U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17643826

Date: JULY 14, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a singer, 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 record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director also concluded that the Petitioner did not establish that she intends to continue working in her area of claimed extraordinary ability. 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 all 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

From age 16, the Petitioner performed in [redacted] under the stage names [redacted]' and, later, [redacted]' (sometimes spelled [redacted]). Her introductory statement indicates that she "recorded and released several single songs and albums," but the record includes little information and evidence about those recordings. In 2016, she co-created [redacted] described as a "national musical Internet project . . . about women's life, rights and discrimination in [redacted]' which evolved into a stage musical, [redacted] The Petitioner entered the United States in 2019 as a B-2 nonimmigrant. The Petitioner states that she intends to continue singing and recording, and to write songs for others, establish a production company, and open a children's music school.

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:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met one of the criteria, numbered (iv). On appeal, the Petitioner asserts that she also meets the other six claimed criteria, but she only specifically addressed two of the criteria, numbered (iii) and (vii). Because the Petitioner makes no specific allegation of error regarding the criteria numbered (i), (v), (viii), and (xi), we consider those issues 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

We note the Petitioner's assertion that she "will submit additional argument and supporting evidence within 30 days," but more than eight months later, the record contains no further submission from the Petitioner. We therefore consider the record to be complete.

Upon review of the record, we conclude that the Petitioner has satisfied two criteria, numbered (iv) and (vii) (relating, respectively, to participation as a judge and to artistic display). Below, we will discuss the other claimed criterion that the Petitioner discusses on appeal.

> *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 copies of articles from various publications. In the denial notice, the Director determined that the Petitioner did not establish that these articles appeared in qualifying publications. On appeal, the Petitioner only addresses articles that appeared in the magazine [redacted] and thereby abandons previous claims regarding other publications.

The senior editor of [redacted] calls the publication the "First Women's Magazine of [redacted] comparable to *Cosmopolitan* in the United States. She asserts that cover stories in three issues featured the Petitioner. The Petitioner submits translated printouts of two of the cover articles, published respectively in the [redacted] 2010 and [redacted] 2012 issues of that magazine.

In a separate letter, the editor asserts that the magazine publishes 4000 print copies per month, and that its website attracts more than 1.1 million unique users per year – on average, nearly 100,000 per month. But the Petitioner provides no objective source for these figures. The Petitioner has also submitted a website analysis from SimilarWeb, showing substantially lower figures. That analysis indicates that the website received about 21,200 "total visits" in September 2016 (the most recent month for which data was provided). The "total visits" figure would be higher than the count of *unique* visitors, because repeat visitors would add to the count every time they visited the site. The Petitioner does not address this significant disparity, and the senior editor does not cite an objective source for the much higher web traffic figure claimed in the letter. We cannot afford significant evidentiary weight to the editor's assertions.

The Petitioner does not provide specific site visit figures for other publications to allow a direct comparison, but the SimilarWeb analysis shows rankings. [redacted]'s site has a "Global Rank" of [redacted] and a [redacted] of 1735. In the category of "Arts and Entertainment – Visual," the site ranking is [redacted]

On appeal, the Petitioner asserts that *Aquarelle* ranks among "the most popular cultural media in [redacted] as "a well-known forum for discussion and awards of well-known individuals as well as

(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). *See also Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (stating that passing references to issues are insufficient to raise a claim for appeal, and such issues are deemed abandoned).

people of significant public interest." Key evidence submitted in support of these claims, however, consists of the publisher's own promotional materials, or third-party commentary that relies on those promotional materials.

For the above reasons, the Petitioner has not established that she satisfies the criterion relating to published material. The Petitioner has documented some degree of media coverage in [redacted] but has not established that this coverage meets the regulatory requirements.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining issue, concerning continued work in the field, cannot change the outcome of this appeal. Therefore, we reserve this issue.[2]

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.

It is perhaps significant that, while the Petitioner claimed to satisfy seven of the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3), she did not claim to satisfy 8 C.F.R. § 204.5(h)(3)(x), "evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." A performing artist is not required to satisfy this particular criterion, but it is the only criterion that specifically mentions the performing arts, and the burden is on the Petitioner to explain how she reached the top of her field and achieved sustained acclaim without selling substantial numbers of recordings or concert tickets in relation to other singers nationally or internationally. Letters in the record indicate that she consistently ranks highly in unspecified "charts," but such claims have negligible weight without supporting documentary evidence.

With respect to the Petitioner's career as a recording artist, the record indicates that recordings of individual songs have won popularity contests based on frequency of radio airplay, but the record contains little other evidence about the Petitioner's recorded work. A magazine article from 2010 indicates that she has released three albums, but the record contains minimal information about these albums, and no documentation about them. The Petitioner submits a letter from a producer who states that he produced an album called [redacted] about which the record is otherwise silent except for a certificate from the [redacted] (which states the title as [redacted]).

Letters in the record include other specific factual claims, such as a collaborator's assertion that the Petitioner won [redacted] in 2014 and again in 2017, and a former teacher's assertion that she performed a sold-out concert at the [redacted] Given the nature of

[2] *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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

such claims, documentary evidence ought to be readily available, but the record contains no such documentation.

The record indicates that the Petitioner has achieved some degree of recognition in her field in [redacted] but it does not consistently show that she has reached the top of that field and attained *sustained* acclaim as the regulations require. Apart from the uncorroborated claims discussed above, we note that the Petitioner submits printouts from her YouTube channel. The printouts show the number of views for 16 videos, all marked as being five or six years old. Eleven of those view counts are below 500. The Petitioner provides no basis for comparison with other singers in [redacted] to show that her view counts are among the highest in her field. Average view counts for [redacted] videos on another channel are somewhat higher, in the low thousands, but again these figures lack context in the absence of any comparative evidence.

III. CONCLUSION

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 not shown that the recognition of her work is indicative of 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 record indicates that the Petitioner achieved some success and visibility in her field, but the evidence submitted is not of a caliber that clears the very high threshold for eligibility under the classification sought.

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.