U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13189151

Date: FEB. 25, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a dermatologist, 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are 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) (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 established a clinic in [redacted], offering "skincare and aesthetic treatments." She asserts that she is "a frequent . . . guest in several mass media TV and Radio shows, providing her medical expert opinion for skin health & treatments and non-invasive aesthetic treatments." The Petitioner also speaks at trade conventions, at the invitation of suppliers.

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 claims 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 only the criterion numbered (ix), relating to compensation. On appeal, the Petitioner asserts that she also meets the six other claimed criteria.

Upon review of the record, we will not disturb the Director's determination regarding the Petitioner's remuneration. For the reasons discussed below, we agree with the Director that the Petitioner has not satisfied the other claimed criteria.

> 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 submits information about several [redacted] television and radio programs, and screenshots from her YouTube channel of her appearances on those shows. These still images, unaccompanied by transcripts, are not sufficient to show that her appearances amounted to published material about her, relating to her work, rather than commentary or advice regarding topics within her area of expertise. The screenshots show web addresses for the videos on the Petitioner's YouTube channel, but the broadcasts were in Spanish and the Petitioner has not provided complete transcripts of the broadcasts, with certified translations of their content. Therefore, the Petitioner has shown that the broadcasts occurred, but has provided only vague, general information about the subjects discussed. The Petitioner has not established that she was the subject of news coverage relating to her work, rather than a commentator providing general information and advice about skin care.

The Petitioner also submits printouts or photocopies from various sources. Many of these materials appear to be promotional materials, rather than media coverage. Several publications ran pieces promoting the same fat removal procedure, featuring what appears to be the same quotation from the Petitioner, or a paraphrased rewording thereof, regarding the importance of consulting with a physician. Marketing materials created for the purpose of selling one's products or promoting one's services are not generally considered to be published material about the individual.[1]

Other submitted pieces are lists of aesthetic procedures, the names of providers, and the prices they charge for those procedures. The Petitioner's business is among those listed, sometimes but not always naming the Petitioner individually. A list or directory is not about the Petitioner simply because her name, or that of her company, is included.

A reduced-size image of a print article from Gente identifies the Petitioner and her business, but the English translation is not complete as required by 8 C.F.R. § 103.2(b)(3). Instead, the Petitioner only submits a translation of the story's headline. Therefore, the submitted evidence does not show that the article is about the Petitioner, relating to her work in the field. A banner at the bottom of the page shows the address, telephone number, and website of the Petitioner's business, which suggests that the piece is an advertisement rather than media coverage of the Petitioner.

The Petitioner submits a photocopy and translation of the first page of an article from the magazine Nacer & Crecer. The incomplete article and translation are of limited evidentiary value. The Petitioner is the author, rather than the subject, of the article. The submitted fragment consists mainly of a discussion of a procedure offered by the Petitioner's business.

For the above reasons, the Petitioner has not established that the submitted articles and printouts are published material about her, relating to her work in the field.

[1] 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/legal-resources/policy-memoranda.

> 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 submits 14 letters to support her claim that she has made qualifying contributions "by taking care of the skin health and image of prominent TV and Radio personalities." Eight of these letters are the same, apart from the names and biographical details of the individuals who signed them. The identical wording strongly suggests a common author, whom we can infer to be the Petitioner herself.[2]

Furthermore, none of the submitted letters identifies any specific original contributions by the Petitioner or explain how those contributions are of major significance in the field. Instead, the letters praise the Petitioner's skill and indicate that she has mastered cutting-edge technology. There is no indication that the Petitioner invented that technology; some of the letters are from companies that developed equipment or techniques that she uses. The use of technology developed by others is not an original contribution.

Apart from the letters, the Petitioner points to her "use of social media." Screenshots prove that her clinic has pages on Facebook and Instagram, but the Petitioner does not explain how her "use of social media" amounts to an original contribution, or that such a contribution is of major significance in the field of dermatology and skin care.

Following a request for evidence, the Petitioner has asserted that her media appearances constitute original contributions of major significance because she "contributed her medical expertise," but she does not identify any new information that she provided to the audience and readers. Instead, the Petitioner appears to have discussed existing treatments and techniques. The Petitioner states that she provided "tips" in some of these appearances, but does not show that those tips originated with her. Passing along information that was already in use among dermatologists is not an original contribution, even if members of a given audience were unfamiliar with that information.

The Petitioner has not identified any original contributions of major significance in her field.

> Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner contends that several of the pieces claimed, above, as published material about her are also scholarly articles by her. The Director observed that the materials are not scholarly. On appeal, the Petitioner contends that "[t]he publication needs [sic] not be 'scholarly,'" because the regulatory language refers to "professional or major trade publications or other major media." The wording of the regulation plainly refers to "scholarly articles." A scholarly article should be written for learned persons in that field. ("Learned" is defined as "having or demonstrating profound knowledge or scholarship.")[3] The submitted pieces are written for a general audience, aimed at members of the public who seek medical advice or are considering certain cosmetic procedures.

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[2] Cf. Mei Chai Ye v. U.S. Dept. of Justice, 489 F.3d 517, 519 (2d Cir. 2007) (an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

[3] See USCIS Policy Memorandum PM 602-0005.1, supra, at 9.

Most of the cited materials are, as discussed above, promotional stories that include brief quotations from the Petitioner. The regulation requires the Petitioner's "authorship of scholarly articles," rather than brief quotations in what appear to be, essentially, advertisements.

An article about a [redacted] treatment acknowledges "advice" from four dermatologists, one of whom is the Petitioner. She asserts that she "collaborated as an Expert Medical Advisor." The Petitioner is not the credited author of the article, and the acknowledgment does not specify the nature or extent of her input. Furthermore, the article was written for a general, rather than scholarly, level of comprehension. For instance, the article explains what [redacted] is, and how it is isolated from other [redacted] components. From the wording, it is evident that the intended readers are prospective patients, rather than trained experts learning how to perform a new procedure.

The Petitioner is the author of the remaining two articles, but they are not scholarly. The translation of the fragment of the Nacer & Crecer article reads as though written for a general readership, rather than for learned persons in the field of dermatology. The translation begins: "There are currently treatment[s] and new technology that help[] us look much better. Nothing sexier than wearing beautiful legs all year long!" As noted above, the Petitioner has not submitted a translation of the Gente article, and therefore she has not shown its content to be scholarly.

The record does not include any scholarly articles written by the Petitioner.

> 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 asserts that she "has been displayed at relevant conferences as a professional speaker . . . and exhibited" on various broadcast and print media. The Petitioner asserts that the term "showcase" "is applicable to any setting, occasion, or medium for exhibiting something or someone, including corporate conventions." By regulation, the exhibition or showcase must be "artistic."[4] The Petitioner has not shown this to be the case with her appearances.

Also, the purpose of the exhibition or showcase must be to display the individual's work. In this instance, the Petitioner spoke at a trade "convention [which] was a showcase of the company's new products." The Petitioner submitted letters from officials of several such companies, manufacturers of equipment used in the Petitioner's profession. The Petitioner's participation in the promotion of suppliers' products does not cause the event to become a display of the Petitioner's work, rather than the products being promoted.

The Petitioner has not satisfied the requirements of this criterion.

> 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)

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

The Petitioner claims to have performed in a critical role for various media outlets. The Petitioner must establish that she has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.[5]

The Petitioner asserts:

> Because of the nature of [the Petitioner's] comments and recommendations when she is interviewed by TV Shows, Radio Shows, Newspapers and Magazines, it is critical that she provides the best recommendation about skin care treatments and non-invasive aesthetics treatments, as well as relevant information to reduce risks an[d] damage to the public. Any misinformation can damage the credibility of the TV Show, Radio Show, Newspaper or Magazine, thus, [the Petitioner] has played a critical and relevant role for these mass media at the time she provides her expertise on the very important issue that is skin care and non-invasive aesthetic treatments.

By the Petitioner's logic, everyone quoted in the media regarding their area of expertise performs in a critical role for the publishers or broadcasters that disseminate those quotations. Speaking credibly within one's area of authority may be a professional obligation, but the Petitioner has not established that the reputations of these broadcasters and publishers hinge, to any significant extent, on the accuracy of the Petitioner's comments in print or on camera.

Initially, the Petitioner cited only her media appearances as critical roles. In later submissions, the Petitioner has also asserted that her clinic is "one of the most prestigious centers for skincare . . . and noninvasive aesthetic treatments in [redacted]." On appeal, the Petitioner asserts that she "is the Director and owner of one of the most iconic aesthetic clinics in [redacted]," which "is recognized by the most distinguished multinational companies specializ[ing] in skincare and aesthetic treatments." The record establishes the Petitioner's leading role with her business, but not that it has a distinguished reputation.

The Petitioner asserts that her clinic's "Facebook page has over 39,000 followers and her Instagram account over 13,000, totaling 52,000 . . . people following [the company's] accounts." These numbers add up to 52,000 followers only if we assume there is no overlap between the two groups of followers. Aside from that issue, the Petitioner does not submit comparative evidence to show the follower counts of other clinics that provide similar services in [redacted] Without this context, the follower counts do not show that her clinic has a distinguished reputation. The Petitioner submits printouts of blog posts about "micro-influencers," but these materials do not provide any basis for comparison between the reputation of the Petitioner's clinic and those of rival businesses in the same field.

The Petitioner claims that published articles in La Nacion identify her clinic as "the best option" or "one of the best option[s]" for particular treatments. The articles in question, however, are essentially lists of procedures, with information about clinics that perform those procedures. The articles do not describe the Petitioner's clinic as being "the best" or "one of the best." The articles do not characterize the Petitioner's clinic as anything other than an example of where to obtain a given treatment.

The Petitioner has not satisfied the requirements of this criterion.

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[5] See USCIS Policy Memorandum PM 602-0005.1, supra, at 10.

> 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 acknowledges that she is not employed in the performing arts, but asserts that her high remuneration is comparable evidence under 8 C.F.R. § 204.5(h)(4).

The "commercial successes" criterion does not refer to a given individual's personal income. That income is already covered by the above criterion at 8 C.F.R. § 204.5(h)(3)(ix). Rather, criterion (x) concerns the commercial success of projects in which the individual participated, documented by evidence such as box office receipts for films or record sales. The Petitioner has not identified any products or projects that would be analogous to a motion picture, play, concert, or recording, such that it would be comparable to commercial successes in the performing arts, and she has not submitted evidence comparable to box office receipts or record sales. Instead, she submits a letter from her accountant, and copies of two income tax returns that do not specify the source(s) of her income.

We agree that this criterion does not readily apply to the Petitioner's occupation, but the Petitioner has not submitted comparable evidence as the regulations require.

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). Here, the Petitioner has submitted letters from prominent clients, and shown that she has appeared on television on some occasions, but the record as a whole does not demonstrate a level of recognition that indicates the required sustained national or international acclaim or demonstrates 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 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).

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.