U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11283915

Date: OCT. 15, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, an event management professional, 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 Texas Service Center denied the petition, concluding that the Petitioner did not satisfy at least three of the ten regulatory criteria for this classification and therefore did not meet the initial evidence requirements. The Petitioner subsequently filed a combined motion to reopen and reconsider, which the Director dismissed. The Petitioner then appealed that decision to our office. We withdrew the Director's decision and remanded the matter to the Director for entry of a new decision. The Director issued a new decision in which he affirmed the denial of the petition, and the matter is now before us again on appeal.

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, the Petitioner has not met this burden. Accordingly, 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 international 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 criteria 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) (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).

II. ANALYSIS

The Petitioner is an event management professional with experience in planning and managing components of large international events including the Rio 2016 Summer Olympic Games and FIFA World Cup. She received a bachelor's degree in social communication from [redacted] University [redacted] in 2000.

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 concluded that the Petitioner met one of these criteria, relating to her performance in a leading or critical role for organizations or establishments that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). The evidence supports this conclusion and sufficiently documents her critical roles as a management employee of the local organizing committees for the 2016 Summer Olympic Games and the 2014 FIFA World Cup held in Brazil.

On appeal, the Petitioner asserts that she meets five additional criteria as discussed below, including: membership in associations that require outstanding achievements; published material in major media; original contributions of major significance in her field; display of her work at artistic exhibitions or showcases; and command of a high salary in relation to others in her field. *See* 8 C.F.R. §

204.5(h)(3)(ii), (iii), (v), (vii), and (ix).[1] After reviewing all evidence in the record, we find that the Petitioner has not satisfied at least three of the criteria and therefore does not meet the initial evidence requirements for this classification.

> *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 satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[2]

The Director evaluated the Petitioner's eligibility under this criterion based on evidence of her membership in the Sports Marketing Association (SMA) and Women in Sports and Events (WISE). The Director acknowledged her membership in these associations but determined that she did not support her claim that either association requires that its members demonstrate outstanding achievements as judged by national or international experts in the field.

The Director also acknowledged the Petitioner's claim that she was a member of the local organizing committee (LOC) for the 2014 FIFA World Cup but determined that the supporting evidence only demonstrated her employment by the LOC, not her membership on the committee. The Petitioner does not contest this determination.

On appeal, the Petitioner asserts that she can satisfy this criterion based on her membership in the SMA, WISE, and a third organization, the Worldwide Association of Female Professionals (WAOFP). In support of her claim, she submits copies of the SMA's "Constitution Bylaws," a screenshot from the WAOFP website, and an undated letter confirming her membership in WAOFP.

The record reflects that the Petitioner was approved for membership in the SMA and WISE in May 2018, approximately one year after she filed the petition, and it does not document when she was admitted as a member of WAOFP. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Therefore, even if we determined that one or more of these

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[1] Previously, the Petitioner has submitted evidence intended to meet the criteria relating to judging the work of others in her field and authorship of scholarly articles. *See* 8 C.F.R. § 204.5(h)(3)(iv) and (vi). On appeal, the Petitioner does not claim that she meets these criteria or contest the Director's findings that they were not met. Therefore, we consider these criteria to be waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

associations requires outstanding achievements of its members, we could not conclude that the Petitioner satisfied this criterion at the time of filing.

Nevertheless, we note that the SMA's bylaws state that professional membership in the association "is open to any individual who wishes to subscribe to the purposes for which the association is formed." The Petitioner emphasized that she nominated herself for a "member-at-large" position on the executive board of this association and therefore her qualifications underwent additional scrutiny, but the SMA bylaws do not support the Petitioner's claim that an SMA member must demonstrate outstanding achievements in order to have his or her board nomination accepted. The evidence submitted regarding the WAOFP's membership requirements states only that "members have been vetted and thoroughly interviewed" and "have demonstrated success in their career pursuits." Finally, the Petitioner has not offered supporting evidence explaining the membership requirements for WISE. Based on this limited evidence, the Petitioner has not demonstrated that any of these associations require outstanding achievements of their members as judged by recognized national or international experts. For the foregoing reasons, the Petitioner has not established 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 submitted one article that was about her and relating to her work, published by *Orlando BrazilUSA Magazine*. The Director determined that the article did not satisfy this criterion because the record reflects that this magazine has a print circulation of only 5,000 copies and is not a professional publication, major trade magazine or other major medium. On appeal, the Petitioner submits the magazine's media kit which provides information regarding its online presence, including figures for e-mail subscribers and online views per month. She also provides comparative figures for the *Orlando Business Journal*, asserts that the two publications have a similar reach, and maintains that she met her burden to establish that *Orlando BrazilUSA Magazine* is "among major trade publications."

The record reflects that the article about the Petitioner was published by *Orlando BrazilUSA Magazine* in [redacted] 2018, more than one year after this petition was filed. Although the Director evaluated the evidence under this criterion, we note again that the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). The Petitioner has not submitted evidence of any published materials about her prior to the filing of this petition in May 2017. Accordingly, she did not establish that she can satisfy 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)

In order to satisfy this criterion, a petitioner must establish that they have made original contributions of major significance in the field.[3] For example, a petitioner may show that her contributions have

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

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 Petitioner claims that she meets this criterion based on her preparation of materials used by FIFA, the International Olympic Committee (IOC), and the International Paralympic Committee (IPC) to "transfer knowledge for upcoming sport events and new generations of professionals." For example, she indicates that, following the 2014 FIFA World Cup, FIFA's [redacted] department hired her to write the [redacted] handbook chapter for the new LOC in Russia, responsible for the 2018 FIFA World Cup. She noted that other materials written by her during the FIFA World Cup tournaments cycle are "part of the [redacted] projects of FIFA" while documents she prepared for the 2016 Olympics and Paralympics are incorporated in a library with more than 30,000 documents available for consultation by sports industry professionals, sports federations and students. The Petitioner asserts that these materials, which she describes as "presentations, handbooks, manuals, operational plans," demonstrate "a great significance and contribution to the major sports entities mentioned . . . and to the professionals and students in my field."

The record includes copies of documents that the Petitioner created in her capacity as the [redacted] employed by the organizing committee of the 2016 Olympics and Paralympics, and as the [redacted] employed by the FIFA World Cup organizing committee. In support of her claim that she made original contributions of major significance, she submitted letters from her former supervisors.

In her letter, [redacted], [redacted] of the 2016 Rio 2016 Olympic and Paralympic Games Organizing Committee, praises the Petitioner's talents, hard work, commitment, communication skills, organizational skills, and attention to detail. She describes the Petitioner as "a dedicated and competent professional" whose "contributions were valuable to the project." The letter, however, does not support the Petitioner's claim that the published materials she created in her role as [redacted] for the 2016 Rio Olympic Games are regarded as "original contributions" nor does support her claim that these documents are of "major significance" in the field as a whole.

The Petitioner also submitted a letter from [redacted] the Head of [redacted] for FIFA. [redacted] offers similar praise of the Petitioner's professional talents and confirms that she was engaged as a consultant "to write one of the handbooks as well as a FIFA [redacted] for [*sic*] the FIFA Club World Cup in Morocco."

In a request for evidence (RFE), the Director acknowledged and discussed the Petitioner's evidence, but noted that it did not establish how she had made *original* contributions to her field or how such contributions remarkably influenced or impacted her field. The Petitioner submitted additional testimonial letters with her response to the RFE. While she indicated that they were intended to establish her critical role with the 2016 Rio Olympic Games and 2014 FIFA World Cup organizing committees, she emphasized that the letters also note her "great contributions" to these projects.

A letter from [redacted], former [redacted] for the 2014 FIFA World Cup, describes the Petitioner's duties as [redacted] in detail, explains how she was "crucial to the success of the event," and states her belief that other sports organizations, organizing committees and/or companies would benefit from her "professional contributions" to any

major event. She does not, however, directly address the Petitioner's published handbooks, briefings and materials related to FIFA events and therefore does not offer support for the Petitioner's claim that these materials themselves amount to original contributions of major significance in their shared field. A letter from [redacted] former [redacted] of the International Paralympic Committee, praises and explains in detail the Petitioner's contributions and critical role to the Rio Olympics organizing committee, but does not clarify how she made original contributions that have gone on to influence the field as a whole.

Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[4] On the other hand, letters that lack specifics do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[5] The Director determined that the evidence did not sufficiently establish that the Petitioner had made original contributions of major significance in the field of event management.

On appeal, the Petitioner asserts that the Director erred in determining that the submitted letters are not specific or that they do not articulate the nature of the Petitioner's "original professional work in the field of acclaim."

We acknowledge that the letters submitted, particularly those of [redacted] and [redacted] are detailed. As noted, the Director determined that these letters sufficient to establish that the Petitioner had served in critical roles for the local organizing committees of both the 2016 Rio Olympic Games and the 2014 FIFA World Cup. However, acknowledging that the Petitioner made important contributions to the outcomes of these events does not lead to a conclusion that her contributions remarkably impacted her field to an extent consistent with "major significance."

As noted, the Petitioner relies on her written briefings, handbooks, manuals and other documentation she created in her capacities as [redacted] and [redacted] at these two events. The work she produced was her own "original" work in that the evidence establishes that she was the employee responsible for creating these documents as part of her position-related responsibilities. It is unclear how the procedures and guidelines she outlined in these documents were novel or different when compared to those documented for previous editions of the FIFA World Cup and Olympic Games. Further, the fact that it was her original work product was made available in the libraries or repositories of FIFA and the IOC for future reference is not sufficient to establish that her work was of major significance, absent evidence that the work, for example, provoked widespread commentary or influenced others working in the field.[6] The letters from persons who worked with the Petitioner on the organizing committees of these events do not comment on the impact or influence of her written work and therefore their letters, while detailed, do not establish that she has satisfies all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner maintains that her contribution to the management of "mega events" is "in and of itself 'original work' given size, significance and impact." While we acknowledge that the FIFA World Cup and Olympic Games are significant and impactful sporting events, this alone is

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

[5] *Id.* at 9.

[6] Id. at 8 (stating that "funded and published work may be original," but "this fact alone is not sufficient to establish that the work is of major significance").

insufficient to establish that a [redacted] presentation or [redacted] briefing prepared in the context of one particular edition of these events is an "original contribution of major significance" in the Petitioner's field. She states that the types of documents she created are part of every Olympic and World Cup cycle and that all such documents are retained by the IOC and FIFA for future reference. She further explains that the materials are widely accessible to professionals involved in Olympic and FIFA events but she has not established how her own original manuals, handbooks and presentations have been highly influential or otherwise of major significance.

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 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 claims eligibility under this criterion based on her work performed for the Rio 2016 Olympic Games and 2014 FIFA World Cup. The Petitioner previously asserted that the nature of these events and evidence regarding the scope of the work assigned to her "clearly elucidates that the display of [her] work process, design and objectives were ultimately showcased and displayed in the qualities of production and directorship" of these venues.

In determining that the Petitioner did not meet the criterion, the Director noted that the evidence reflects that her primary duties related to [redacted] rather than the display of any "artistic elements." The Director also concluded that these events were not "artistic exhibitions or showcases."

On appeal, the Petitioner draws attention to her responsibility for the conception, planning, development and execution of the [redacted] Programs [redacted] for the 2014 FIFA World Cup Brazil. The Petitioner emphasizes that these programs hosted prominent world leaders and were "aimed to showcase the Brazil culture and hospitality," by including regional décor, objects and elements, as well as traditional local food. She resubmits a [redacted] briefing and associated concept development documentation, as well as evidence of the proposal submitted by the Brazilian hospitality services company that was ultimately selected to provide the décor and catering for the [redacted] and [redacted] program.

The evidence establishes that the [redacted] briefing, developed to guide [redacted] contractors in preparing their proposals, mentions these cultural elements. For example, the briefing document notes that the [redacted] area environment should have "a regional flair," "predominant Brazilian decoration," and "international cuisine." However, this same document also provides guidelines for all non-cultural elements such as [redacted], etc. While it appears that the Petitioner was involved in selecting the winning [redacted] the evidence reflects that the artistic concept for the décor of the [redacted] areas was developed by that bidder, not by the Petitioner.

Therefore, even if we agreed with the Petitioner that the [redacted] area of a major international sporting event qualifies as an "artistic exhibition or showcase" the evidence does not establish that she created the work displayed at the 2014 FIFA World Cup or other events. As she has not established that this

event was an artistic exhibition or showcase that displayed her own work, she does not meet this criterion.

> *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 has consistently claimed that she meets this criterion based on her earnings received in 2015 and 2016.[7] At the time of filing, the Petitioner submitted several employment contracts. In the RFE, the Director informed her that contracts alone did not provide sufficient evidence of her actual earnings and requested evidence, such as her foreign tax documents, to demonstrate her remuneration. Further the Director advised that the Petitioner should submit geographical, position-appropriate compensation surveys or comparable evidence to demonstrate that her salary or other remuneration is high relative to others working in the field.

The Petitioner's response to the RFE included copies of her Brazilian annual individual income tax returns for the years 2015 and 2016. In a statement accompanying the response, the Petitioner stated that a "senior event manager" in Brazil earns a median salary of R$ 7,500 per month or R$ 97,000 per year, considerably less than the earnings reported on her tax return. She attributed this median salary figure to "data of Brazilian Geography and Statistic Institute (IBGE)," but did not provide supporting documentation from this or any other source. The Director determined that the Petitioner did not satisfy this criterion, in part, because she submitted "no evidence corroborating" the stated R$97,000 median salary for her occupation and geographic location. The Petitioner did not address this deficiency when she filed a combined motion to reopen and reconsider or in the initial appeal of the Director's decision dismissing her motion.

In support of this appeal, the Petitioner submits, for the first time, a geographical compensation survey for the occupation of event manager in Rio de Janeiro obtained from *Glassdoor*. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Accordingly, the Petitioner has not established that she meets 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

[7] She has also claimed that she meets this criterion based on her earnings in 2018, subsequent to the filing of the petition. Again, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Our determination is therefore based on evidence that pre-dates the filing of the petition in May 2017.

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.

ORDER: The appeal is dismissed.