U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5764169

Date: MAR. 3, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a ballroom dancer and coach, 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 Petitioner satisfied only one of the 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. *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).

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 has participated in ballroom dancing competitions and has coached at dance centers. 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).

In denying the petition, the Director found that the Petitioner met only one of the initial evidentiary criteria, lesser awards under 8 C.F.R. § 204.5(h)(3)(i). However, for the reasons discussed below, we do not concur with the Director's determination regarding the lesser awards criterion.

On appeal, the Petitioner submits a brief claiming to meet two additional criteria. After reviewing all of the evidence, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

A. Evidentiary 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).

As mentioned above, although the Director determined that the Petitioner satisfied this criterion, we disagree. In order to fulfill this criterion, the Petitioner must demonstrate that she received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.[1] 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 prize recipients or awardees as well as any limitations on competitors.[2]

The record reflects that at initial filing, the Petitioner stated in her cover letter that she placed in 14 international competitions from 2001 - 2010 and 17 national competitions in the United States from 2011 – 2014. Although the Petitioner provided copies of certificates and medals relating to her international competitions, she did not submit evidence of her placements or awards at national

[1] *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.
[2] *Id.*

competitions in the United States. Moreover, the Petitioner did not present supporting evidence establishing the recognition or significance of her awards at either the international or national competitions.

In response to the Director's request for evidence, the Petitioner again claimed her eligibility based on her 14 competitions and asserted that "[i]t goes without saying that the competition in Macedonia, Bulgaria, Ireland, Moldova, Greece, and Germany were international competitions," and "the [redacted] Cup competitions held within Russia were also international in nature." The issue for this criterion is not whether an alien competed in national or international competitions but whether the bestowed prizes or awards are nationally or internationally recognized for excellence in the field. Here, the Petitioner did not submit evidence regarding the stature or recognition of her awards from any of her international competitions.

Regarding her claimed national competitions in the United States, the Petitioner provided documentation relating to the National Dance Council of America (NDCA), including background, rules and regulations, and monthly competitions. Again, the Petitioner did not present documentation evidencing her receipt of prizes or awards from national competitions in the United States, as well as evidence that she actually competed in the events. Here, the Petitioner did not sufficiently document the record to corroborate her placements and finishes.

Notwithstanding the above, the Petitioner claimed that the NDCA "is the only organization of its kind in the United States for professional ballroom dancers" and "[e]very celebrity dancer who has competed in the United States has taken part in NDCA competitions." However, the Petitioner did not demonstrate how participating or placing in NDCA competitions automatically establishes receipt of nationally or internationally recognized prizes or awards for excellence in the field. Here, the Petitioner did not show that every prize or award from an NDCA sanctioned event results in a nationally or internationally recognized prize or award for excellence in the field. Moreover, the Petitioner did not establish that her unsupported finishes at 17 NDCA competitions represent nationally or internationally recognized prizes or awards for excellence in the field.

Furthermore, the Petitioner referenced a letter from her former employer, [redacted], who indicated that "[t]he largest U.S. competition is the [redacted] Ball, which is held annually," and "[i]t used to be televised on PBS." We note that [redacted] did not mention the Petitioner competing or receiving awards from NDCA competitions, including the [redacted] Ball. Moreover, although the Petitioner asserted to have competed at the [redacted] Ball in 2011 and 2012, she did not establish that her claimed fourth and fifth place finishes in the [redacted] division rise to the level of "excellence" consistent with this regulatory criterion.

Because the Petitioner did not demonstrate that her evidence fulfills the regulatory requirements, we withdraw the findings of the Director for 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).

In order to satisfy 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.[3] The Petitioner contends that her postings of videos on YouTube, as well as on similar websites, qualify for this criterion. The Petitioner submits screenshots from YouTube and search results from Google reflecting videos, images, and photographs posted on various websites. In addition, she presents a list of 14 video clips posted on YouTube, along with a permalink for each one. However, the Petitioner did not establish that screenshots of video clips, photographic images, and permalinks constitute published material about her relating to her work. Here, the Petitioner did not provide transcripts or other evidence detailing or showing the content of the material. Accordingly, the Petitioner did not demonstrate that the evidence represents published material about her relating to her work in the field consistent with this regulatory criterion.

Moreover, the Petitioner argues that YouTube qualifies as a major medium. She submits background material regarding YouTube, including evidence that "YouTube is now the world's 2nd biggest search engine for more than 1.8 billion people registered on the site to check it daily to watch 5 billion videos." Furthermore, YouTube's worldwide active users of 1.5 billion are second only to Facebook's 2 billion worldwide users, and YouTube is among other top social platforms, such as Instagram, Twitter, WhatsApp, and Snapchat.[4] As it relates here, the issue is not whether YouTube overall qualifies as a major medium but whether the YouTube channel posting the videos represents major medium status.[5] For example, based on YouTube's structure, the popularity of a channel is demonstrated through the number of subscribers or followers, and the popularity of a video is shown by the number of views. In this case, based on the submitted documentation, the highest number of channel [redacted] subscribers is 10, and the highest number of video [redacted] views is 2,678. However, the Petitioner did not demonstrate the significance of these figures or show how such data reflects status as a major medium.[6]

Accordingly, the Petitioner did not establish that she meets this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner 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 Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations,

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.
[4] *See* screenshots from businessofapps.com.
[5] This same reasoning would also apply to other social platforms. For instance, major medium status would be measured based on the number of followers to an individual's Facebook page rather than total number of users to Facebook overall.
[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).

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. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

We find that the Petitioner does not satisfy the criteria relating to awards and published material. Although she claims eligibility for an additional criterion on appeal, relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.[7] Accordingly, 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). Although the Petitioner has participated in ballroom dance competitions and teaches dance students, the record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

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.

[7] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).