U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16949516

Date: APR. 30, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a [redacted] artist, 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 Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only two 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)(A) 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(5)(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

A. Evidentiary Criteria

The Petitioner indicates employment as a [redacted] artist. 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 determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and display at artistic exhibitions or showcases at 8 C.F.R. § 204.5(h)(3)(vii). We will not disturb the Director's findings relating to those criteria.[1]

On appeal, the Petitioner asserts that she meets one additional criterion. After reviewing all the evidence in the record, we conclude that the Petitioner does not establish that she satisfies the requirements of at least three criteria.

> *Published material about the individual 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 meet 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, and any necessary translation.[2] On appeal, the Petitioner asserts that she satisfies the

---

[1] We note that the Director determined that the Petitioner initially submitted evidence related to four other evidentiary criteria, membership in associations at 8 C.F.R. § 204.5(h)(3)(ii), original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), leading or critical roles at 8 C.F.R. § 204.5(h)(3)(viii), and commercial successes in the performing arts at 8 C.F.R. § 204.5(h)(3)(x), respectively, but did not satisfy these criteria. The Petitioner does not contest these issues on appeal and therefore we deem them to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

[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* 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

eligibility requirements of this criterion based on four claimed interviews of her on [redacted] television shows. The Petitioner submitted YouTube screenshots of a video from the show [redacted] which was broadcasted on [redacted] TV on [redacted] 2017, YouTube screenshots of a video from the show [redacted] which was broadcasted on [redacted] TV on [redacted], 2017, and YouTube screenshots of a video from the show [redacted]' which was broadcasted on [redacted] Television 1 on [redacted] 2019. The Petitioner provided transcriptions of those videos suggesting published material about her relating to her work. Although she also argues that she satisfies this criterion based on a claimed interview of her conducted on the show [redacted] and broadcasted on [redacted] TV in [redacted] on [redacted] 2019, she did not provide a transcription of the interview demonstrating published material about her relating to her work.

The Director determined that this evidence did not satisfy the requirements of the criterion because "screen prints and transcripts of televised interviews do not meet the plain language in the regulations as being 'published material,'" and, nevertheless, the record did not establish that the TV networks on which they were broadcasted were a major medium. On appeal, the Petitioner asserts that the Director's interpretation of this criterion was too restrictive.[3] We agree. The issue is whether the aforementioned television shows represent a major medium. Here, the Petitioner did not establish that the shows [redacted]' [redacted]' or [redacted] represent a major medium.[4] Although the Petitioner provided television ratings for channels in [redacted], the documentation submitted did not establish that these television shows constitute a major medium. In addition, the English translations of the above transcripts are not accompanied by a copy of the foreign-language transcripts or the required certification from the translator.[5]

Finally, the Petitioner argued that her evidence should also be considered as comparable evidence because "[t]here is no professional or major trade publications in the field of [redacted]' 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.[6] 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 why the evidence she has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[7] General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted.[8] Here, the Petitioner did not show why she cannot offer evidence that meets

---

[3] The Petitioner submits a non-precedent decision concerning a photographer who petitioned under this classification, noting that "[i]n this case, the AAO considered a television [show] as media but determined that petitioner did not meet this criterion because she failed to prove her 'appearances on the shows.'" This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

[4] *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).

[5] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Here, the translations contain the typed statement, "Sworn interpreter and translator for Courts," the interpreter's name and telephone number.

[6] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

[7] *Id.*

[8] *Id.*

at least three criteria. The fact that the Petitioner provided documentation that does not meet at least three criteria is not evidence that a [redacted] artist could not do so. In fact, the Petitioner claimed to meet six other criteria. For the foregoing reasons, the Petitioner did not demonstrate that she fulfills this criterion, including 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 ability" standard. *Price*, 20 I&N Dec. at 954. 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.