U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7351305

Date: FEB. 10, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a journalist, 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 only met one of the ten initial evidentiary criteria for this classification, of which she must meet at least three.

On appeal, the Petitioner asserts she meets two additional criteria and contends that the Director did not properly weigh the submitted evidence.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* 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,

(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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

II. ANALYSIS

The Petitioner, a journalist, is currently a contributing writer for [redacted] and a writer and U.S. correspondent for the independent Russian radio station [redacted] Previously, she worked as a radio host for [redacted] in Russia, as a television host for [redacted] an independent television channel in Moscow, and as a writer for [redacted] a Ukrainian daily newspaper.

A. Evidentiary Criteria

Because the Petitioner 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). The Director found that the Petitioner met the criterion at 8 C.F.R. § 204.5(h)(3)(iii), relating to published material about her in professional or major trade publications or other major media. The record reflects that *The Guardian* and *Politico* published online articles in which the Petitioner discusses her work as a journalist in Russia. Accordingly, we agree with the Director's determination that this criterion was met.

On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to authorship of scholarly articles and performing in a leading or critical role for organizations or establishments that have a distinguished reputation.[1] After reviewing all of the evidence in the record, we find that the Petitioner has not satisfied at least three criterion.

[1] We note that the Director determined that the Petitioner submitted evidence related to the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), but did not satisfy this criterion. The Petitioner does not contest this issue on appeal and therefore we deem the issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

Evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the Petitioner must demonstrate her authorship of "scholarly" articles. Outside of the academic arena, a scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship.[2] Evidence of scholarly articles published 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 and identify who the intended audience of the publication is.[3]

The Director acknowledged the Petitioner's contention that "non-academic articles meet this criterion if they are written 'for learned persons in the field.'" However, the Director determined that the Petitioner's published pieces are "journalistic articles" and that the intended audience of [redacted] is "the general public."

At the time of filing, the Petitioner claimed to meet this criterion because one of her co-authored articles from [redacted] was cited in the book, [redacted] written by [redacted] The Petitioner stated that the article "so qualifies as authorship of a scholarly article because of its citation in [redacted]'s book" and noted that the book, a *New York Times* bestseller, "undoubtedly qualifies as major media." The Petitioner did not claim that her article was scholarly based on its intended audience, explain how being cited in [redacted]'s book meets that threshold, or indicate that [redacted] is itself a professional or major trade publication or other type of major media publication.

In addition, the Petitioner provided a letter from [redacted] publisher of [redacted] who described the quarterly magazine as "a premier platform for political thought . . . read in the corridors of government and academia . . . and also read by a more general public of subscribers and visitors to our website, which publishes new material daily." The Petitioner submitted copies of her articles published on [redacted] website, but did not provide evidence that she had been published in the print version of the magazine.

In response to a request for evidence, and on appeal, the Petitioner has provided additional letters from staff of [redacted] profiles of the editorial board's members, evidence that another one of her articles was referenced in a book, and testimonials from academics and journalists in the field of Russian-American politics who state that they read and value the Petitioner's articles. She argues that, given the stature of the editorial board and some of her readers, she has established that the intended audience of her articles, and of the publication, is learned individuals in the fields of U.S. politics, foreign policy, and foreign relations.

We agree with the Director that the Petitioner did not establish the scholarly nature of her published articles. While both [redacted] and many of the Petitioner's articles have a focus that may

[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* 9 (Dec. 22, 2010), https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-6423.html.

[3] *Id.* at 8.

appeal to the interests of those in academia and government, its publisher confirms that its articles are intended to be accessible to the general public, and that appears to be particularly true of its online articles. The evidence does not establish that the intended audience of the Petitioner's articles is "learned persons" in the field. In addition, the Petitioner has not addressed the other element of this criterion by submitting evidence to establish that [redacted] is a professional or other trade publication, or that it has the circulation to be considered a major medium.

> *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)

The Petitioner claims that she has performed in critical roles with both [redacted] Radio and [redacted] To establish performance in 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.[4]

The Director determined that the Petitioner provided sufficient evidence of the distinguished reputation of both organizations, but found that the submitted testimonial letters "do not indicate that the petitioner's duties were leading for the organization as a whole or that her accomplishments went beyond providing contractual services to contribute to the success of the organization."

We disagree and find that the Petitioner submitted sufficient evidence to establish that she has performed in a critical role with [redacted] Radio. [redacted]'s editor-in-chief has submitted letters containing detailed and probative information regarding the Petitioner's role as a co-host of multiple prime time radio programs, as the radio station's only U.S. correspondent, and as the most-read contributor to the radio station's website. Accordingly, the Petitioner has met this criterion.

B. Comparable Evidence

On appeal, counsel requests that, if we do not find that she meets the scholarly articles criterion, we consider comparable evidence. Specifically, counsel states:

> Petitioner provided a statement clearly explaining why the criteria in 8 CFR 204.5(h)(3) don't apply to her case directly. The comparable criterion that Petitioner requests that you consider is work in a leading or critical role for distinguished events or productions. This is already a regulatory accepted criterion with respect to O-1 petitions and is therefore clearly a recognized basis for consideration in this category.

The comparable evidence that the Petitioner would like to have considered relates to: her service as a witness before a Joint Briefing of the House [redacted]; her appearance as a panelist on an [redacted] Broadcasting Company national radio program; her participation in a program at [redacted] University at [redacted] in which she was the featured guest; and her appearance at a paneled event of the [redacted]

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

The Petitioner correctly notes that 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 an explanation as to why the evidence she has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[5] However, the regulations for this immigrant classification do not allow for a petitioner to substitute evidence based on a claim that it is comparable to evidentiary criteria found in the regulations for a separate nonimmigrant classification, which is what the Petitioner here has requested.

Further, the Petitioner has not shown why she cannot offer evidence that meets at least three criteria, or that the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not apply to her occupation. In a letter, the Petitioner claimed that six of the ten criteria do not apply to her occupation, but she did not mention the other four, which she initially claimed she could meet. Further, her explanations were not persuasive.[6] For example, in claiming that the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) does not apply to journalism, she notes that "there are many top writers in my field who have not received awards for their writing" and states that the editor-in-chief of [redacted] has not to her knowledge won awards for his writing. She also claims, with respect to the judging criterion, that "there are many top figures in my field who do not judge competitions" and that she is "not aware of prominent competitions" in her field. Addressing the membership and high salary criteria, the Petitioner states that she is "not aware of any associations that admit members based on extraordinary ability," and states that persons who write for niche publications "receive modest salaries."

The Petitioner did not adequately support her claims that the criteria at 8 C.F.R. § 204.5(h)(3) do not apply to her occupation. The fact that the Petitioner did not provide documentation that satisfies at least three criteria is not evidence that a journalist could not do so. Again, the Petitioner initially claimed to fulfill four criteria. In addition, the Petitioner did not show how her evidence is "truly comparable" to the criteria listed in the regulation.[7]

For these reasons, the Petitioner did not establish that she qualifies for additional criteria through the submission of comparable evidence.

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

[5] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.
[6] *Id.* (stating that "[g]eneral assertions that any of the ten objective criteria described in 8 CFR 204.5(h)(3) do not readily apply to the alien's occupation are not probative and should be discounted").
[7] *Id.*

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.