U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-W-L-

DATE: APR. 17, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner seeks classification as an individual of extraordinary ability in spa design and wellness. *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 satisfied two of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that she meets at least three of the ten criteria.

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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is the managing director for [redacted] a spa concept and design firm. Because she has not indicated or 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). In denying the petition, the Director found that the Petitioner fulfilled the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). The record reflects that the Petitioner served as a judge for the [redacted] in 2010 and performed in a leading or critical role for her company. Accordingly, we agree with the Director that the Petitioner demonstrated that she met the judging and leading or critical role criteria.

On appeal, the Petitioner maintains that she meets two additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the 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).

In order to satisfy this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media, including the title, date, and author of the material.[1] The Petitioner contends that she provided 28 articles that meet this criterion. The record, however, reflects that only four of the articles contain published material about the Petitioner relating to her work in the field. The remaining articles are about the Petitioner's company, [redacted]. Although some of these articles mention the Petitioner's name and reference her quotes, they are about the company and its spa-related projects. Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).[2]

Further, as it relates to the four articles mentioned above, the Petitioner did not include the required author for one of the articles (lifeandstyle.com). While the Petitioner claimed that the author was a "Staff Interviewer," she did not specifically identify the author of the material.[3]

In addition to lifeandstyle.com, one article was posted on wellnesstoday.com and two articles were published in *Asia Spa*. Regarding lifeandstyle.com, the Petitioner provided "About Us" screenshots and claimed that the "[c]ompany does not reveal" circulation numbers. Likewise, the Petitioner offered an "About Us" screenshot from wellnesstoday.com reflecting an affiliation with the Institute for Integrative Nutrition (IIN) and a screenshot from integrativenutritition.com stating that IIN "has provided a global learning experience for 100,000 students and graduates in over 150 countries worldwide." Moreover, as it relates to *Asia Spa*, the Petitioner submitted screenshots from bluincmedia.com indicating a circulation of 62,000. On appeal, the Petitioner presents screenshots from bluincmedia.com asserting that Blu Inc. Media is "[t]he leading luxury publication group in Asia."

The record, however, does not demonstrate that the magazine and two websites are professional or major trade publications or other major media. Without circulation or viewing statistics, the Petitioner has not shown that lifeandstyle.com and wellnesstoday.com are regarded as major media.[4] In addition, the screenshot from integrativenutritition.com relates to IIN rather than the medium status of wellnesstoday.com. Finally, while *Asia Spa* claims that it has a circulation of 62,000, the Petitioner did not show the significance of the figures or explain how such numbers represent major trade

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[1] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[2] *Id.* (providing that the published material should be about the petitioner relating to his or her work in the field, not just about his or her employer or another organization with whom he or she is associated).

[3] Similarly, the Petitioner did not sufficiently identify the authors of six other articles by indicating the author as the "Staff Writer" or "Staff Interviewer."

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (finding that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

publication status. Moreover, the screenshots from bluincmedia.com relate to Blu Inc. Media but do not show *Asia Spa's* standing as a major trade publication.[5]

Because the Petitioner did not establish that her evidence fulfills the eligibility requirements, she did not demonstrate that she fulfills 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 Petitioner argues that her meets this criterion. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field.[6] For example, a petitioner may show that her contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. Here, we will address the Petitioner's arguments on appeal and determine whether she has shown original contributions of major significance in the field consistent with this regulatory criterion.

The Petitioner submits a copy of presentation and indicates that her concept was reported by cladglobal.com. Although the article states that has come up with a new child-specific spa concept," the Petitioner did not demonstrate that an article covering an idea shows that the field views it as being majorly significant. Moreover, the Petitioner did not establish that the reporting on the Petitioner's design by a single website is indicative of an original contribution of major significance in the field. For instance, she did not show that her spa concept resulted in widespread coverage and interest in major publications.

In addition, the Petitioner contends that her spa concept was "embraced by and and references the design contract, letter of appointment, photographs of the finished spas, and a Twitter page from advertising the spa. While at least two entities have incorporated the Petitioner's spa design in their hotels/resorts, she did not establish that the overall field views her concept as a contribution of major significance. The Petitioner, for instance, did not show that her spa design has been widely implemented or highly influenced the greater field.[7]

Similarly, the Petitioner references a previously submitted e-mail from senior director of design and construction for , requesting a seminar to discuss her spa presentation. Moreover, the Petitioner presents a letter from who stated that

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[5] Likewise, while the Petitioner provided circulation and readership numbers for the other publications and websites, as well as background information for the publishing companies, she did not explain the relevance of the figures or show how such statistics demonstrate status as major trade publications or other major media.

[6] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[7] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

the [] has the greatest ability to impact the *future* [emphasis added] of spa design that caters to the kids" and "*would* [emphasis added] set apart a brand such as in the wellness facility/luxury hotel sector." Here, speculated on the potential influence and on the possibility of being majorly significant at some point in the future. However, did not explain how the spa design already qualifies as a contribution of major significance in the field, rather than a prospective impact. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[8] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[9] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that she has made original contributions of major significance in the field.

III. CONCLUSION

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. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

[8] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[9] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

ORDER: The appeal is dismissed.

Cite as *Matter of A-W-L-*, ID# 2752470 (AAO Apr. 17, 2019)