U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-B-

DATE: OCT. 22, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an actress, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner presents a brief, arguing 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,
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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). 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 indicates that she has performed in plays, films, and sitcoms in the United States.[1] 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, as indicated above, the Director determined that the Petitioner did not meet any of the initial evidentiary criteria. On appeal, the Petitioner maintains that she fulfills 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.

> *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 argues that her "receipt of 2016 Best of New York award clearly qualifies [her] under this criterion." In order to fulfill this criterion, the Petitioner must demonstrate that she received the

[1] According to the Petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, she last entered the United States on September 22, 2016, on an H-1B nonimmigrant visa to work as a project engineer for [redacted] in [redacted] New York. Moreover, the Petitioner provided a statement indicating that she "previously had a successful career in engineering, but now [she has] realized that [her] heart belongs to acting, and this is what [she] intend[s] to do full time from now on."

prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.[2] Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.[3]

At initial filing, the Petitioner asserted that one her films, [redacted] "was nominated for the category Best of New York award at the [redacted] NY in [redacted] 2016." The Petitioner also submitted a document entitled, "Best of New York," reflecting [redacted] as one of the "Films to be Screened" at the [redacted] However, the evidence does not show that either she or the film received a "Best of New York" award. Moreover, the Petitioner did not establish that the claimed film nomination is tantamount to her receiving a prize or award. In addition, the document does not support the Petitioner's assertion that [redacted] was nominated for a "Best of New York" award.

Notwithstanding the above, 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 his or her employer's receipt of the awards or prizes.[4] Even if the film garnered the award, the Petitioner did not demonstrate her "receipt" of it consistent with this regulatory criterion. In addition, the Petitioner did not provide supporting evidence demonstrating that a "Best of New York" award is nationally or internationally recognized for excellence in the field.

Accordingly, the Petitioner did not show that she meets this 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).

The Petitioner claims eligibility for this criterion for the first time on appeal based on an article posted on broadwayworld.com. 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.[5] The article, however, is about a play starting at the [redacted] While the Petitioner is mentioned one time as one of the actors, the article is not about the Petitioner. 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). Further, the Petitioner did not include or identify the required author of the article.

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[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.*

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

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

In addition, as evidence of the status of broadwayworld.com, the Petitioner submitted screenshots from wisdomdigital.com highlighting that "more than 100,000 users have signed up for the Safari Push, and another 100,000 for Mobile Alerts." The Petitioner, however, did not show the significance of the figures or explain how such data reflects status as a major medium.[6]

For these reasons, the Petitioner did not demonstrate that she satisfies 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 Petitioner contends that she provided "expert testimony" that "clearly qualifies [her] under this criterion." 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.[7] 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 she provided four recommendation letters that confirmed her participation in projects and praised her talents and abilities. For instance, the letters state that the Petitioner "was cast for our movies because she has a unique acting style unlike other actors, brings the role to life with depth, take direction well and very puntual [sic]" [redacted], "is a very talented and dedicated person who has real talent" [redacted], "[is] a wonderful actor – real, spontaneous, and vulnerable" [redacted], and "lend he[r] acting skills and personality to a script that came from hard work and heart" [redacted]."[8] However, having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. Further, 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. Moreover, the letters do not demonstrate the Petitioner's impact beyond the limited projects in which she performed or participated.[9]

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.[10] 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

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[6] *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).

[7] *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).

[8] The Petitioner submitted a fifth letter from [redacted] who indicated that she is scheduled to appear in an upcoming play.

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

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

the basis for meeting this criterion.[11] Moreover, 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).

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 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).

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.[12] 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 organizations 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.[13]

On appeal, the Petitioner argues that she "submitted [a] signed agreement with renowned Executive Producer of the [redacted] Awards in New York, [redacted], confirming [her] leading and critical role with [redacted], a leading talent management and entertainment production company." A review of the "Personal Management Agreement," however, reflects execution and signature in January 2018, after the initial filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. §103.2(b)(1). Hence, the Petitioner did not demonstrate that she performed in a leading or critical role at the time she filed her petition.

Notwithstanding, the agreement reflects representation of [redacted] on behalf of [redacted] to act as the manager for the Petitioner as an artist "as it relates to acting, performing, modeling, spokesperson, etc." Here, the Petitioner did not show how being a contracted artist shows a leading or critical role for [redacted] The agreement provides no indication of a leadership position within [redacted] nor does it demonstrate that the Petitioner performed in an essential capacity, contributing to the success or standing of the company.

Furthermore, the Petitioner did not establish that [redacted] enjoys a distinguished reputation.[14] While the Petitioner provided screenshots from [redacted]'s website claiming it is a "Leading Talent Management and Entertainment Production Company," she did not submit independent, corroborating evidence showing its "leading" status. For example, the Petitioner did not include evidence showing the general field's view of the company, how its reputation compares to similar talent companies, or how its successful representation of artists relates to others, signifying a distinguished reputation consistent with the regulatory criterion.

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[11] *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).

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

[13] *Id.*

[14] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10-11 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

Finally, the Petitioner also contends that she "played a leading role in the play [redacted]" which won [a] 2017 [redacted] Award." The regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the role to be for "organizations or establishments." Here, the Petitioner did not demonstrate how a play qualifies as an organization or establishment consistent with this regulatory criterion. Further, while the previously mentioned broadwayworld.com article mentioned her as one of several actors in the play, the article does not indicate that she performed in a leading role.

Accordingly, the Petitioner did not show that she satisfies 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 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. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of P-B-*, ID# 4596103 (AAO Oct. 22, 2019)