U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13668297

Date: MAR. 19, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an architect, 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 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

From 2002 to 2012, the Petitioner held various positions at the [redacted] Institute of Architectural Design and Research [redacted], eventually holding the title of dean. As dean, the Petitioner was "the head of the major project[s]" and "also responsible for the management of the design office." Since 2013, the Petitioner has been the majority shareholder of [redacted] and chaired its board of directors. The Petitioner seeks employment as the director and chief architect of [redacted], a real estate development company.[1]

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 eight of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (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;
- (vi), Authorship of scholarly articles;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met only the criterion numbered (vi). On appeal, the Petitioner asserts that she meets five of the other previously claimed criteria, but does not contest the Director's conclusions regarding criterion (ii), and therefore we consider that issue to be abandoned.[2]

[1] The Petitioner previously filed Form I-526, Immigrant Petition by Alien Entrepreneur, approved in December 2013. Her associated Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, remains pending.

[2] *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

On appeal, the Petitioner implies, but does not directly claim, that she satisfies a previously unclaimed criterion numbered (ix), relating to high salary or other remuneration. We will not consider this criterion during these appeal proceedings. The Petitioner did not claim to have satisfied this criterion before she filed the appeal. The purpose of an appeal is to identify, specifically, erroneous conclusions of law or statements of fact. *See* 8 C.F.R. § 103.3(a)(1)(v). Because the Petitioner had not previously claimed to have satisfied this criterion, the Director cannot have erred with respect to that criterion.

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

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner has claimed several awards at various times in this proceeding. The Director determined that some of the awards were limited to the provincial level, and others went to the Petitioner's employers and therefore the Petitioner herself did not receive them. The wording of the regulation requires the individual's receipt of the prizes. Involvement in a prize-winning project or endeavor does not suffice if the Petitioner herself did not receive the prize.

On appeal, the Petitioner limits her arguments to two specific awards from China's National Engineering Construction Quality Award Examination Committee. In 2012, [redacted] won the [redacted] Silver Award for its design of the [redacted] In 2013, [redacted], [redacted], and [redacted] shared "the third prize of [redacted] . . . for [the] [redacted] Project."

The Petitioner asserts that, as team leader, she effectively received the prizes for the two projects identified above. [redacted]'s chairman of the board asserts that the Petitioner "led the design team[s] to complete" those projects, but does not indicate that the Petitioner received the prizes.

The record does not contain elaboration from the awarding entity to establish the extent to which the awards recognized her work in particular. For instance, the record does not explain which elements of the [redacted] project were considered under [redacted]' nor does it indicate that the award was specific to "Phase II" of that project.

The Petitioner has not shown that she meets the requirements of this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)*

(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).

The Petitioner served on technical qualification evaluation committees for municipal authorities in [redacted] The Petitioner states that committee members "first review the applicant's written materials, and secondly interview the applicant." The materials submitted by the Petitioner indicate that she was involved in judging the *qualifications* of candidates for professional certification, rather than judging the *work* of others as the regulation requires. Translated materials from the [redacted] Human Resources and Social Security Bureau indicate that municipal authorities grant "professional and technical qualifications . . . through . . . initial assessment, review and evaluation, examination, and combination of examination and evaluation of graduates of colleges and universities."

The Petitioner has not established that she meets the requirements of 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)*

The Petitioner asserts that she holds the rights to "patented technology" concerning an energy-saving system to control heating and air conditioning. The Petitioner does not explain how the system constitutes a contribution to the field of architecture, rather than to the related but distinct field of ventilation engineering. The Petitioner holds a degree in thermal engineering, but she claims extraordinary ability as an architect, not as a thermal engineer.

We further note that the Petitioner has not directly documented the patent itself, only a "copyright registration certificate" for computer software. The terms "patent" and "copyright" are not synonymous or interchangeable, but the issuance of either attests only to originality, not to significance. From the wording of the translation, we cannot determine whether the Petitioner personally developed the software, or holds the rights to software developed by others.

The Petitioner asserts that her "innovation has been widely utilized," and submits copies of three "patent use agreements."[3] All of the licensees are design firms in [redacted], and the agreements limit the use of the copyrighted work to [redacted] Province and, in one case, [redacted] Province. The Petitioner does not explain how implementation in two Chinese provinces counts as "widespread" in terms of major significance in the field.

The Petitioner has not established that she meets the requirements of this criterion.

> *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 Director concluded that this criterion is not applicable to the field of architecture. Because there is an esthetic element to architecture, we disagree with the Director's conclusion; the nature of the field does not inherently rule out artistic exhibitions or showcases. Nevertheless, the burden is on the Petitioner to show that her work was on display in its own right, rather than simply facilitating the display of the works

[3] The translations show the word "patent," but the registration number listed on the agreements corresponds to the copyright certificate discussed above. The list of attachments on each agreement refers to a "[c]opy of patent certificate," but the attachments themselves are not reproduced in the record. The agreements were not issued by the China National Intellectual Property Administration, and therefore they cannot suffice to establish that the Petitioner holds a patent.

it contained. (For example, in an art museum, it is the paintings and sculptures that are on display, not the building that contains those works.)

The Petitioner states that she led a "design team . . . [who] cooperated with [redacted] to complete the design of the [redacted] which was exhibited at the [redacted] in 2010." The Petitioner has not established that the purpose of the [redacted] was to display the pavilion structures themselves, rather than the exhibits that they housed. Also, the Petitioner has not shown that she, rather than the unnamed "[redacted]" was primarily responsible for the fundamental design and character of the structure. The record does not show that the Petitioner's team conceived of the structure, rather than assisted in realizing concepts that originated from the [redacted].

The Petitioner has not shown that she meets 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)*

The Petitioner states that she satisfies this criterion through serving as the dean of [redacted]s [redacted] Institute and as chairperson of [redacted] The Director determined that the Petitioner had not shown her role to be leading or critical for any organization or establishment as a whole.

We disagree, in part, with the Director's conclusion. The record consistently indicates that the Petitioner held positions of major responsibility at both [redacted] and [redacted]. But the Petitioner must also establish that the organizations or establishments have a distinguished reputation. Reputation is a measure of outside perception, and therefore the Petitioner cannot establish a company's reputation simply by submitting letters from officials of that company. Furthermore, it cannot suffice simply to list projects that a company undertook, or honors or awards that the company received as a result of those projects. The Petitioner must also provide a basis for comparison to show that company is distinguished in relation to other companies in the same industry.

In this case, the Petitioner has not provided evidence to show that [redacted] and [redacted] have distinguished reputations in comparison to other architectural firms in China. Therefore, the Petitioner has not met the requirements of this criterion.

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 criterion, relating to published material about the Petitioner (8 C.F.R. § 204.5(h)(3)(iii)), cannot change the outcome of this appeal. Therefore, we reserve this issue.[4]

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

[4] *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).

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). The Petitioner has established some degree of success and prominence in Shenzhen, but her recognition appears to be predominantly local. The submitted evidence does not establish recognition of the Petitioner's work indicative of the required sustained national or international acclaim, or demonstrating 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.