U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-G-M-

DATE: MAR. 20. 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an orchestra concertmaster, seeks classification as an individual of extraordinary in the arts. *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 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,
>
> (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

The Petitioner is employed as an orchestra concertmaster with [redacted] 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 did not fulfill any of the initial evidentiary criteria.

On appeal, the Petitioner maintains that she meets four 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.

A. Evidentiary 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).

The Petitioner claims eligibility for this criterion based on her receipt of a first prize at [redacted] in 2004. The Director found that the award is limited to youths and students; and therefore, cannot be considered a nationally or internationally recognized award for excellence in the field because it excludes established professionals who have already achieved excellence. In her

brief, the Petitioner argues that "the Director erred in basing the decision on eligibility for this category solely upon age" and "[t]he guidance to 'consider' age is not a mandate to deny solely on that basis."

In order to satisfy this criterion, the Petitioner must demonstrate whether she has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.[1] Relevant considerations regarding whether the basis for granting the prizes or awards was for excellence in the field include, but are not limited to: the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize recipients as well as any limitations on competitors.[2] Based on the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), we do not find that youth or students awards automatically disqualify individuals from meeting this criterion. However, an award limited to age or student status might be a relevant factor in determining whether the overall field acknowledges it for excellence.[3] As instructed in the referenced policy memorandum, limitations placed on competitors may affect the field's respect of the prize or award. Ultimately, the issue for this criterion is whether the prizes or awards are nationally or internationally recognized for excellence in the field.

The record reflects that the Petitioner submitted several documents describing and relating to the music competition rather than to the award. For instance, [redacted] is labelled as a "nationwide competition refer[ing] to young adults up to 20 years" and "serves both the promotion of amateur music and the promotion of young people with professional musical ambitions." In addition, the music competition "is the largest and most important music contest for young musicians in Germany," "motivates thousands of young musicians to perform every years," and "promotes young talent in making music and helps many entrants to reach professional levels." Here, the Petitioner did not demonstrate the national or international significance of the awards in the field but focused on the purpose and background of the competition. For these reasons, the Petitioner did not show that her first prize award is nationally or internationally recognized for excellence in the field.

Accordingly, the Petitioner did not establish 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).

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

---

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

[2] *Id.* (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance.)

[3] In addition, the nature of aged-based and student status prizes and awards is also appropriate in determining 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 in a final merits determination if the Director finds that an individual meets at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115.

field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner praises [redacted] as "the only performing arts company in the United States of America that showcases [redacted]" and indicates that "[m]any of the musical pieces performed are [redacted] original compositions." In addition, the Petitioner contends that [redacted] "has specialized in an original and novel approach to symphonic and orchestral musical performance." However, the Petitioner refers to [redacted] contributions rather than to her own contributions in the field.[4] Here, the Petitioner did not specifically identify what contributions she has made to field relating to [redacted] and how they have been of major significance.

Further, the Petitioner argues that her "extraordinary ability to combine her expertise in western classical music with her grasp on the unique styles of classical Chinese music . . . constitutes an original contribution to the musical field." Having a diverse or unique skill set is not a contribution of major significance in-and-of-itself. Rather, the record must be supported by evidence that the Petitioner has already used those skills and abilities to impact the field at a significant level. In the case here, the Petitioner did not establish how combining her expertise with her grasp of styles is viewed as an original contribution, as well as how it has significantly impacted or influenced the overall field.[5]

Moreover, the Petitioner contends that "[t]he fact that the [redacted] has appointed [her] as the Concertmaster of its acclaimed symphony orchestra signifies that she is one of that small percentage who have risen to the very top of the field and has been recognized for her extraordinary ability and outstanding achievements." The record also contains recommendation letters that primarily discuss her role with [redacted] without showing how she has made original contributions of major significance to the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[6] 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.[7] 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). In addition, the Petitioner's position with [redacted] is more appropriate for the leading or critical role criterion under the regulation at 8 C.F.R. § 204.5(3)(3)(viii) and will be addressed later in this decision. Furthermore, the Petitioner' status and recognition in the field would be applicable in a final merits determination if she met at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115.

---

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8 (indicating that the first step in evaluating this criterion is to determine whether the individual has made original contributions in the field).

[5] *See* USCIS Policy Memorandum PM 602-0005.1, 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).

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

[7] *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).

Finally, the Petitioner generally requests that "all the evidence in the original petition, [request for evidence], and in this appeal be considered." However, the Petitioner did not specifically identify what contributions should be considered, how they are of major significance, and which evidence should be evaluated.

For these reasons, the Petitioner has not met her burden of showing that she has made original contributions of major significance in the field.

> *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).

The record reflects that the Petitioner has performed at artistic exhibitions and showcases. Accordingly, the Petitioner has established that she meets 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 Petitioner contends that she qualifies for this criterion based on her role for [redacted] As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[8] Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[9]

The record reflects that the Petitioner is the concertmaster for the orchestra within [redacted] According to a screenshot from rockfordsymphony.com provided by the Petitioner, a concertmaster is the lead violinist, leads the orchestra in its tuning prior to the concert, and customarily plays all of the violin solos within pieces. While the Petitioner demonstrated that her concertmaster position is leading to the orchestra, she did not explain or show how her role is leading to [redacted] overall. The Petitioner, for example, did not compare her role as a concertmaster within the orchestra to the other leading positions at [redacted] Moreover, the Petitioner did not establish that in her role as a concertmaster she was responsible for the success or standing of [redacted] For instance, the Petitioner offered a letter from [redacted] representative of [redacted] who confirmed the Petitioner's position and employment and generally claimed that the Petitioner "made a significant contribution to the internationally acclaimed, highly respected performances of [redacted] The letter, however, does not specifically articulate how the Petitioner impacted [redacted] achievements or reputation. Here, the letter, along with other similarly submitted letters, does not show that she held a leading position for [redacted], and does not contain specific information signifying that she was essential to its accomplishments.[10]

---

[8] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.
[9] *Id.*
[10] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this

Accordingly, the Petitioner did not demonstrate that she fulfills this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *KEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *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). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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.

---

determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

ORDER: The appeal is dismissed.

Cite as *Matter of A-G-M-*, ID# 2524769 (AAO Mar. 20, 2019)