U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20245185

Date: AUG. 23, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an art curator with a degree in architecture, 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 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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 earned a degree in architecture from the National University [redacted] Argentina, in 1997 and established her own architectural studio in that country, while also serving for ten years on [redacted] faculty. The Petitioner entered the United States in 2014 as a B-2 nonimmigrant visitor, and later changed her status to that of an F-1 nonimmigrant student. Since moving to [redacted] Texas, she has started two businesses, specifically an art gallery and a company that makes fashion accessories. The record contains a two-year job offer, which the Petitioner accepted, for employment as a curator with a [redacted] art gallery.

A. Evidentiary Criteria

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 six 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;
- (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 only one of the criteria, pertaining to display at artistic exhibitions. On appeal, the Petitioner maintains that she meets all six claimed criteria.

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criterion pertaining to display. We further conclude that she has submitted sufficient evidence to show that she participated as a judge of the work of others.[1] We will discuss the other claimed criteria below.

[1] Letters in the record indicate that the Petitioner served on a jury at the Municipal Museum of Art [redacted] and on a jury to select works for an exhibition mounted in tribute to a former [redacted] professor. The Director determined that the submitted evidence "does not show that the beneficiary's contributions involved reviewing any work or otherwise acting as a judge of the work of others." We disagree. The letters, on their face, describe judging activity. Issues such as "the criteria for participation . . . as judge" and the significance and scope of the events where the Petitioner served as a judge would have been relevant in the final merits determination, if the proceeding had advanced to that stage, but they do not affect the threshold question of whether she served as a judge of the work of others. Because the Petitioner's work described above establishes that she participated as a judge of the work of others, we need not address the Petitioner's assertion that her work as a curator also entails judging the work of others.

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 was a recipient of the [redacted] Prize at the [redacted] International Biennial of Architecture in 1991. The Director determined that the award was regional rather than national or international.

On appeal, the Petitioner repeats her prior assertion that the [redacted] Biennial "is one of the most important architectural events in [redacted]," showing the work of "prominent figures of international architecture" from around the world. The regulation requires that the prize or award itself is nationally or internationally recognized; the Petitioner cannot meet her burden of proof solely based on the reputation of the awarding entity, or of the event where the award was presented. The Petitioner has submitted background materials about the Biennial, but these documents do not mention the [redacted] Prize. Therefore, the Petitioner has not established that the [redacted] Prize is nationally or internationally recognized.

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 initially submitted an article about the Petitioner's construction of architectural models from the [redacted] 2009 issue of *Deco & Arquitectura*. The Petitioner asserts that "*Deco & Arquitectura* is a major Argentine trade publication," but cites no evidence to support this assertion.

In response to a request for evidence (RFE), the Petitioner submitted another article, from the Spanish online publication *La Cara Buena del Mundo*, profiling the Petitioner's U.S. company that makes fashion accessories using [redacted] obtained from an interior decorating firm. First, we note that the article is dated [redacted] eight days after the petition's filing date. The Petitioner must meet all eligibility requirements as of the petition's filing date. 8 C.F.R. § 103.2(b)(1).

Also, the Petitioner must "establish that the circulation (online or in print) or viewership is high compared to other statistics." 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policymanual. The Director concluded that the Petitioner did not submit circulation data for either publication. On appeal, the Petitioner acknowledges that she did not provide circulation data, but she contends that this "does not mean that [each publication] is not a major trade publication." The Petitioner asserts: "These publications are intended to be read by individuals within the art, design, and architecture industry, which publish articles that are related to that field. Thus, establishing that these publications are considered major trade publications." The specialized subject matter shows that *Deco & Arquitectura* is a trade publication, but not every trade publication is a *major* trade publication. The burden is on the Petitioner to establish that the publications qualify as "major"; there is no presumption that every trade publication is a *major* trade publication. Here, the Petitioner has not established that *Deco & Arquitectura* is a major trade publication.

The Petitioner has also not submitted evidence to support her claim that *La Cara Buena del Mundo* is a trade publication "intended to be read by individuals within the art, design, and architecture industry"; the Petitioner has not submitted information about the publication's content apart from the one submitted article. But the larger point is that the Petitioner has not established that *La Cara Buena del Mundo* qualifies as a major trade publication or other major media.

The Petitioner has not satisfied 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).

In response to the Director's RFE, the Petitioner asserted that she performed in a leading role for her own architectural studio that she had operated in Argentina. Because the Petitioner founded and ran the business, we agree with the Petitioner that she had a leading role with that studio. But she must also establish that the studio has a distinguished reputation, defined as marked by eminence, distinction, or excellence or befitting an eminent person. 6 *USCIS Policy Manual*, *supra*, at F.2 appendix.

The Petitioner asserts that her studio's distinguished reputation is evident from its "prestigious and renowned clients." The identification of some of the studio's clients, however, does not establish that the Petitioner's firm has a distinguished reputation in the absence of further documentation. The record does not establish how and why those clients came to choose the Petitioner's studio, nor does it provide information about the projects the studio undertook for those clients.

We note that one of the claimed clients is, itself, an architectural design firm. The Petitioner submitted printouts from that firm's website, indicating that the architectural design firm has won more than 20 awards and honorable mentions "in national and international competitions." The Petitioner has not established that her own studio has earned similar accolades.

The Petitioner has not satisfied this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner submitted a letter from an accountant, indicating that the Petitioner earned over Arg$50,000 per year, whereas "[t]he income of other artists did not exceed . . . $22,000.00 per year." The letter cites no sources and includes no supporting evidence. The English translation of the letter refers to the Petitioner as an "architect-artist" ("*arquitecta-artista*" in the original Spanish) while comparing her earnings to "[t]he income of other artists" ("*artistas*") rather than other "architect-artists."

The Director determined that "the record does not contain evidence of the beneficiary's salary and remuneration," and that the Petitioner did not submit data to allow a comparison of the Petitioner's earnings to those of others in the field. On appeal, the Petitioner quotes the figures from the accountant's letter, but these figures do not directly document the Petitioner's income; specify the services that the Petitioner performed; identify any source for the claimed average income of "other artists"; or show that the comparative figures relate to individuals performing similar work to that of the Petitioner. We agree with the Director that the letter does not provide enough information to make the comparison that the regulatory language demands.

The Petitioner has not satisfied this criterion.

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 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 submitted evidence depicts a largely local reputation, first in [redacted] and later in [redacted]

Furthermore, we note that some of the Petitioner's evidence concerns her work in architecture, and other evidence relates to her work as an art curator, while a small amount of material in the record addresses her work making fashion accessories. While the Petitioner refers to herself as a "visual artist," it is not apparent that the use of this umbrella term is sufficient to place all her different endeavors into one identifiable, collective "field." This is particularly relevant in the context of the Petitioner's architectural work, which appears to have ended when she left Argentina in 2014. The Petitioner must establish that she seeks to enter the United States to continue work in the area of claimed extraordinary ability. Section 203(b)(1)(A)(ii) of the Act. The Petitioner relies heavily on her architectural work in her claims to have satisfied several criteria, such as those relating to prizes and a leading or critical role. The Petitioner's business ventures during seven years in the United States have not involved architecture, but rather working as an art curator, and making fashion accessories, and therefore she has not shown that she intends to continue working in the field of architecture. As a result, any recognition she may have previously earned as an architect is of peripheral relevance to her intended work as an art curator and creator of fashion accessories.

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.