U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-C-

DATE: JULY 2, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a marketing and media relations consultant, seeks classification as an individual of extraordinary ability in business. *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, and a subsequent motion, 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 asserting that she fulfills 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,
>
> (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). 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

A. Evidentiary Criteria

At the time of filing, the Petitioner was serving as Director of Marketing and Media Relations for [redacted] Because she has not indicated or established that she has received a major, internationally recognized award, the Petitioner 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 met the published material and leading or critical role criteria under 8 C.F.R. § 204.5(h)(3)(iii) and (viii), respectively. On appeal, the Petitioner maintains that she also meets the awards, original contributions, and display criteria at 8 C.F.R. § 204.5(h)(3)(i), (v), and (vii), respectively. Upon review, we conclude that the record does not support a finding that the Petitioner meets the requirements of at least three 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).

As evidence under this criterion, the Petitioner presented five awards received by [redacted] "Most Innovative" [redacted] at the "2014 [redacted]," "Best Design" [redacted] at the "2011 [redacted]," *Robb Report* magazine's

"Best of the Best 2011 [redacted]. "Best Power [redacted] category at the 2011 International [redacted]," and "Best Asian Built [redacted] at the 2014 '[redacted] Awards, jointly organized by *Asia-Pacific Boating* and *China Boating* magazines."

The Director noted that the above awards were "won by a [redacted]" and that they were "given for product design, and not for marketing."[1] For example, the record includes an article in *Robb Report*'s "Best of the Best 2011 [redacted]' special issue edition stating that the [redacted] was designed by [redacted] and built by [redacted]. This article does not mention the Petitioner or her marketing work. The evidence does not show that [redacted]'s awards for its design, innovation, and building of various types of [redacted] were mostly attributable to her work or that those awards were in the marketing and media relations field.

In order to fulfill this criterion, the Petitioner must demonstrate her *receipt* of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.[2] Here, the Petitioner did not receive these awards; rather, her employer garnered them. The description of this type of evidence in the regulation provides that the focus should be on "the alien's" receipt of the awards or prizes, as opposed to her employer's receipt of the awards or prizes.[3] Furthermore, the information about the awards from the presenting organizations and [redacted] is not sufficient to demonstrate that they are nationally or internationally recognized prizes or awards for excellence in the field.

In addition, while the Petitioner contends that [redacted] received "Best [redacted] of the Year 2013 by [redacted] Awards, [redacted] China," the evidence does not show that her company actually won this award. Instead, the record includes a [redacted] 2013 [redacted] press release distributed by *PR Newswire* stating: [redacted] 2013 *finalist* for [redacted] 2013" (emphasis added). The Petitioner also provided a list of the "2013 [redacted] Awards Winners" from "SPH Magazines Blog," but this list does not identify [redacted] as having won either of the aforementioned awards. Moreover, the record does not contain sufficient evidence demonstrating that the company's selection as a finalist constitutes a nationally or internationally recognized prize or award for excellence in the Petitioner's field. Nor does the evidence show that [redacted]s standing as a finalist was mostly attributable to her work. For the above reasons, the Petitioner has not established that she meets this regulatory criterion.

> *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).

[1] The Petitioner has identified her field of endeavor as "marketing and media relations."

[2] *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* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[3] *Id.*

The Director found that that the Petitioner had demonstrated her eligibility under this criterion. For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary evidence showing that she meets the requirements of this criterion. Accordingly, the Director's determination on this issue will be withdrawn.

The record includes a [redacted] 2016 article about the Petitioner, entitled "[redacted] in Canada.GreekReporter.com. In addition, she provided information about GreekReporter.com from its website. This information states that GreekReporter.com operates "different local portals" such as '[redacted] USA, Australia, Canada, Europe, World, Greece" reaching an "audience of more than 4 million." Regarding GreekReporter.com's claimed readership, USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos,* No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9). The record also includes a *Wikipedia* entry stating that *Greek Reporter* is a news organization that operates an "online portal consisting of a collection of internet news web sites for Greek people and people of Greek descent who live and work in and outside Greece." The Petitioner, however, has not presented comparative statistics or other evidence indicating that *Greek Reporter*'s Canadian website, Canada.GreekReporter.com, has a readership elevating it to major media relative to other news publications.

The Petitioner also presented various magazine articles from *Yates*, *Yachts Russia*, *Invictus*, *Design Bureau*, *Inside Marine*, *Argos Yachts*, and *MegaYacht News*, but these articles only mention her in passing or briefly quote her discussing information about her employer and it yachts. This regulatory criterion requires "published material about the alien." Articles that are not about her do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). Furthermore, the Petitioner has not presented comparative statistics or other evidence indicating that the aforementioned magazines' readership elevates them to major media relative to other publications.

In addition, the Petitioner provided documentation showing that she hosted various '[redacted] Videos" that were broadcast weekly via YouTube and Twitter. The record includes information from [redacted] stating: [redacted] with host [the Petitioner], is a weekly news show recapping the world's top trending international headlines. . . . Great for people on the go, the show runs 5-7 minutes, and tells you all you need to know to sound 'in-the-know' at your next dinner party or social gathering." The evidence indicates that these videos covered the world's top trending international headlines and were not about the Petitioner. Nor has she demonstrated that [redacted] is a form of major media. The Petitioner has not established therefore that she meets this regulatory 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 she revolutionized the presentation of yachts at industry exhibitions through experiential marketing. She contends that her booth exhibitions recreated the experience of [redacted] including special visual effects and music, and that "[h]er approach was immediately copied by other [redacted] manufacturers."

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. For example, a petitioner may show that the 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.

As evidence for this criterion, the Petitioner provided letters of support discussing her creativity in delivering effective [redacted] displays.[4] However, as discussed below, these letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to demonstrate the nature of specific "original contributions" that the Petitioner has made to the field that have been considered to be of major significance.

For example, [redacted], president of [redacted], stated: "Transforming the traditional exhibition space into an experiential landscape for potential owners, [the Petitioner] shook up the formerly conservative, fuddy duddy [redacted] community and pushed the exhibition industry into the 21st century in terms of creative progressiveness and cutting edge artistic styling." He further indicated that "[a]side from having shared her vision for [redacted] design, a style which has been adopted by many of [redacted]s competitors, [the Petitioner's] artistic expression and marketing genius is vividly on display at each and every [redacted] global showcase." Similarly, [redacted] Director of Sales for [redacted], a company that produces [redacted] shows in Florida, contended that the Petitioner "quickly set a new bar amongst[redacted] manufacturers and brokers, introducing a new global standard for [redacted] displays, and corn[er]ing the arena of 'experiential marketing.'" [redacted] and [redacted] however, do not provide specific examples of how the Petitioner's experiential marketing approaches have widely affected the industry or have otherwise risen to the level of original contributions of major significance in the field.

In addition, the Petitioner submitted a letter from [redacted] President of [redacted] a cloud solutions and information technology company.[5] He asserted that the Petitioner led "not only [redacted] but was a forerunner for the whole [redacted] industry in recognizing that platforms that display video content offer multiple layers of engagement. . . . This ultimately assisted in the meteoric rise that [redacted] realized . . . ." The record, however, does not contain sufficient evidence showing that the Petitioner's multi-media strategies had a meaningful impact to the overall field beyond [redacted] The language of this regulatory criterion requires that the Petitioner's original contributions be "of major significance in the field" rather than mainly affecting her employer. *See 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). Without sufficient evidence demonstrating that her work constitutes original contributions of major significance in the field, the Petitioner has not established that she meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

[4] Although we discuss a sampling of letters, we have reviewed and considered each one.
[5] [redacted] noted that he previously served as Chief Technology Officer for [redacted]

The Petitioner initially asserted that her marketing displays and promotional booths at various boat shows meet this criterion. The record indicates that the design and craftsmanship of [redacted] was on display at these commercial boat shows. The language of this criterion specifically requires display of the Petitioner's work at "*artistic* exhibitions or showcases" (emphasis added). Here, the evidence does not demonstrate that the work on display was her work product, nor that these commercial boat shows were "artistic" in nature.[6] Accordingly, the Director concluded that the Petitioner had not satisfied this criterion.

On appeal, the Petitioner contends that she satisfies this criterion based on comparable evidence under the regulation at 8 C.F.R. 204.5(h)(4). Specifically, she asserts that her "preparation of the booths, promotional materials, [and] organizing presentations" at boat shows should be considered as comparable evidence. The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to her occupation. A petitioner should explain why she has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence she has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[7]

In this case, the Petitioner has not shown that the listed criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to her occupation. She has not asserted or demonstrated that she cannot offer evidence that meets at least three of the ten criteria. As discussed, the Petitioner has claimed to meet more than three criteria. Moreover, the Petitioner has not shown that marketing and media relations consultants cannot present evidence relating to the other regulatory criteria. For these reasons, the Petitioner has not established that she is eligible to meet this criterion through the submission of comparable evidence.

> *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 evidence shows that as Director of Marketing and Media Relations for [redacted], the Petitioner has performed in a critical role for a distinguished organization. Accordingly, the record supports the Director's determination that the Petitioner meets this criterion.

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

[6] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9-10.
[7] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

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 and recognition of her work are indicative of the required sustained national or international acclaim or that they are 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 foregoing reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability. 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 Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C-C-*, ID# 3629500 (AAO July 2, 2019)