U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15738101

Date: APR. 15, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a sports 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 record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to individuals 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 has worked for several television stations in [redacted] including [redacted], [redacted] and [redacted]. She hosted the weekly program [redacted], reported on international sporting events, and wrote online articles for [redacted]. Her YouTube channel features videos of sports tourism (in which she visits various international locales and participates in local sports activities).

Because the Petitioner has not indicated or shown that she 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 Petitioner initially claimed to have satisfied seven of these criteria, summarized below:

- (iii), Published material about the individual in professional or major media;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments;
- (ix), High remuneration for services; and
- (x), Commercial success in the performing arts.

The Director concluded that the Petitioner met two of the criteria, numbered (iii) and (ix). On appeal, the Petitioner asserts that she also meets four other criteria, numbered (v), (vii), (viii), and (x). The Petitioner does not contest the Director's conclusions regarding the criterion numbered (vi), and therefore we consider that issue to be abandoned.[1]

[1] *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).

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criteria numbered (iii) and (ix). We will discuss the other claimed criteria below.

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 asserts that various accomplishments meet this criterion. An official of [redacted] calls the Petitioner "one of the first women in [redacted] to break through the glass ceiling that exists in sports reporting in the country." Setting aside the lack of documentary support for this assertion, her employer's decision to hire her is not an original contribution that the Petitioner made. (We note that promotional materials in the record show that, when the Petitioner joined [redacted] two of the three existing co-hosts were female.)

The Petitioner asserts that she was the first female journalist hired by [redacted] in [redacted] but an executive with that company indicates that the network hired the Petitioner "when [the network] launched." The Petitioner has not established that being part of a new network's initial hiring wave is an original contribution, nor has the Petitioner explained how it is of major significance. Media coverage of the hiring, documented in the record, did not highlight the Petitioner's gender as a significant part of the story.

Letters from employers and others contain general praise for the Petitioner, but do not identify specific original contributions or explain their significance. For instance, the sports and news manager at [redacted] states that the Petitioner "is truly a star of [redacted] in [redacted] as she not only has incredible journalistic skills, which allow her to write complex journalistic pieces, but also the charisma and on-camera personality that attracts the public and keeps audiences engaged." General assessments of the Petitioner's skill and appeal to audiences do not satisfy the requirements spelled out in the regulations.

The Petitioner's creation of a television documentary, [redacted] constitutes an original contribution, but the burden is on the Petitioner to establish its major significance. The Petitioner asserts that [redacted] is "the first documentary [redacted] in the history of [redacted] television." This statement attests to the film's originality, but does not establish its major significance. A [redacted] executive calls the documentary "very successful," but does not elaborate. The record does not establish the documentary's performance relative to similar programming.

The Petitioner has documented an active and high-level career in sports journalism, but has not established the major significance of her original contributions.

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)

As evidence of qualifying display, the Petitioner submits screen captures from her television appearances; an appearance on a talk show; and dancing in a competitive television program. Talk show appearances and competitive dancing do not amount to work in the Petitioner's field.

The Director concluded that the Petitioner's television appearances as a reporter did not constitute display in artistic exhibitions or showcases. On appeal, the Petitioner observes that the words "display" and "art" have broad meanings, and the Petitioner asserts that television is an "artistic medium" and that "journalism . . . [is] usually included within the Liberal Arts curriculum." It does not follow, however, that the phrase "artistic exhibitions or showcases" applies broadly to disciplines outside the fine arts, or reasonably applies to every usage of the term "art." Television programming can be artistic in nature, but not every television broadcast is an artistic exhibition or showcase. For example, a news broadcast may include footage from a security camera, which was not captured with any artistic intent.

The purpose of sports journalism is not to provide an "artistic exhibition or showcase" to "display" the work of reporters, but rather to inform viewers about sports-related matters. The role of a sports journalist is to serve as a conduit to provide that information, even if some reporters have distinctive traits such as an animated style of delivery, or clever turns of phrase.

The Petitioner has not established that her career involves display of her work at artistic exhibitions or showcases.

> *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)*

The Petitioner asserts that she meets this criterion because she was the anchor for [redacted] a weekly sports program on [redacted] The Petitioner states that this program was "the leading sports show" on [redacted]'s "second largest network." The record corroborates [redacted]'s distinguished reputation as a major television network. The network's sports and news manager calls [redacted] "one of the most important [redacted] television sports shows." Letters written specifically to support the petition refer to the Petitioner as the anchor or central figure of the show, but media coverage of the Petitioner's hiring does not share this characterization, indicating instead that she joined a team of three other reporters who were already working on the show.

[redacted]s production director asserts that the Petitioner's role "was key to the huge success of the show and our impressive ratings," but the Petitioner does not provide sufficient data to show that the show's ratings improved after she joined the show (or declined after she left). Without such data, the record does not objectively support the claim that the Petitioner was responsible for the show's ratings performance.

An official of [redacted] states that the Petitioner "writes a weekly column covering sports tourism" for [redacted] This official praises the Petitioner's "excellent reporting" and "unique, uplifting way of communicating with the audience," but does not explain how her role as a columnist is critical to [redacted] as an organization. The record does not show how many writers work for [redacted] but promotional materials identify more than 20 bloggers (not including the Petitioner). The materials do not specify the distinction, if any, between columnists and bloggers. The record establishes the distinguished reputation of [redacted] but it does not show that the Petitioner performed in a critical role for the organization.

As shown above, the record establishes the Petitioner's involvement in high-profile sports journalism, but does not show that her role was critical for the publishers or broadcasters that employed her.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x)

The Petitioner asserts that the wording of the regulatory criterion is becoming "obsolete in our current digital world," and that television ratings should be considered. A petitioner may submit comparable evidence when the standard regulatory criteria do not readily apply to an individual's occupation. *See* 8 C.F.R. § 204.5(h)(4). Here, the Petitioner does not specifically invoke the "comparable evidence" provision. The regulations, in their published form, are binding in this proceeding; the Petitioner has no right or privilege to declare those regulations "obsolete" and substitute a new standard more favorable to her interests.

Ratings are a relevant consideration when dealing with television personalities, and received some degree of discussion above, but further analysis of ratings would be more appropriate in the context of a final merits determination once a given individual has met the initial evidentiary threshold at 8 C.F.R. § 204.5(h)(3). Here, the Petitioner has not cleared that threshold, and therefore a more detailed discussion of television ratings would not affect the outcome of the proceeding.

The Petitioner has not met the regulatory requirements under 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 lesser 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 conclusion 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. U.S. Citizenship and Immigration Services 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). By the same reasoning, employment with a major television network is not presumptive evidence of eligibility. Here, the Petitioner has established past employment with prominent networks, but has not provided a sufficient basis for comparison to show that she is among 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). We note that the record indicates that the Petitioner left [redacted] in 2018, and does not indicate that she has maintained a high profile since that time, as required to demonstrate *sustained* national or international acclaim as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.