarly referenced that the Petitioner "has reached out to underserved populations . . . with a distinctive vision of dance as a means of cultural enrichment and social empowerment." Regarding the outreach efforts, which the Petitioner calls an creative dance project, he utilizes Internet video streaming to teach dance to those in other parts of the world that may have a limited exposure to contemporary dance. He has also visited Cambodia, in 2014 and 2015 to teach children to dance. The Petitioner states: "[My] contribution to the field of dance through [my] teaching and mentoring, in particular with respect to individuals with limited exposure to dance, was detailed in testimonials by a number of [individuals]." However, neither nor the Petitioner has documented how this outreach has already been influential in the field as a whole. The record lacks evidence establishing the success of the Petitioner's outreach efforts, or the level of adoption or acceptance of his outreach methods in the field.

The record shows that the Petitioner has been involved in teaching and mentoring other dancers, including young dancers. The Petitioner has not established that his action is original in the field of dance or choreography, such that he is the first person or one of the first people to have similarly taught or mentored dancers. To meet this criterion, he must exhibit original contributions. Moreover, he has not demonstrated that his teaching or mentoring efforts have impacted the field at a level consistent with a finding of contributions of major significance.

In addition to the abovementioned reference letters, the Petitioner has submitted other letters, including some from U.S. State Department officials, indicating that the Petitioner is a talented and skilled dancer and choreographer. These reference letters offer evaluations of his abilities, but do not detail his effect or impact in the entire field. Proof of his impact, at a level consistent with a finding of significant contributions, is needed to satisfy this criterion. *See also Visinscaia*, 4 F. Supp. 3d at 134-35 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious). Further, the Petitioner presents a June 30, 2015, letter from a retired foreign service officer with the U.S. State Department. stated that the Petitioner "has been spreading the American form of modern dance as an Ambassador of American culture for six years now, and I can think of no one better qualified for EB-1 status." The U.S. State Department has partnered with in cultural diplomacy programs in several countries, of which the Petitioner has been involved. However, while the Petitioner may have contributed to these programs, he has not corroborated that such work resulted in a significant contribution to the field of dance. It is insufficient to show an impact in an organization or within programs; the Petitioner's contributions must be realized in his field. *Id.* (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).

Solicited letters from colleagues that do not specifically identify contributions or specific examples of how those contributions influenced the field are insufficient.[2] *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 a foreign national's eligibility for the benefit sought. *Id.* Letters from experts supporting the petition is not presumptive confirmation of eligibility; USCIS may, as this decision has done above, evaluate the content and corroboration of those letters as to whether they support the foreign national'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"). *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)); *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 as a whole. Based on the foregoing, the Petitioner has not filed documentation that meets the plain language requirements of this criterion.

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

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

The Director determined that the Petitioner did not meet the requirements of this criterion. The Director concluded that the roles the Petitioner performed were not leading or critical for the organizations themselves. The Director also indicated that the record lacked sufficient evidence to demonstrate that the organizations or establishments enjoyed a distinguished reputation.

On appeal, the Petitioner offers information relating to several organizations, including the [redacted] According to the information from the [redacted] website, it states the company performs on the world's stages, it is dedicated to the pursuit of excellence, it supports the creative process, educates children, and enriches the general public. [redacted] the company's President, described several instances of how the Petitioner has performed in a role that is both leading and critical to the company. For example the Petitioner has represented the company on U.S. Embassy related projects in numerous countries, and his performances have garnered much attention for [redacted] from the public and critics. On appeal, the Petitioner refers to the [redacted] In her July 9, 2015, letter, [redacted] the U.S. Ambassador to the [redacted] refers to the [redacted] as exceptionally prestigious. The Petitioner also presents a June 30, 2015, letter from [redacted] a retired foreign service officer with the U.S. State Department. [redacted] states that the [redacted] is internationally recognized and has been a cultural diplomacy partner of the State Department in more than 60 countries. The entirety of the evidence on record, to include the material submitted on appeal, sufficiently establishes that the Petitioner performed in a leading or critical role for the [redacted] and that it enjoys a distinguished reputation. Therefore, we withdraw the Director's adverse determination as it relates to this 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, documentation that satisfies at least three of the ten regulatory criteria.

III. CONCLUSION

The documentation submitted in support of an extraordinary ability petition must clearly demonstrate that the Petitioner 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 submitted 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 the record in its entirety in the context of whether or not the Petitioner has demonstrated: (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 foreign national "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 not satisfied the antecedent regulatory requirement of presenting documentation that satisfies 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 filings in the aggregate supports a finding that the Petitioner has not shown the level of expertise required for the classification sought.[3]

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 C-M-*, ID# 15795 (AAO Feb. 19, 2016)

[3] We maintain *de novo* review of all questions of fact and law. In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).