U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-R-T-

DATE: SEPT. 5, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an Irish dance teacher, seeks classification as an alien 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 of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had met the requisite three of ten evidentiary criteria. We dismissed the Petitioner's appeal, finding that she met two of the criteria under 8 C.F.R. § 204.5(h)((3)(i)-(x).

The matter is again before us on a motion to reconsider. The Petitioner submits a brief along with additional evidence.

Upon review, we will deny the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We do not consider new facts or evidence in a motion to reconsider.

A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

II. ANALYSIS

The Director found that the Petitioner met two of the evidentiary criteria, those relating to judging the work of others in the field, and original contributions of major significance to the field. On appeal, we determined that the Petitioner established that she played a critical role for the

as the school's head coach and choreographer, but disagreed with the Director regarding her contributions to the field. Specifically, we reviewed the many reference letters submitted by teachers from Irish dance schools where the Petitioner had trained dancers, and found this evidence insufficient to establish those schools' and dancers' claimed success or that that claimed success could be attributed to the Petitioner. We therefore found that the Petitioner did not meet the initial evidence requirement by satisfying the requirements of at least three of the evidentiary criteria, so we did not conduct a final merits determination as referenced in *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). On motion, the Petitioner presents arguments that our decision regarding several of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3) was incorrect based upon the evidence of record.

> *Documentation of the individual'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)

In addressing her claim to the criterion relating to lesser nationally or internationally recognized awards, the Petitioner first cites to *Lee v. Ziglar*, 237 F.Supp. 2d 914, 918 (N.D. Ill. 2002) in support of the assertion that an athlete's or team's awards may be attributed to a coach. While the Petitioner correctly notes that the decision in *Lee* found that a renowned baseball player's acclaim as a player did not support his qualification under this classification as a coach since the two jobs require different skills, it did not address Lee's qualification based upon awards that may have been won by players coached by him.

Similarly, the Petitioner also misinterprets our non-precedent decision in *Matter of K-S-Y-*, ID#14269 (AAO Mar. 9, 2016). That decision found that where an athlete had established recent national or international acclaim, coaching could be considered as within his area of expertise if he sustained that acclaim upon transitioning to coaching at a national level. We did not find, as the Petitioner asserts, that his awards received as an athlete could be considered to be coaching awards. In addition, as a non-precedent decision, the finding in *Matter of K-S-Y-* applied only to the petitioner in those proceedings and did not establish a new USCIS policy as asserted by the Petitioner.

The Petitioner also suggests, citing to *Muni v. INS*, 891 F.Supp. 440, 445 (N.D. Ill. 1995), that just like team awards may be attributed to individual members of a team, awards received by individual athletes may be attributed to their coach. But the court in *Muni* did not hold that team awards can be attributed to individual athletes on the team, relying instead upon the individual's qualification under other criteria. While we may consider team awards to be attributable to individual team members where the individual establishes that he or she played a key role, the contribution of a coach to a team's or individual's success is substantially different from that of individual athletes on a team.

As stated in our appeal decision, the plain language of this criterion requires that the Petitioner, not someone else, have received an award. Also, as explained below, the evidence regarding awards

received by students under the Petitioner's tutelage has been considered as comparable evidence under the criterion for contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v). Therefore, the Petitioner has not established that she meets this criterion.

> *Documentation of the individual'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)

As she did on appeal, the Petitioner challenges the Director's interpretation of the language of this criterion, asserting that the outstanding achievements required by associations refer not to requirements to gain membership into the association, but to the maintenance of membership status once accepted as a member of the association. For support of this interpretation, the Petitioner cites to *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) for the proposition that we may not impose novel substantive or evidentiary requirements beyond those in the regulations, and claims that we are treating admission to an association as a prize or award, thus duplicating the criterion at 8 C.F.R. § 204.5(h)(3)(i). But the district court decision she then cites to portrays the differences in the standards between these two criteria, and accurately depicts the long-held interpretation of this regulatory language which we applied in our previous decision. Additionally, the court in *Kazarian* did not address the membership criterion in its decision, and the Petitioner has not provided another pertinent decision or regulatory or statutory provision which would support her interpretation of the regulation. The Petitioner has not demonstrated that she meets the requirements of this criterion.

> *Published material about the individual in professional or major trade publications or other major media, relating to the individual'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 Petitioner also challenges our finding regarding this criterion, and includes sections from *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) and *Russell v. INS* 98 C 6132 (N.D. Ill. January 3, 2001) in her brief. First, it must be noted that neither of these cases are adopted or precedent decisions. Further, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

We note that neither of the cases supports the Petitioner's eligibility under this criterion. *Negro-Plumpe* clearly indicates that the court did not accept the argument that articles that focused on a show or character are about a performer. Under this interpretation, whether the articles submitted by the Petitioner are about [redacted] and its students, as we stated in our previous decision, or about the Irish dance world championships, as the Petitioner asserts, they do not meet the requirements of this

criterion because they are not about the Petitioner. Regarding *Russell*, it is unclear which part of the cited section the Petitioner relies upon in support of her claim under this criterion. That excerpt states both that there is no regulatory requirement that the media publications "be from news outlets throughout the country," and that there is no requirement that the articles describe the individual as being at the top of the field. However, our previous decision did not rely upon either of these interpretations of the regulations, instead noting that the materials were not about the Petitioner, and that evidence was not submitted to establish that the publications were major media.

The Petitioner has also included new evidence with her motion to reconsider regarding this criterion, including information printed from the website where one of the media materials was posted, as well as circulation information about some of the other publications which was obtained from www.mondotimes.com. However, as noted above, we do not consider new facts or evidence in a motion to reconsider. Accordingly, the Petitioner has not established that she meets this criterion.

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

On motion, the Petitioner asserts that the statement in our previous decision that "teaching individual students that excel in worldwide championship competition is not in-and-of-itself a contribution of major significance" is counterintuitive. Although the Petitioner does not mention a precedent decision, statutory or regulatory provision, or USCIS policy in support of this argument, we note that the USCIS Adjudicator's Field Manual indicates that evidence of student's awards may be considered as comparable evidence of contributions of major significance under 8 C.F.R. § 204.5(h)(4).[1] For that reason, we will consider the Petitioner's arguments regarding the awards received by students trained by her under this criterion, as opposed to the awards criterion at 8 C.F.R. § 204.5(h)(3)(i).

As we stated in our appeal decision, we withdrew the Director's determination regarding this criterion because we found that many of the letters submitted by the Petitioner lacked sufficient detail of both the awards won by the students trained by her, and the link between the Petitioner's training and any success enjoyed by the students. For instance, on motion the Petitioner references a letter from [redacted] of the [redacted] While [redacted] is complimentary of the Petitioner's work, she does not provide specifics as to the nature of the working relationship between the Petitioner and her school, or as to how the Petitioner helped the students listed to achieve the awards they earned. When discussing one of her students who won the [redacted] title, [redacted] simply states that "I will always be so grateful to [the Petitioner] for her unbelievable hard work, encouragement and inspiration." The letter does not mention the amount of time spent by the Petitioner in training this dancer, or specific ways in which she helped the dancer to prepare for the [redacted] title competition. In addition, although [redacted]

[1] See section 22.2(i)(1)(A) of the USCIS Adjudicator's Field Manual, which states that the comparable evidence provision at 8 C.F.R. § 204.5(h)(4) might apply to an Olympic coach who is coaching an athlete who wins an Olympic medal, and that this could serve as comparable evidence under 8 C.F.R. S204.5(h)(3)(v).

attached a list of winners of regional and national Irish dance competitions from her school, evidence of these awards was not submitted.

Other letters in the record are similarly lacking in detail regarding the connection between the Petitioner's work and any success enjoyed by dancers trained by her. [redacted] of the [redacted] in [redacted] Ireland, describes the Petitioner's activity as the principal instructor in dance camps held at her school in 2006, 2007 and 2008. Ms. [redacted] indicates that the Petitioner worked with both beginners and advanced students, and that "with the help from [the Petitioner] I now have many pupils who have won major titles..." While this letter indicates that the Petitioner helped the writer to become a better Irish dance teacher, there is no direct link between the Dance camps conducted by the Petitioner and student awards received several years later. A similar example is a letter from [redacted] of the [redacted] in [redacted] Kentucky, who states that the Petitioner has been conducting workshops at her school for the previous two years, and that since that time, "we have had more dancers than ever placing at the top levels of regional, national and world competitions." Since the Petitioner has acted as a temporary "workshop" coach for many of the dancers upon which this claim is based, the evidence does not demonstrate that the awards received by these students could be attributed to her.

The Petitioner also bases her claim to this criterion relying on students she has trained in a permanent coaching position. A letter from [redacted] and Artistic Director, states that under the Petitioner's tutelage, the school had two dancers win gold medals at the 2013 [redacted] and photographs in the record confirm these awards. Additional evidence of the awards received by students trained by the Petitioner at [redacted] includes photographs of dancers holding trophies or wearing sashes, many including the Petitioner. In addition, the Petitioner submitted a list of [redacted] winners posted by a user on *www.dance.net* that shows her name in parentheses after the names of two third place and one seventh place winner. The record lacks evidence corroborating this claim or the list of students and awards mentioned in the Petitioner's brief, repeated from her initial petition support letter. The evidence regarding the Petitioner's work at Trinity shows that she has been directly responsible for training a small number of dancers who won prizes at international competitions. However, considering the evidence of the large number of dancers competing and receiving awards at international Irish dance competitions, it does not establish that this activity comprises a contribution of major significance to the field of Irish dance.

Finally, the Petitioner repeats her claim to have trained dancers who went on to perform professionally in [redacted] However, the Petitioner did not submit evidence to support these assertions in her petition or on appeal, and does not now refer to a decision, statute or USCIS regulation which would compel our acceptance of this unsupported claim. Therefore, the evidence does not demonstrate that the Petitioner 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)

In her brief, the Petitioner also restates her arguments pertaining to this criterion, asserting that the fees received by [redacted] for her workshops at other schools should be considered as part of her total compensation. But the Petitioner has not asserted that our previous decision was based upon an incorrect application of law or policy, and does not support her assertions with references to USCIS regulations, statute or policy. While she now has included the website addresses for U.S. Bureau of Labor & Statistics salary data for teachers and choreographers, again we do not consider new facts or evidence in a motion to reconsider.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.* 8 C.F.R. § 204.5(h)(3)(x)

The Petitioner also asserts her claim to have coached professional dancers who performed in [redacted] under this criterion, and argues that the commercial success of that show should be attributed to her under 8 C.F.R. § 204.5(h)(3)(x). However, the record does not include evidence to verify the Petitioner's claim to have trained the two dancers named in her brief. In addition, even if such evidence had been submitted, the Petitioner has not established that any part of the commercial success of [redacted] could be attributed to her, when considered with the many performers, producers, coaches and other support personnel involved with its production over more than 20 years. She has therefore not established that she meet this criterion.

III. CONCLUSION

Upon consideration of the brief submitted in support of the Petitioner's motion to reconsider, we do not find that she has established that our previous decision was based upon the incorrect application of law or policy with respect to any of the criteria at 8 C.F.R. § 204.5(h)(3). As the evidence does not establish that the Petitioner meets at least three of the ten evidentiary criteria, we need not address her contention on motion that she is among the small percentage of Irish dance teachers and choreographers at the very top of the field. Nevertheless, we have reviewed the Petitioner's assertions, and find that they are not supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or USCIS policy statement.

ORDER: The motion to reconsider is denied.

Cite as *Matter of D-R-T-*, ID# 1482000 (AAO Sept. 5, 2018)