U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF O-M-C-

DATE: OCT. 8, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, variously identified as a journalist and "patron of the arts," 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 Nebraska Service Center denied the petition, 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 ten criteria. The Petitioner asserts that the Director applied too strict a standard of proof. More broadly, the Petitioner disputes case law relating to the adjudication of extraordinary ability petitions.[1]

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

[1] As an administrative appellate body, we have no authority to overrule or disregard binding judicial case law. In any event, the arguments disputing the case law appear to have been copied, without attribution, from an *amicus curiae* brief prepared by the American Immigration Lawyers Association (AILA) in support of an unrelated petition. (The brief raises several points that are not relevant to this proceeding, and the phrase "AILA reiterates its concern . . . " appears on page 16 of the Petitioner's brief.) The AILA amicus brief is available online at https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Directorates%20and%20Program%20Offices/AAO/Brief%201.PDF (last visited Sept. 25, 2019). In our appellate decision relating to that other petition, we considered and rebutted the arguments in the *amicus* brief. Because these arguments are not specific to the case now before us, we will not revisit our responses here.

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. A petitioner can either demonstrate a one-time achievement (that is, a major, internationally recognized award), or 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 qualifying 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 they are 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 stated that she "founded the [redacted] to honor distinguished writers, poets and artists and . . . would like to bring the [redacted] to . . . the United States." The Petitioner did not submit any evidence to show that the [redacted] (also called the [redacted]) provided her with paid employment. Rather, the Petitioner has worked primarily as a journalist from 1987 to 2013, and "produced two shows on Broadway" in 2012 and 2014.

Because the Petitioner 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 only fulfilled two of the initial evidentiary criteria, relating to judging the work of others and performing in

a leading or critical role. On appeal, the Petitioner maintains that she meets two additional criteria, discussed below.

We note that the Petitioner has submitted evidence relating to a variety of pursuits, such as journalism, stage production, and organizing awards ceremonies, without identifying a field encompassing these activities in which she seeks to establish her extraordinary ability. Accordingly, she has not demonstrated that all of the submitted evidence relates to the field in which classification is sought. Regardless, upon review, the record does not show that the Petitioner satisfies the requirements of at least three criteria. We begin by discussing the two criteria that the Director granted.

> *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 Director determined that the Petitioner satisfied this criterion. We disagree. The regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment. The evidence of record does not establish that the Petitioner has met the requirements according to the plain language of this criterion.

The Petitioner's initial evidence under this criterion, such as press passes, established her employment as a journalist with [redacted] an Italian public broadcasting company. The Petitioner did not document her role there in detail except to indicate that she was based in [redacted]; her former colleagues attested that the Petitioner covered a range of stories and events in the United States. The role of a network journalist with a network is not automatically leading or critical; we note the Petitioner's assertion that "1600 journalist[s] work at [redacted] full time." One colleague claimed that the Petitioner "organize[d] . . . the [redacted] correspondent's office," but this individual is a newspaper reporter who did not establish direct knowledge of the events described. As discussed further below, the Petitioner cited salary figures relating to news anchors, but the evidence does not establish that the Petitioner was an anchor rather than a correspondent.

The Petitioner later submitted letters from colleagues, indicating that she served as director of the [redacted] School of Journalism in [redacted] Italy. The letters contain apparent inconsistencies. One colleague indicated that the Petitioner became the director of the school after serving on juries to select students, whereas another colleague asserted that the Petitioner actually founded the school. The record contains no documentary evidence about the school (which the Petitioner did not mention at all in her initial submission) or the Petitioner's role there.

Two of the writers stated that they work at the [redacted] School of Journalism at [redacted] University in [redacted] but they did not state that the [redacted] School and the [redacted] School of Journalism are the same institution. The president of the [redacted] School specifically used both names in his letter, naming the [redacted] School in his own credentials and using the name '[redacted] School of Journalism" when discussing the Beneficiary's work. Another writer, identified as the manager of [redacted] Merchandising and Faculty Restaurant, stated "I work as a manager at the [redacted] University," and that "I also worked as the [redacted] at the [redacted] School of Journalism . . . in the years 1992 to 1996." The record

contains no documentary evidence from the [redacted] School of Journalism to confirm or clarify the nature of the Beneficiary's employment there.

Given the vague and inconsistent claims, coupled with a lack of verifiable, documentary evidence, we cannot conclude that the Petitioner has met her burden of proof with respect to this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Director determined that the petitioner established eligibility for this criterion. We disagree, for the reasons outlined below.

Initially, the Petitioner cited her co-creation of the [redacted] under this criterion, but did not explain how this showed her participation as a judge of the work of others. The record is ambiguous as to whether the Petitioner has participated as one of the judges who choose award recipients. Furthermore, the awards go to "writers, poets and artists." The Petitioner did not claim to have worked in those fields, or explain how they are allied to her own field(s) of employment.

In a supplemental submission, the Petitioner indicated that she had participated as a judge of the work of others in the field of journalism. The Petitioner submitted three letters indicating that she served on a jury that selected students to attend the [redacted] School of Journalism. As noted above, the letters are vague and inconsistent, and the record contains no documentary evidence from the [redacted] School of Journalism, an omission of particular concern when we consider that the Petitioner initially did not mention the school at all.

The Petitioner also submitted a translated copy of an article from an unidentified publication, indicating that the Petitioner sat on a jury to decide the winner of an award for "articles, interventions or essays on the topic 'Constitutional reforms: rules to be retained.'" The article indicates that "[t]he award ceremony was held on 3/24/97," but the dateline of the article is "May 1996." The mismatched dates also appear in the Italian-language original, from no identified source other than an email message from the Petitioner.

The inconsistencies and deficiencies in the Petitioner's new evidence diminish their evidentiary weight. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because the Petitioner's evidence of judging consists solely of inconsistent letters and an article of unknown origin, we find that the Petitioner has not submitted enough evidence to meet its burden of proof with respect to this criterion.

We agree with the Director that the Petitioner has not met the additional criteria discussed below.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii)

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The Petitioner cited the following as qualifying memberships:

- A doctorate in Architecture from the University of [redacted]
- An assistant professorship in the department of Architecture at [redacted] University
- Listings in the Italian Register of Professional Architects and the Italian Register of Professional Journalists

Most of the above information relates to architecture, but the record does not indicate that the Petitioner seeks classification in that field, or that she intends to work as an architect. Also, the Petitioner did not explain how a university degree and a faculty position constitute membership in associations, or establish the role that recognized national or international experts play in the degree-granting and hiring processes. Similarly, the Petitioner did not establish the requirements for listing in the two Italian Registers, or show that the listed individuals collectively comprise an association.

The Petitioner submitted an unsigned letter, attributed to a former dean of the University of [redacted], listing some of the Petitioner's past achievements and expressing the opinion that the Petitioner qualifies as an alien of extraordinary ability "base[d] on her successful career and distinguished accomplishments." The Petitioner cited this letter as evidence of a qualifying membership, but the letter does not mention membership in any association.

The Petitioner later stated that her former employer, [redacted] has a distinguished reputation, and she asserted without evidence that [redacted] "office in [redacted] is the most prestigious." The Petitioner did not submit any evidence that employment by [redacted] amounts to membership in an association, or that it is contingent on outstanding achievements as judged by recognized national or international experts in the field of journalism.

On appeal, the Petitioner contends that her involvement with the [redacted] Foundation is, itself, a qualifying membership. The Petitioner, however, co-founded the Foundation. The Petitioner has not shown that her ability to do so required nationally or internationally recognized experts to judge her achievements as outstanding; she has not identified those achievements or the experts who judged them to be outstanding.

The Petitioner also asserts that "there are professional associations with different levels of membership and higher levels of membership may satisfy this evidentiary criterion." This is a general statement, and the Petitioner has not shown that it relates to any of her claimed memberships.

The Petitioner has not met the plain language of 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 regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner contended that her role in co-creating the [redacted] is an original artistic contribution of major significance in the field, and that the award is "the Italian equivalent of the Nobel Prize in Literature."

The Petitioner submitted letters from, and background information about, several [redacted] recipients. For example, [redacted] former Poet Laureate of the United States, stated: "The [redacted], as an award and as an experience, is one of the two or three most significant forms of recognition I have received." [redacted] cited "[t]he international nature of the prize, the elegance of the presentation, the generous reception in [redacted], [and] the sculptural work of art that comes with the prize." These factors do not establish the significance of the prize itself.

Another former Poet Laureate, [redacted], stated that the [redacted] is "possibly Italy's most prestigious international literary honor," but did not elaborate on that assertion.

The reputation of these writers is not in dispute in this proceeding, but their own acclaim does not establish the significance of the [redacted] It is significant that the Petitioner has been able to locate and submit high-quality, objective documentation about these award winners, but has not provided evidence of a similar caliber relating to the [redacted], or the Petitioner's creation thereof. The Petitioner has chosen to compare the [redacted] to the Nobel Prize, but has not shown that the two prizes enjoy comparable prestige or receive comparable attention, for example in news coverage. The coverage documented in the record consists primarily of press releases from the winners' employers and publishers.

On appeal, the Petitioner submits two letters from individuals who are involved with the Nobel Prize for Literature. [redacted] of the University of [redacted] stated that he is "in continuous contact with the jury of this Prize," and that "[t]he [redacted] Academy in its work for choosing the laureates [of] the Nobel Prize in Literature has taken account of the decisions of the [redacted] Foundation," and that the Academy and the Foundation have been in "direct cooperation . . . [since] 2014." The Petitioner did not describe the nature of this cooperation, submit documentation of any formal agreement, or show how many other organizations cooperate with the Academy in this way or how the Academy selects those organizations.

[redacted] a member of the [redacted] Academy and Nobel Committee for Literature, stated: "The [redacted] has an important place in contemporary culture. It has been awarded to several writers who were later to receive the literary Nobel Prize. . . . As a winner of the [redacted] myself, I also have personal knowledge of this prize."

The quoted letters demonstrate that some experts in the field are familiar with the [redacted] But this familiarity does not establish that the Petitioner's contributions have been of major significance in the field. Recognition does not necessarily equate to major significance in the field.

Furthermore, the Petitioner has not explained how the creation of the [redacted] is an original contribution. The Petitioner identified no characteristic of the [redacted] that distinguishes them from other literary prizes and awards. The record does not *rule out* the originality of the [redacted] but the burden is on the Petitioner to make that case and submit appropriate corroborating evidence.

Beyond the [redacted], Attorney [redacted] initially identified as Italy's Honorary Consul for the State of [redacted] stated that the Petitioner's "contribution is a bridge to the Italian and American cultures," and that the Petitioner "has donated her time by acting as a liaison between my office and Italian Diplomats . . . in the United States," primarily in [redacted]. [redacted] did not explain the larger significance of the Petitioner's efforts in this regard. In later correspondence, [redacted] acknowledged that he had represented the Petitioner in a personal injury case.

The regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added]." Without additional, specific evidence showing that the Petitioner's work has been unusually influential, widely applied throughout her field, or has otherwise risen to the level of contributions of major significance, the Petitioner has not established that she meets this criterion.

There are two other criteria that the Petitioner previously claimed to meet, but does not defend on appeal. Therefore, these issues are abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal). We will briefly note the Petitioner's claims under these two criteria.

> *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 Petitioner asserted that she meets this criterion because she produced two plays in [redacted] one in 2012 and the other in 2014. The Petitioner does not claim to have met any other regulatory criteria through her work as a theatrical producer, and the Petitioner has not explained how that work relates either to her career in journalism or to her endeavors relating to the [redacted]

The appellate brief discusses display, but only in the context of the "comparable evidence" clause at 8 C.F.R. § 204.5(h)(4), asserting for instance that "scholars and academics 'display' their work" at academic conferences. The Petitioner had not previously invoked the "comparable evidence" clause, and does not discuss the specifics of this case in discussing the issue. The Petitioner discusses the issue only in the context of disputing *Kazarian* and related case law.

> *Evidence that the alien 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)

The Petitioner stated that the "average News Anchor Salary in New York" is "116,923 in 2018 dollars," and that her "[t]otal gross annual pay in 2000 was $146,530." The Petitioner contended: "In today's dollars, the value of the contract would be significantly higher."

Supporting documents show that, while the average news anchor salary in New York was $116,923 in 2018, the range of salaries was very broad. The 90th percentile was $427,116, meaning that one anchor in ten earned more than that amount. The quoted figure of $146,530, while above average, is not significantly high in relation to others in the field.

A larger issue, however, is that the Petitioner did not accurately describe her own compensation. A translated letter from [redacted] in Italy, from May 2000, specified the Petitioner's expected "[t]otal gross annual pay" not as US $146,530, but as 146,530,160 Italian lira. The same document states that, "[b]y converting into foreign currency," the Petitioner's "[y]early pay in US dollars" would be $59,140.70. The Petitioner did not show that this amount was significantly high for news anchors in New York in 2000. The Petitioner also did not submit any other documentary evidence relating to her compensation.

The Petitioner does not revisit this issue on appeal, and we consider the claim to be abandoned.

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.[2] For the foregoing reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of O-M-C-*, ID# 5108163 (AAO Oct. 8, 2019)

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[2] As the Petitioner has not established her extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not address whether she is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii). However, we briefly note that record raises questions in this regard. The Petitioner stated that she "has been here on an E-2 visa as a manager for several companies that have invested $26,000,000 in [redacted] and [redacted], and . . . also owns commercial real estate in [redacted] that she manages." The Petitioner did not identify the companies or establish that they have any relation to the [redacted] or her journalism career. The Petitioner also stated that she "was unable to sustain her remarkable contributions to the arts or journalism . . . because of a serious accident" in 2015. The attorney who represented her after the accident stated that the Petitioner "strives every day to get back to her work as a journalist, producer and entrepreneur." This language indicates that it is still uncertain that the Petitioner will be able to resume her past work.