U.S. Citizenship and Immigration Services

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

MATTER OF R-L-S-

DATE: JUNE 25, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a fitness instructor, seeks classification as an individual of extraordinary ability in athletics. *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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner contends that she meets at least three criteria and qualifies for classification as an individual of extraordinary ability.

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

## I. LAW

Section 203(b)(1)(A) 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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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. 8 C.F.R. § 204.5(h)(2)-(3).

## II. ANALYSIS

The Petitioner is a fitness instructor. As she has not established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director held that the Petitioner did not meet any of these criteria. On appeal, the Petitioner asserts that she meets the following criteria: published material at 8 C.F.R. § 204.5(h)(3)(iii), original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), and high salary at 8 C.F.R. § 204.5(h)(3)(ix). Upon review, we conclude that the evidence in the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

> *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.* 8 C.F.R. § 204.5(h)(3)(iii).

The Director found that the evidence in the record did not support the published material criterion, concluding that the articles in the record were not about the Petitioner. On appeal, the Petitioner states that the record contains at least ten examples of published media coverage about her. While we note that several of these articles were published after the petition was filed, we find that the record contains sufficient documentation to meet the requirements of this criterion. For example, the

Petitioner has submitted two articles published on [redacted] entitled, "[redacted]" and "[redacted]" Both of these articles are about the Petitioner and her work in the field and the record reflects that these are published in major media.[1]

In addition, an article published on [redacted] contains an interview with the Petitioner to discuss several tips for feeling healthier while traveling. This article states that the Petitioner is "[redacted]" and provides sufficient details regarding her work in the field. The record reflects that [redacted] has significant daily and monthly unique visitors indicative of major media. Therefore, the record demonstrates that the Petitioner meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The record reflects that the Petitioner is one of three fitness hosts for [redacted], an online fitness company with over 3 million subscribers and that her fitness videos have amassed over 200 million views online. In addition, the Petitioner has over 98,000 followers on Instagram and 18,000 followers on Twitter. After acknowledging the number of online followers the Petitioner has and her success as an online fitness instructor, the Director held that the record does not demonstrate that her work has significantly impacted or otherwise changed the industry. On appeal, the Petitioner states that her impact on the field as a whole is substantial, but she does not provide specific details to corroborate this claim.

In her letter, [redacted] the CEO of [redacted] congratulates the Petitioner for promoting fitness in Israel and for her influence on social media as a fitness instructor, but this does not address how she has impacted the field of fitness. Similarly, a letter from [redacted] the Vice President at [redacted] states that the Petitioner has had "an incredibly successful career" and that her online popularity is "what advertisers are looking for these days." However, this does not indicate how the Petitioner success's as an influencer equates to contributions of major significance in the field of fitness instruction.

The record contains a letter from [redacted], the Chief Operating Officer for [redacted] who asserts that the number of the Petitioner's followers establishes that her contributions are of major significance. [redacted], CEO of [redacted] reaches the same conclusion, stating that "[the Petitioner's] health and fitness posts, blogs, videos, campaigns, and commercials have a following of over 3.6 million with over 300 million views,"[2] which he states means that her "[redacted]." Similarly, [redacted], the social media manager at [redacted] indicates that the Petitioner's "undeniable reach and positive influence across sites

[1] The record contains evidence that the Petitioner has appeared live on [redacted], a morning television show, but the Petitioner has not submitted a transcript of this interview, and the documentation submitted regarding the viewership relates to the [redacted] website rather than the television program and does not establish this as major media.

[2] We note that different figures are cited throughout the record for both the number of followers and views.

like Facebook and YouTube made her a perfect candidate," noting that "she has shown explosive growth in the social media sphere."

Similarly, , the Brand Manager for , states in her letter that the Petitioner is a "unique artist in her field" who combines "a collage of knowledge, motivational abilities, genuine concern and interest, meshed with her own personal flair and humor that can make something incredibly difficult enjoyable and rewarding." states that the Petitioner has such a large following because "she is the best at what she does." While these letters praise the Petitioner's popularity and success as an online fitness instructor, they do not specify how her popularity equates to original athletic contributions of major significance in the field. The record does not demonstrate how the Petitioner's contributions have impacted the field of fitness instruction.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The Director held that the record did not contain sufficient translations of the articles submitted. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.*

On appeal, the Petitioner states that the Director is taking issue with a very fine difference between "true and accurate" as stated in the certificate of translation for the article, discussed above, and the terms "complete and accurate" as required in the regulation at 8 C.F.R. § 103.2(b)(3). We note that this certificate of translation indicates that it is a "summary rendition of the attached Korean document," rather than a full English translation, as required. *Id.* Without a full and properly certified English translation, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims. Therefore, the Petitioner does not meet 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).

The Director held that the Petitioner's role as the face of the brand represents one as a model or spokesperson and is inapplicable to the claimed area as a professional fitness instructor. On appeal, the Petitioner states that companies, such as . (with the brand ) and , selected her to fill the role as a model or spokesperson because of her popularity and recognition online.

The record contains a letter from , the marketing department manager at , stating that the Petitioner "was chosen as the face of because of her huge popularity in the fitness industry." She further states that "[w]e wanted [the Petitioner] over anyone

else because she is recognized and our consumers are very familiar with her." Ms. also indicates that the company hosted a fit camp where its customers could meet the Petitioner. The record contains an article in in which the Petitioner is displaying the brand in her fitness routines. However, as indicated above, this article is not accompanied by a certified translation.

While we find that the Petitioner's background as a fitness model appears to be tied to the role the company hired her to perform, the evidence in the record does not establish this as a leading or critical role. The Petitioner has not established the duration of her role as a spokesperson for , whether her work extended beyond the Korean market, and most importantly, to what extent her work influenced the success of the company. While Ms. states that the fit camp was a "huge promotion" and that they were "delighted with the turn out," the record does not contain objective evidence to demonstrate the extent of this success. We note that the record does not contain evidence demonstrating that , is an organization with a distinguished reputation.

The record contains a letter from , the co-founder of , who states that the Petitioner was hired to be "the face" of our brand and that "[h]er status as a high profile fitness instructor brought our brand significant success that strengthened our customer-product-service relationship and influenced a large audience to buy and consume more." While Ms. states that the Petitioner influenced 's customers to purchase more, the record does not demonstrate the extent or duration of this increase in sales to demonstrate how critical her role was to the company. In addition, the record does not contain evidence demonstrating that has a distinguished reputation.

While the record reflects that the Petitioner is one of three fitness hosts for , the record does not specify how the Petitioner has a leading or critical role within the company; nor does the record contain evidence that it is an organization with a distinguished reputation. Therefore, the Petitioner has not established that she meets 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).

Regarding salary, the record contains an agreement between the Petitioner and stating she would be paid $60,000 for a video shoot over three days and another agreement with stating she would be paid $30,000 for a video shoot of at least 1.5 hours of produced content. The record also contains an agreement between the Petitioner and , indicating that she would receive $4,000 per month creating and filming fitness videos from February 2015 to February 2018. The Director held that these agreements in the record postdated the filing of the instant petition and would not be considered toward this criterion. We find that the Petitioner signed the agreements with these companies prior to the filing of the instant petition, but the agreements with and are not signed by both parties to demonstrate a contractual obligation. The record does not demonstrate that the Petitioner received payment from

these companies as well as [redacted]. Therefore, the record does not establish that the Petitioner meets this criterion.

## III. CONCLUSION

The Petitioner is not eligible because she has not submitted the required initial evidence of either a qualifying 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). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has the level of expertise required for the classification sought.

**ORDER:** The appeal is dismissed.

Cite as *Matter of R-L-S-*, ID# 1247030 (AAO June 25, 2018)