U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5303295

Date: JAN. 16, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, an artisan, photographer, and fashion designer, seeks classification as an alien 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 record did not establish that the Petitioner had a one-time achievement (a major, internationally recognized award) or met at least three of the required evidentiary criteria. The Petitioner appealed the matter to us, and we dismissed the appeal. The Petitioner then filed a motion to reopen the matter with us, which we then denied.

On second motion, the Petitioner submits additional evidence and asserts that she meets the two additional criteria claimed in her initial motion.

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 review, we will dismiss the motion to reopen.

I. LAW

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 submits qualifying evidence under at least three criteria, we will then determine whether the totality of 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.[1]

A motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. BACKGROUND

In her decision, the Director determined that the Petitioner met only one of the requisite three criteria, regarding display of her work at artistic exhibitions or showcases. On appeal, we determined that the Petitioner met an additional criterion related to playing a leading or critical role for an organization with a distinguished reputation, but did not establish that she met at least three of the initial criteria, as required.[2] The Petitioner then filed a motion to reopen with us, providing new evidence and claiming to meet two additional criteria for published material and for high salary. We subsequently dismissed this motion, determining that the evidence did not demonstrate her eligibility for the two additional criteria.[3]

The Petitioner now submits a second motion to reopen, provides new evidence, and asserts that these materials demonstrate that she meets the criteria claimed in her first motion.

III. ANALYSIS

At the outset, the Petitioner did not include the required statement about whether or not the validity of the unfavorable decision has been, or is, the subject of any judicial proceeding. 8 C.F.R. § 103.5(a)(1)(iii)(C). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Moreover, for the reasons discussed below, the new evidence submitted in support of the instant motion to reopen does not demonstrate that the Petitioner satisfied two additional criteria, as claimed.

A. Motion to Reopen

We previously determined on motion that the Petitioner had not submitted evidence sufficient to establish that she met the published material criterion. In the instant motion, she again provides two articles published in the magazine *domus design*.[4] The first, published in [redacted] 2006, has already

[1] *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).

[2] *See Matter of O-S-*, ID# 129424 (AAO Jul. 5, 2018).

[3] *See Matter of O-S-*, ID# 200787 (AAO Feb. 15, 2019).

[4] We note that the Petitioner also includes printouts from her [redacted] online shop as well as other photographs of her work, which we have reviewed, but do not discuss here.

been submitted, reviewed, and considered; accordingly, we will not address it in this proceeding. The second, published in [redacted] 2007, while previously submitted, lacked a complete translation.[5] On second motion, the Petitioner provides this article, which credits her with "photographs in the interior," and its complete translation. She asserts that it features her work, and directs our attention to a page in which the editor references "[redacted]" However, the article is about the apartment and its design, not about the Petitioner. Articles that are not about a petitioner do not meet 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 Petitioner submits new documentation to demonstrate that *domus design* qualifies as major medium. Specifically she includes online circulation statistics for burdastyle.ua, a printout from www.burda.ua describing *domus design,* and circulation statistics for other Ukrainian magazines "on architecture and design." She also submits articles identifying *domus design* as one of "the best" magazines for design and décor in Ukraine and discussing the magazine's role in "major award ceremonies, fashion show events, furniture exhibits, and more."

In order to establish that a publication is major media, evidence should show that its online or print circulation is high relative to that of other publications.[6] While the Petitioner provides the online circulation statistics for burdastyle.ua, the "digital segment" for Burda Ukraine,[7] she does not submit evidence demonstrating how these statistics are reflective of *domus design*'s on-line circulation. The additional media articles, while reflecting the publication's participation and sponsorship of various events, similarly lack evidence establishing its circulation. The newly submitted evidence is therefore not sufficient to establish the circulation, either on-line or in print, of *domus design*. Accordingly, while the Petitioner submits online circulation statistics for comparable magazines, she has not established that *domus design*'s circulation is high relative to these magazines or otherwise established that it is a major medium.

In addition to the evidence discussed above, the Petitioner provides a printout from journals.ua titled "Domus Design Magazine Online" describing the magazine and identifying the magazine's "stakeholders" as architects, who "make up about 80% of Domus Design online subscribers." As such, this evidence is sufficient to support a finding that *domus design* is a professional or trade publication. However, in order to satisfy this criterion, an article published in a professional or major trade publication must also be about the petitioner and related to their work. As we note above, the record does not support such a finding.

For the foregoing reasons, the new evidence submitted by the Petitioner does not establish her eligibility for the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii).

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[5] As we noted in our February 2019 decision, the Petitioner provided this article previously but did not include a complete translation.

[6] *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 (instructing that evidence of published material in professional or major trade publications or in other major media publications about the individual should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

[7] The aforementioned printout from http://www.burda.ua describes the magazine and the company Burda Ukraine. This document states the "Digital segment in Burda Ukraine" is represented by six websites, one of which is burdastyle.ua, but does not discuss the relationship between *domus design* and burdastyle.ua.

We also concluded in our prior decision that the Petitioner did not establish that she commanded a high salary or other significantly high remuneration for services in relation to others in her field, as required to meet the criterion at 8 C.F.R. § 204.5(h)(3)(ix). We noted that while she provided an interior design proposal, and copy of a 2017 IRS Form 1099 as evidence of a $9,800 payment for the project, she did not include evidence demonstrating how this remuneration compared with that of other interior designers.

On second motion, the Petitioner resubmits the Form 1099 and "Bedroom Design Concept" proposal document. She also provides new evidence in order to demonstrate that her remuneration for this project is "significantly high in relation to others paid in the field." Specifically, she submits the following documents related to fashion designers and photographers: U.S. Bureau of Labor Statistics' (BLS) California occupational employment and wage estimates, entries from the BLS Occupational Outlook Handbook, and average salary reports from Payscale. The Petitioner also provides a printout of job postings from www.indeed.com and upwork.com for these occupations. However, she does not submit evidence of past remuneration for work in these fields; rather, as we noted in our previous decision, the submitted documentation relates to her work as an interior designer. Evidence establishing remuneration in the fields of fashion design and photography is not sufficient to demonstrate that she has commanded significantly high remuneration for her work in the field of interior design. The new evidence on motion, therefore, does not show that she meets the criterion for high salary or remuneration pursuant to 8 C.F.R. § 204.5(h)(3)(ix).

III. CONCLUSION

The new evidence submitted by the Petitioner on motion is not sufficient to demonstrate that she has fulfilled at least three of the initial evidentiary requirements. 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 motion will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The motion is dismissed.