



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF A-Y-S-

DATE: FEB. 4, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a theater professor, 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 Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only 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 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,
- (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). 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).

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 indicates employment as a theatrical professor at the [REDACTED] in [REDACTED] Egypt. As the Petitioner 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).

A. Evidentiary Criteria

The Director found that the Petitioner met the following two criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner judged two theatrical festivals and authored a scholarly publication. Accordingly, we agree with the Director's decision for these two criteria. In addition, the record demonstrates that the Petitioner has directed theatrical performances at festivals thereby fulfilling the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii). Therefore, the Petitioner has established that she satisfies at least three regulatory criteria, and we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her

achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown her eligibility.

The record reflects that the Petitioner received a bachelor of arts degree in accounting from [REDACTED] in 1995; a bachelor of arts degree and a diploma of post graduate studies in acting and directing from the [REDACTED] in 1999 and 2003, respectively; and a doctor of philosophy from [REDACTED] in 2013. According to her curriculum vitae, the Petitioner was a teaching assistant at [REDACTED] from 2003 – 2013. In addition, the Petitioner held various positions at [REDACTED] from 2009 – 2013, such as Arabic instructor, graduate administrative associate, video editing assistant, and graduate research assistant. Most recently, the Petitioner maintained that she was “The Head” of [REDACTED] in [REDACTED] Egypt from November 2014 – June 2015, and has been a theatrical professor at [REDACTED] since Fall 2013.¹ As mentioned above, the Petitioner judged others within her field, authored a scholarly publication, and displayed her work at artistic exhibitions. The record, however, does not demonstrate that her achievements are reflective of a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding her service as a judge of others, an evaluation of the significance of her experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22. The Petitioner provided evidence showing that she served as a judge at the [REDACTED] in December 2013 and at the [REDACTED] in May 2016. However, the Petitioner did not establish that her two judging instances place her among the small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2). She did not show, for example, how her judging experience compares to others at the top of the field.

In addition, the Petitioner did not demonstrate that her two judging occurrences in 2013 and 2016 contribute to a finding that she has a “career of acclaimed work in the field” as contemplated by Congress or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not show, for instance, that she garnered wide attention from the field based on her work as a festival judge. Without evidence that sets her apart from others in her field, such as evidence that she served as a judge of acclaimed individuals or of prestigious national or international competitions rather than aspiring students or amateurs, she did not demonstrate that she “is one of that small percentage who [has] risen to the very top of the field of endeavor.” *See* 8 C.F.R. § 204.5(h)(2).

¹ The record reflects that the Petitioner last entered the United States as a visitor on June 21, 2016. The Petitioner has not indicated or documented any employment since her arrival in the United States.

Likewise, publication of scholarly work does not automatically place one at the top of the field. Here, the Petitioner presented evidence showing that she authored one book, [REDACTED] in 2013. The Petitioner, however, has not demonstrated that this publication record is consistent with having a “career of acclaimed work.” H.R. Rep. No. at 59. In addition, the commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). She has not shown that her authorship of one scholarly publication is reflective of being among the small percentage at the very top of her field or demonstrates the required sustained national or international acclaim for this highly restrictive classification. See 8 C.F.R. § 204.5(h)(2) and section 203(b)(1)(A) of the Act.

Moreover, the citation history or other evidence of the influence of her book can be an indicator to determine the impact and recognition that her work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article or book authored by a petitioner may provide solid evidence that her work has been recognized and that others in her field have been influenced by her work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. Although the Petitioner submitted screenshots from websites offering the availability to purchase the book, such as amazon.com, ebay.com, and thriftbooks.com, she did not show that the field has recognized her book as being highly influential or as a widely used, standard source. Here, the Petitioner did not demonstrate that her book attracted a level of interest in her field commensurate with sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The Petitioner, for example, did not provide evidence of the citation of her book by others or sales figures to show that her work is recognized as being at the top of her field. See 8 C.F.R. § 204.5(h)(2).

Regarding the display of her work, the Petitioner indicated that she directed four plays, such as [REDACTED] acted in six plays and three television shows, and edited three films. As it is expected that directors and actresses would exhibit their artistic work in front of audiences, we will evaluate the extent to which the display of her work is reflective of acclaim consistent with this classification. While the Petitioner presented evidence showing her participation as a director and actress, she did not demonstrate, for example, that her work brought wide praise from critics, drew notable crowds, raised attendance, or were responsible for the success or standing of the events.² The Petitioner’s evidence does not distinguish her performances or work from others in her field or show that it reflects a “career of acclaimed work in the field.” H.R. Rep. No. 101-723 at 59.

Beyond the three criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, we find that the evidence neither fulfills the requirements of any further

² Although the Petitioner has experience in the theatrical field, she did not claim, nor does the record reflect, commercial successes under the regulation at 8 C.F.R. § 204.5(h)(3)(x).

evidentiary criteria nor contributes to an overall finding that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of her field.

As it relates to her awards, the Petitioner provided certificates acknowledging her service and participation, as well as financial aid grants to attend higher education. For example, the Petitioner submitted an [REDACTED] certificate “for Outstanding Contribution and Service in recognition of [her] contributions and dedication to the Department of Theatre’s Video Archives,” a letter from the [REDACTED] indicating that she received “an Egyptian government scholarship for up to 4 year[s] in the USA to obtain her Ph.D. degree,” and a certificate from the [REDACTED] for “her effort and participation in the [REDACTED].”³ However, the Petitioner did not demonstrate that the field recognizes any of these as prizes or awards for excellence. Here, the record does not reflect that she received prestigious awards against acclaimed competition throughout her field or was judged by accomplished directors and actors.

The Petitioner also claims membership with the [REDACTED]. However, the Petitioner did not establish that her membership requires outstanding achievements, as judged by recognized national or international experts.⁴ Further, as she has not shown, for example, that she is a member of associations that limit membership to artists with renowned endeavors, her membership evidence does not contribute to a finding that she has sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

In addition, the Petitioner maintains that she offered four articles reflecting published material about her in major media. While two articles [REDACTED] mention the Petitioner as the head of [REDACTED] they are about the art center. The other two articles [REDACTED] reflect published material about her. However, she did not establish that any of the articles were published in major media.⁵ Moreover, the Petitioner did not demonstrate that the articles are consistent with the sustained national or international acclaim necessary for this highly restrictive classification. See section 203(b)(1)(A) of the Act. In addition, she did not show that her limited press coverage is indicative of a level of success consistent with being among “that small percentage who [has] risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Further, with respect to her contributions to the field, the Petitioner states that she submitted letters to show that her contributions “are original, unique and will bring great benefit to the United States of America.” The letters, however, make general assertions repeating the statute and regulations without providing specific information explaining how her work has greatly impacted the overall field. For instance, [REDACTED] claimed that the Petitioner “delivered solid

³ While we discuss a sampling of her awards, we have reviewed and considered each one.

⁴ According to the evidence submitted by the Petitioner, full membership requires individuals to have received a doctorate related to Middle East studies, have taught Middle East studies, or who have made a scholarly contribution to Middle East studies.

⁵ The Petitioner provides screenshots from *Wikipedia*, an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. See *General Disclaimer, Wikipedia* (January 31, 2019), https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *Badaşa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008).

performances that highlighted her diverse talents” and “[h]er research and abilities will continue to substantially benefit the United States.”⁶ [REDACTED] did not show how the Petitioner’s diverse talents have impacted the field or how her research has already benefited the field. Repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Here, the letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Moreover, as discussed above, the Petitioner served as “The Head” of [REDACTED]. However, the Petitioner did not establish that [REDACTED] enjoys a distinguished reputation. In addition, the Petitioner did not establish that her work at this organization has been recognized by the field as being significantly important or viewed as unusually influential. The submitted documentation, for instance, does not reflect that the Petitioner has somehow impacted the field through her work at this establishment demonstrating attention at a level commensurate with those at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The record as a whole, including the evidence discussed above, does not establish the Petitioner’s eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. at 954. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that she has sustained national or international acclaim and is among the small percentage at the top of her field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).⁷

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established her eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of A-Y-S-*, ID# 1972670 (AAO Feb. 4, 2019)

⁶ Although we reference a sample letter, we have reviewed and considered each one in the record.

⁷ As the Petitioner has not demonstrated her extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether she intends to continue working in the area of extraordinary ability under section 203(b)(1)(A)(ii).