U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-E-

DATE: MAY 25, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an individual with degrees in education and linguistics and a music credential, 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, Nebraska Service Center, denied the petition. The Director concluded the Petitioner did not satisfy the initial evidentiary requirements to show extraordinary ability and, based on minimal evidence regarding her future employment plans, did not establish that she would continue to work in an area of expertise or substantially benefit prospectively the United States.

The matter is now before us on appeal. In her appeal, the Petitioner resubmits items already in the record and provides a statement. She does not address the regulatory criteria designed to show extraordinary ability; rather, she affirms that she holds a graduate degree, "which has the potential to benefit [the] United States in the long run."

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

I. LAW

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

> (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,

(i) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(ii) 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 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 evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories 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*; *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); *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").

Finally, the regulation at 8 C.F.R. § 204.5(h)(5) provides:

> *No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

II. ANALYSIS

The Petitioner did not complete part 6 of the Form I-140, Immigrant Petition for Alien Worker, which requests basic information about the proposed employment. The Petitioner offered her Bachelor of Education and her Master's Degree in Linguistics, information about the institutions where she obtained her degrees, a reference letter from the Department of Linguistics, and her marriage certificate. The Director's request for evidence (RFE) set forth the ten regulatory criteria, of which a petitioner must satisfy at least three, and invited the Petitioner to

document her proposed employment. In response, the Petitioner reiterated that she has an advanced degree and is interested in pursuing a higher level of education. She revealed that her recent employment has been for restaurants. In addition, she discussed her experience with the musical instrument the electone, having completed "the highest level of student course, Grade 6, from [the] She expressed her "confidence that my strong background in [the] educational sector with the accumulated experience in multi-culture, linguistics, and communication will possibly benefit the United States in the local, regional, and national level." She supplemented the record with IRS Form W-2, Wage and Tax Statements; a 1992 Certificate of Advancement from the and employment letters from in referencing her experience in 2000.

The Petitioner seeks classification as an individual of extraordinary ability, an employment-based classification. The statute requires that she demonstrate both extraordinary ability and her intent to continue working in the area in which she has documented her expertise. For the reasons discussed below, the record supports the Director's findings that the Petitioner did not provide evidence that satisfies any of the regulatory criteria or confirms her intent to continue working in any specific area.

A. Extraordinary Ability

The Petitioner did not indicate, and the record does not establish, that she has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3). She must therefore establish her eligibility under at least three criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director analyzed the record under three of the regulatory criteria. On appeal, the Petitioner does not specifically identify which criteria she meets. We will therefore address the three criteria examined by the Director as well as one additional criterion based on a review of the Petitioner's submissions. Upon a review of the record, we conclude that the Petitioner has not met any of the regulatory criteria for the classification she seeks.

1. Regulatory Criteria

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

While not addressed by the Director, the record contains the Petitioner's Certificate of Advancement from the While the Petitioner affirms that level 6 is the highest student level, she has not corroborated that statement. *See 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)). The record contains no evidence that this certificate is a nationally or internationally recognized prize or award for excellence rather than a credential for having demonstrated a level of competency. Accordingly, the Petitioner has not satisfied this criterion.

Similarly, the Petitioner has not shown that her degrees, conferred after completing the requisite coursework, constitute nationally or internationally recognized prizes or awards for excellence.

Significantly, academic degrees are one category of evidence relevant to foreign nationals of exceptional ability, a lesser classification than the one the Petitioner seeks. Section 203(b)(2) of the Act; 8 C.F.R. § 204.5(k)(3)(ii)(A). For these reasons, the Petitioner has not presented evidence that satisfies 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.* 8 C.F.R. § 204.5(h)(3)(ii)

The Director did acknowledge the Petitioner's certificate, considering it under the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). The Director concluded that the Petitioner had not demonstrated that it constitutes membership in an association that requires outstanding achievements of its members. The Petitioner does not contest this conclusion on appeal. We find that the record does not contain any evidence regarding the requirements for achieving this certificate or suggesting that it reflects admission to an association as a member. Thus, the Petitioner has not satisfied this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

A leading role should be apparent by its position in the organizational hierarchy and the role's matching duties. A critical role is evident from its overall impact on the organization or establishment. The Director considered the two letters from and concluded they did not demonstrate that the Petitioner's duties for that company were either leading or critical. The Petitioner does not specifically address these findings on appeal. In a letter dated July 25, 2000, human resources manager for confirms that the Petitioner was employed there since February 8, 2000, as a team assistant. vice president and head of the EV SP Department, Power Transmission and Distribution Division at explains that as a team assistant, the Petitioner was willing to learn, displaying excellent interpersonal and communication skills. Neither letter describes how the team assistant position fit within the overall hierarchy of or how the Petitioner impacted the company in that role. For these reasons, the Petitioner has not met this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix)

The record contains IRS Forms W-2 from 2007 through 2014 reflecting annual income between $2,365 and $65,708. In addition, confirms that the Petitioner earned 20,000 Thai Baht at in 2000. The Director concluded that the Petitioner had not shown that these salaries were high in relation to others in the field. On appeal, the Petitioner does not respond to the Director's concerns. Rather, she states that she has been and will be "supported [in] a comfortable living" by her spouse. As the Petitioner has not supplied evidence of salaries in her field for comparison purposes, she has not satisfied this criterion.

2. Summary

As explained above, the exhibits provided do not satisfy any of the regulatory criteria. As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

B. Continued Employment

Regarding her future plans, the Petitioner did not complete part 6 of the Form I-140 or otherwise identify her proposed employment in the initial submission. In response to the Director's RFE, she noted her graduate degree, confirmed that she intends to seek additional education, and maintained her education will allow her to "contribute my skills and knowledge in the local, regional, and/or national sectors in the future." The Director concluded that the Petitioner had not provided a "clear indication of what her field" is or "detailed evidence that she is coming to the United States to work in the field of extraordinary ability." On appeal, the Petitioner affirms that she is supported by her husband, is not seeking part-time positions, and holds a graduate degree which has the potential to benefit the United States in the future. The Petitioner has not offered letters from prospective employers, or prearranged commitments such as contracts. In addition, her broad statements do not detail her plans on how she intends to continue her work in the United States. Accordingly, she has satisfied the requirements pertaining to her proposed employment at 8 C.F.R. § 204.5(h)(5).

C. Substantial Prospective Benefit

Section 203(b)(1)(A)(ii) of the Act specifically requires that the foreign national's entry into the United States will substantially benefit prospectively the United States. The implementing regulation does not set forth specific evidentiary requirements for this provision. Nevertheless, it is a part of the statute and USCIS is not precluded from analyzing the issue. In this case, the Petitioner has not identified her area of expertise, nor has she offered extensive documentation of her extraordinary ability or evidence of her intent to continue working in an area of expertise. Accordingly, the record supports the Director's determination that the Petitioner has not established that she will substantially benefit prospectively the United States.

III. CONCLUSION

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings 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 individual "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), (3); *see also Kazarian*, 596 F.3d at 1119-20 (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). 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 not established the level of expertise required for the classification sought. In addition, she has not corroborated her intent to work in an area of expertise or shown that she will substantially benefit prospectively the United States.

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 T-E-*, ID# 17228 (AAO May 25, 2016)