U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15277004

Date: MAR. 26, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a production professional in the television and motion picture industry, seeks classification as an alien 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 met the initial evidence requirement for this classification through receipt of a major, internationally recognized award or meeting at least three of the evidentiary criteria under 8 C.F.R. § 2045(h)(3). He reached the same conclusion after granting the Petitioner's combined motion to reopen and reconsider. The Petitioner now appeals the Director's decision on her combined motion.

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) 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 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 is a production professional who has worked on television and motion picture products in a variety of roles. She states that she intends to continue to work in this area in the United States.[1]

A. Evidentiary Criteria

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). The Director found that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to the display of her work at artistic exhibitions. On appeal, the Petitioner asserts that she also meets four additional evidentiary criteria. After reviewing all of the evidence in the record, we find that she does not meet the requisite three evidentiary criteria.[2]

> Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii)

[1] The record shows that the Petitioner has been employed in the television and motion picture industry in the United States for several years pursuant to O-1 nonimmigrant status.

[2] Although the Petitioner initially claimed to also meet the criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iv) and (vi) relating to lesser nationally or internationally recognized awards, participation as a judge of the work of others, and authorship of published scholarly articles, she does not contest the Director's decision relating to these criteria on appeal or otherwise refer to them in her appeal brief. We will therefore consider these issues to be waived. See, e.g., Matter of M-A-S-, 24 I&N Dec. 762, 767 n. 2 (BIA 2009).

The Petitioner asserts that she is a member of three associations in her field which require outstanding achievements:

- The Screen Actors Guild – American Federation of Television and Radio Artists (SAG-AFTRA)
- The Producers Guild of America (PGA)
- The Alliance of Motion Picture and Television Producers

Regarding her membership in SAG-AFTRA, she submitted a letter dated April 9, 2016 from this association which stated that her employment "as a [redacted]' qualified her for membership. In addition, she submitted an email and associated application which concerned a project she was producing which required SAG-AFTRA approval. While these documents show that she was eligible for, and invited to, SAG-AFTRA membership, and has submitted paperwork to the association regarding a movie project, they do not serve to establish that she is a member.

In addition, even if we were to conclude that the Petitioner had established her membership in SAG-AFTRA, the evidence does not demonstrate that this association requires outstanding achievements of its members. Notably, the letter inviting her to membership clearly states that she qualified based upon her work as a background performer, and does not mention any further requirements. The Petitioner has not asserted or submitted evidence to demonstrate that as a requirement for membership, such a performance is considered to be an outstanding achievement among others in her field. In addition, while the Petitioner notes on appeal that in the invitation letter, SAG-AFTRA is referred to as "the most distinguished performer's union in the world," and that membership "is a significant rite of passage and proof of your professional status," neither of these statements reflect its membership requirements. Further, she does not dispute the Director's characterization of the association's membership requirements, which were taken from its website.

Regarding the other two associations to which the Petitioner claims membership, she refers on appeal to letters submitted in support of previous O-1 nonimmigrant visa petitions on her behalf from each of these associations. Both letters indicate that the associations reviewed her qualifications and express the opinion that she is qualified for the requested nonimmigrant visa classification. However, neither letter refers to her membership in the associations, and the record does not include other evidence to support the Petitioner's assertion. Also, the record does not include information regarding the membership requirements for these associations. Therefore, we agree with the Director and conclude that the Petitioner has not established that she meets this criterion.

> 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 Director noted in his decision on the Petitioner's motion that some of the evidence submitted under this criterion was illegible, that other evidence consisted only of links to websites, and that the record lacked evidence to show that articles about the Petitioner and her work in the field were published in a qualifying medium under this criterion.

On appeal, the Petitioner states that all of the website links she provided are active, and again lists links to several websites, including two radio or podcast interviews. However, we note that it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). This includes the submission of evidence into the record to support that eligibility. Here, the weblinks themselves are not published material about the Petitioner, and the record does not include transcripts of the podcasts, or copies of the articles, by which we are able to determine whether she was interviewed about her work in the field of movie and television production.

An interview of the Petitioner that is supported by evidence is shown by a letter from [redacted] who states that she conducted an interview for her show [redacted] which was aired on [redacted] TV on [redacted] 2019 and thereafter. The letter indicates that she interviewed the Petitioner about her work in the field, and is accompanied by two screenshots. It also states that [redacted] TV is a national television channel, but does not provide viewership data for the channel, or the show for which the interview was conducted, let alone comparative statistics for other channels and shows in [redacted]. Although this evidence is sufficient to establish that this interview was about the Petitioner and her work as a producer, it does not demonstrate that the interview was published in a major medium.

Additional evidence submitted in support of this criterion includes copies of newspaper articles which are about the Petitioner and her work as a production professional. These include the following:

- [redacted], 2019
- [redacted]" Weekend Argus, [redacted] 2019
- [redacted]" Voice, [redacted] 2016

In her appeal brief, the Petitioner includes distribution statistics for [redacted] stating that it is the newspaper of [redacted] and that 302,000 copies per week are distributed. In addition, we note that in response to the Director's request for evidence (RFE), she stated that this periodical's daily total readership was 33,085, and also included information regarding the other two publications. However, the Petitioner did not indicate the source of this information, or provide documentary evidence to support its accuracy. Again, it is the Petitioner's burden to establish eligibility through the submission of documentary evidence to support her assertions.

In addition, in order to show that a periodical or other publication qualifies as a major medium, evidence should establish that its circulation (on-line or in print) is high compared to the circulation statistics of other media.[3] Here, the Petitioner has not provided comparative circulation data to establish that the periodicals in which material about her was published qualify as professional or major trade publications or other major media.

[3] See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted With Certain 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.

Other evidence includes an article in a [redacted], Illinois newspaper which is about filming for a movie on which the Petitioner worked that does not mention her, and an undated interview article in Grazia magazine in which only one of ten questions focuses on her work as a production professional. This material is not about the Petitioner, and the record lacks evidence that either publication qualifies as a major medium.

Based on the above analysis, we conclude that the Petitioner does not meet 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)

"Contributions of major significance" connotes that the Petitioner's work has significantly impacted the field. See Visinscaia, 4 F. Supp. 3d at 134. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

In his decision, the Director focused on the multiple reference letters submitted by the Petitioner, but found that they were insufficient to establish that she had made an original contribution of major significance. On appeal, the Petitioner states that the Director's RFE indicated that she did not meet this criterion because the evidence did not contain scholarly articles, and also refers to the language in the Director's decision regarding "scholarly literature search websites." We note, however, that these statements were made when discussing the criterion at 8 C.F.R. § 204.5(h)(3)(vi), which pertains to the Petitioner's authorship of scholarly articles in her field. The Petitioner does not dispute the Director's findings regarding her contributions to the field of movie and television production, and therefore does not establish that she meets this criterion.[4] In addition, she does not indicate that the paper she references on appeal is a contribution of major significance to her field. As such, we conclude that she does not meet 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 Petitioner submitted a letter from [redacted] confirming that she contributed in a variety of roles to productions which were displayed at arts festivals. She also submitted evidence showing that she was credited in films which were screened at film festivals, including [redacted] at the Cannes International Film Festival and others. We agree with the Director that she meets this criterion.

[4] The Petitioner does not specifically indicate that she is challenging the Director's decision relating to her authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi) on appeal, and we therefore consider this issue to be waived. However, because she appears to assert that claim under 8 C.F.R. § 204.5(h)(3)(v), we briefly note that the evidence she presented earlier and on appeal does not meet the requirements of that criterion. Specifically, although she created a Google Scholar profile which lists a paper, [redacted]," and submitted a partial copy of this paper, this evidence does not indicate that the paper was published in a professional or major trade publication or other major media as required.

III. CONCLUSION

The Petitioner has submitted evidence that shows that her work has been displayed at artistic exhibitions or showcases. However, we find that she does not satisfy the criteria relating to membership in an association requiring outstanding achievements, published material about her, and contributions of major significance. Although she also claims eligibility for an additional criteria on appeal, relating to a leading or critical role at 8 C.F.R. § 204.5(3)(3)(viii), we need not reach that additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve that issue.[5] Accordingly, 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. Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). 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 that 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.

[5] 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).