U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5755266

Date: NOV. 21, 2019

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an actor, 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 Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that she meets any of the ten initial evidentiary criteria, of which she must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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).

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)

II. ANALYSIS

The Petitioner is an actress who has performed in film, television, commercials, and other projects in Israel and the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she 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 determined that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that she submitted evidence to satisfy five criteria, discussed below. After reviewing all of the evidence in the record, we conclude that the Petitioner has not satisfied the requirements of at least three criteria.

> *Published material about the individual 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)

The Petitioner claims eligibility for this criterion based on her submission of 15 exhibits from various sources including blogs, social media, a festival program, and several websites, specifically relating to the films [redacted] and [redacted].[1] She states that this evidence establishes that her achievements have been "extensively recognized in Israel and the international arena." In order to fulfill this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material.[2] The submitted evidence does not meet these criteria.

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[1] The Petitioner also submitted a table which lists all roles she has held during her acting career, with a "link to information" about each project. However, she did not provide copies of the referenced published materials for the record and therefore did not meet her burden to establish that any of the linked articles, videos and other sources satisfy this criterion.

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

The Petitioner submitted screenshots of reviews of [redacted] from the blogs mictoday.wordpress.com, tarboot.wordpress.com, and naimeod.com (with only partial English translations) but did not establish that these blogs constitute professional or major trade publications or other major media.[3] For example, the Petitioner states that [redacted] who wrote the review appearing on tarboot.wordpress.com is "an established film critic and author," but she neither states nor provides evidence demonstrating that this blog qualifies as a major medium.

Further, these reviews are not about the Petitioner and her work. The review posted on the "Mictoday" blog identifies the Petitioner as the actress who played the character [redacted] in the film but does not otherwise mention her. Similarly, the only reference to the Petitioner in the submitted review from [redacted] s blog is the appearance of her name in the cast list for the film. Another review of [redacted] from the website fisheye.co.il (described as a "movie critic website") mentions only that the critic (whose name is not identified) sat next to the Petitioner in the movie theater while screening the film for her review. The Petitioner also provided a partial copy of an interview with the film's writer by the website Film Buzz (filmbuzz.tv). The Petitioner appears in a still from the movie that accompanied the article, and her name is tagged, but the submitted material does not include the full text of the interview and her name is not mentioned elsewhere. 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).

The record contains a screenshot from the blog "The Book of Life" (jewishbooks.blogspot.com), which provides a synopsis and still from [redacted] and indicates that there is a podcast of a Skype interview the blog author conducted with the Petitioner along with the film's male lead, screenwriter, and a production manager. The Petitioner did not submit a transcript of the interview and the blog post only mentions that the Petitioner appeared in the film. The Petitioner's evidence also includes screenshots of Facebook posts from the director of [redacted] and posts from the general Facebook page of [redacted] which mention her and her work in these films, along with another blog post from naimmeod.com which includes one sentence regarding the Petitioner's work in the latter film. Again, the record does not contain evidence that these Facebook posts or a blog entry satisfy the requirement that the Petitioner submit published materials from professional or major trade publication or other major media.

In addition to the articles from blogs and Facebook posts, the Petitioner provided evidence that a capsule review of [redacted] which congratulates the Petitioner and other actors in the film, appeared on the website tapuz.co.il. The Petitioner describes the website as "a major website in Israel." Similarly, the Petitioner submitted an article titled [redacted] from ynet.co.il, which is described as "one of the most known news sites in Israel." The article states that the film's production company – [redacted] - has a new Internet funding campaign for [redacted] and mentions that the Petitioner had been cast in the film. However, these articles are not about the Petitioner, the submitted material does not identify the authors, the articles do not appear to be fully translated, and they are not accompanied by evidence that supports the Petitioner's claim that either source (tapiz.co.il or ynet.co.il) constitutes major media.

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

Finally, the Petitioner submitted several miscellaneous items, including screenshots from IMDb.com, a photograph of a film festival program that includes a brief synopsis of [redacted] a news or blog entry on the web site of [redacted] which announced her casting in that film, and a notice published on the website hevevent.com which mentioned her participation in an October 2014 panel discussion titled '[redacted]' held by an unidentified organizer. All of these documents are lacking in one or more elements required to satisfy this criterion and do not qualify as published material about the Petitioner and her work in professional or major trade publications or other major media, nor do they include all elements of the author, title or date.

Because the Petitioner did not establish that her evidence meets the regulatory requirements, she did not demonstrate that she satisfies this criterion.

> *Evidence of the individual'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 contends that it is "obvious" that she has made original artistic contributions, including "essential contributions to the international film, television, and even the theatrical entertainment industries" and "in each of her artistic works." In order to meet 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.[4] 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 in the field.

The record reflects that the Petitioner provided twelve recommendation letters, which confirmed her participation in film projects and acting workshops and praised her talents, abilities, professionalism, and character.[5] For instance, [redacted] states that she "has an extraordinary ability to transform emotions" and acting coach [redacted] notes her "extreme talent and truthful acting," stating that "she is a great actress" who "can work in this industry." [redacted] of [redacted] acting studio, states that he has worked with the Petitioner in several productions and expresses his appreciation for her "deep understanding of human behavior, also her well-trained technique," calling her "one of our brightest and most innovative young actors." Actor [redacted] describes the Petitioner as "one of the most outstanding talents I have met in the past two years," and praises her performance in [redacted], noting that the film required dramatic and comic skills along with the physical ability to perform a fight scene, and also notes her "intellect and confidence." [redacted] the director and founder of [redacted], recalls the Petitioner's audition for [redacted] noting that "[e]very single person in the room was amazed by her sincere acting, and by how easily she can switch her emotional state." He indicates that his studio wrote a lead role in its latest project, [redacted] specifically for her. [redacted] screenwriter and director of [redacted], states that the Petitioner's physical and mental transformation for her role in the film was "incredible" and describes her role as "one of the strongest in [the] film."

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

[5] Although we do not discuss every letter submitted, we have reviewed and considered each one in determining whether the submitted evidence satisfies this criterion.

However, having a diverse, unique, or special skill set as an actor is not a contribution of major significance in-and-of-itself. The record must be supported by evidence that the Petitioner has already used those skills and talents to impact the field at a significant level, which she has not shown. Here, the Petitioner's letters do not contain specific, detailed information identifying her original contributions and explaining the unusual influence her work has had on 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] Here, the letters do not demonstrate the Petitioner's impact beyond the projects in which she performed or participated.[7]

The Petitioner also relies on the above-referenced published materials in support of this criterion. However, as discussed, the materials submitted, to the extent that they mention the Petitioner and her work, do so only in passing and do not demonstrate how she has made original artistic contributions of major significance to her field as a whole.

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.

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

The Petitioner states that she meets this criterion based on evidence that her films (including [redacted], and [redacted]) were displayed at [redacted] Expo Festival, [redacted] Film Festival, [redacted] Film Festival, [redacted] Film Festival, and [redacted] Competition. However, the Director found that she did not submit "the appropriate evidence."

We note that, in a cover letter that accompanied her response to a request for evidence (RFE), the Petitioner indicated that exhibits "p" through "s" related to this criterion and included evidence of the above-referenced festival screenings. However, the materials submitted with the RFE response were labeled "a" through "o" and did not include the referenced exhibits.

The Petitioner's exhibit "f" includes a partially-illegible photograph of a listing of films, including [redacted] with screen times, along with the caption '[redacted] Expo Festival [redacted].' While it appears to be a photograph of a publication, the date and source of this photograph are not identified. The Petitioner also provided a copy of a photograph that appears to show her holding an item on which her name and the words '[redacted] Expo Panelist" are printed. This evidence, without an official listing from the festival or other documentation, is insufficient to establish that her film was screened at the [redacted] Expo Festival. Accordingly, we find that the Petitioner has not met this criterion.

> *Evidence that the individual 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).

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

[7] *Id.; see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (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).

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. In addition, this criterion requires that the organizations or establishments must be recognized as having a distinguished reputation, which is marked by eminence, distinction, or excellence.[9]

On appeal, the Petitioner argues that "the acting profession is extremely competitive" with many actors "never achieving critical acclaim or international or even national exposure." The Petitioner emphasizes that she "has performed in major roles in film, television and theatre as well as in commercials for big name products." In support of her claim, the Petitioner references a table which she lists all of her acting credits and the published materials regarding the films [redacted] and [redacted] She also references exhibits relating to the festivals in which her films have been screened, which as discussed, are not part of the record.

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the Petitioner's leading or critical role(s) to be for "organizations or establishments." Here, while the Petitioner has had lead roles in several projects, she did not demonstrate how the films, television programs, plays, or commercials in which she has appeared qualify as organizations or establishments consistent with this regulatory criterion. Therefore, the list of the Petitioner's acting credits, and articles that mention these roles, is not sufficient to meet this criterion.

We have also reviewed testimonial evidence in evaluating whether the Petitioner meets this criterion, specifically the letter from [redacted] of [redacted], which produced [redacted] and [redacted] confirms that the Petitioner held lead roles in these films, and states that his company "would be happy to work with [the Petitioner] again." However, his statement does not offer detailed and probative information that specifically addresses how the Petitioner's role for this production company was leading or critical. For instance, the letters did not describe the hierarchy of the company and explain where the Petitioner's position fit in its overall structure. Moreover, while [redacted] praises the Petitioner's performances in these films, he does not address how those performances contributed to the success or standing of his company, such that she could be considered to have performed in a critical role for the organization. Finally, the record does not contain evidence establishing that [redacted] is recognized as having a distinguished reputation.

For these reasons, the Petitioner did not show that she satisfies this criterion.

> *Evidence that the individual 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)

To establish eligibility under this criterion, the Petitioner must present evidence showing that she has earned a high salary or significantly high remuneration in comparison with those performing similar

[8] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.
[9] *Id* at 10-11.

services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The Petitioner's initial evidence included: (1) a memorandum between the Petitioner and [redacted] confirming the terms and conditions of the her proposed services for a web series titled [redacted] and (2) a deal memo between the Petitioner and [redacted] indicating the terms for her services with respect to the film project [redacted] The agreement with [redacted] indicates she would receive $200 per day, while the agreement with [redacted] indicates a $2,000 per week fee. However, the Petitioner did not provide any documentation corroborating her past earnings, such as pay stubs or tax documentation, nor did she submit published salary data that could serve as a basis of comparison between her earnings and those of other actors performing similar services.

In response to the RFE, the Petitioner stated that "according to the U.S. Bureau of Labor Statistics, the national mean hourly wage for actors . . . is $32.89 per hour." The Petitioner indicated that she was submitting three additional exhibits ("aa, u and v") that included USDOL Online Wage Library results for SOC Code 27-2011 Actors, and evidence that she commanded $212.50 per hour for her work on a commercial for [redacted] and $200 per hour for her work with "[redacted]" However, as noted above, the exhibits attached to the Petitioner's RFE response included those labeled letters "a" through "o" only; the exhibits referenced above were not provided for the record.

The record does not contain sufficient evidence of the actual salary or other remuneration that the Petitioner has commanded for her services. Nor does it include evidence of comparative salary data for individuals with the Beneficiary's level of expertise and experience, and performing similar services in the field. Accordingly, the Petitioner did not demonstrate that she meets this criterion.

B. O-1 Nonimmigrant Status

In addition, we note that the record reflects that the Beneficiary 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 Beneficiary, 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); *IKEA 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision

ORDER: The appeal is dismissed.