U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20453097

Date: JULY 7, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, who operates a weight loss center, 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.

When the Petitioner filed her appeal in October 2021, she asserted that she would submit a brief within 30 days. To date, eight months later, the record does not contain any further brief, and the Petitioner has requested that we expedite the processing of the appeal. Therefore, we consider the record to be complete as it now stands.

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 holds a medical degree and, as she describes it, "has extended training in the area of psychology, business coaching, and cosmetology." The record contains little information about the Petitioner's employment in her native Ukraine, but the record indicates that she owned a business there called [redacted] The Petitioner entered the United States in 2015 as a B-1 nonimmigrant visitor for business. Since that time, she has been in the United States as either a B-1 visitor or an E-2 nonimmigrant treaty investor, running her own business, [redacted] which operates [redacted] in [redacted] Georgia.

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 four of these criteria, relating to lesser nationally or internationally recognized prizes or awards; membership in associations that require outstanding achievements; original contributions of major significance; and authorship of scholarly articles.

The Director concluded that the Petitioner met only one criterion, relating to authorship of scholarly articles. On appeal, the Petitioner asserts that she meets all four claimed criteria. Upon review of the record, we agree with the Director that the Petitioner has satisfied only one criterion. 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 initially claimed five qualifying prizes or awards. Following a request for evidence (RFE), the Petitioner stated that "[t]he most significant awards" she received are the three described below.[1]

[1] The Petitioner's other two claimed awards are a diploma recognizing her "successful implementation of [redacted]" from the international [redacted] and the Ukrainian [redacted] and a diploma from the Department of Medical Rehabilitation, Physiotherapy and Balneology at the [redacted] recognizing her work training "highly qualified personnel" for "health and beauty centers." Because the

The Civil Service Component of Accountability and Effectiveness of Ukrainian [redacted] gave the Petitioner an undated citation for providing "professional and specialized training in Conflict Management" to "judges and court personnel." In 2006, the Citywide Information Forum of the State Service of Employment in [redacted] Ukraine, gave the Petitioner a clock and a diploma "for her fruitful cooperation with [redacted] Employment Centre on the issues of implementation of the governmental policy for public employment." Finally, the Petitioner received a certificate in 2007 from the [redacted] the [redacted] and the [redacted]

In the RFE, the Director asked for evidence that the claimed prizes meet the requirements set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(i). In response, the Petitioner provided her own declaration with additional claimed details about the awards, but she did not submit any further corroborating evidence. A petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Furthermore, section 203(b)(1)(A)(i) of the Act requires "extensive documentation" of recognition. Because the Petitioner has not submitted evidence to support her assertions, she has not met this burden.

The Director concluded that the Petitioner had not established "that the primary purpose of the prizes or awards was to recognize excellence in the beneficiary's field." The Director also noted that some of the awards appear to be "local or regional in nature."

On appeal, the Petitioner again asserts that she has received qualifying awards, but she does not cite any evidence to support her assertions. The 2006 Citywide Information Forum award was granted by a municipal authority, with no evidence of wider recognition. The undated citation relating to conflict management training is from an organization that received funding from the European Union, but it does not follow that the citation is a nationally or internationally recognized prize or award from the European Union itself. The Petitioner has not shown that her receipt of either of these documents attracted recognition at a national or international level. The certificates appear to recognize the Petitioner's completion of specific short-term projects for what appear to be clients, rather than excellence in her field.

Regarding the 2007 [redacted] certificate, the Petitioner asserts that she presented a project at a competition for which one of the judges was [redacted] the founder of [redacted] The Petitioner asserts: "There could be no higher measure of excellence than winning a [competition] that is judged by the founder of the method that was a subject of the competition." [redacted] signed the [redacted] certificate, in his capacity as president of the [redacted] But the record does not reliably corroborate the Petitioner's narrative of the events surrounding her receipt of the certificate. The English translation of the key portion of the certificate reads:

Petitioner has not addressed the Director's conclusions regarding these two claimed awards, we conclude that she has abandoned her claims regarding them. *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 (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).

Certificate
of
[redacted] Competition Winner
This is issued to
[the Petitioner]
to confirm her participation in Research-to-Practice Workshop
[redacted] in Action
(theory and practice 5 hours in total)

Apart from the Petitioner's name and the two signatures, the text of the original certificate is printed except for the phrase "*победитель конкурса* [redacted]," translated as [redacted] Competition Winner," which has been handwritten under the word "*Сертификат*" ("Certificate"). Apart from this handwritten addition, the certificate includes no other reference to any competition, and the Petitioner has submitted no other evidence about the claimed competition.

Whatever the circumstances of this handwritten addition, the printed text shows that the certificate was printed for the purpose of documenting participation in a five-hour training workshop, rather than the receipt of any award arising from that participation. The Petitioner has not established that the completion of occupational training amounts to a nationally or internationally recognized prize or award for excellence in her field.

With respect to the requirement that the awards recognize excellence in the Petitioner's field, the Petitioner does not explain how any of these claimed awards directly relate to her current field of endeavor, which involves management of a weight loss clinic.

The Petitioner has not documented her receipt of qualifying prizes or awards.

> *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).

The Petitioner claims to satisfy this criterion through her membership in the All-Ukrainian Association of Physiotherapists and Balneotherapists (AAPB) and the All-Ukrainian Association of Applied Aesthetics Experts (AAAAE). The Petitioner has not shown that either organization requires outstanding achievements of its members, as judged by recognized national or international experts.

The letter attesting to her membership in the AAPB states that the Petitioner became a member in 2000, "for active participation in scientific and practical work, the development of innovative drives in physiotherapy and balneology sectors, based on the high results shown, on the recommendation of [an] 'AAPB' honorary member."

The letter confirming the Petitioner's AAAAE membership describes projects in which the Petitioner participated, but does not indicate that the organization requires outstanding achievements as a condition of membership. Rather, the letter indicates that the Petitioner was involved in the organization since its incorporation in 2001, and "took an active part in its development."

On appeal, the Petitioner disputes the Director's conclusion that "[t]he listed associations do not require outstanding achievement as an essential condition for admission to membership." The Petitioner contends that this conclusion "is not founded on any evidence provided to the USCIS." The burden of proof is on the Petitioner to establish eligibility; there is no presumption that the Petitioner's memberships meet the requirements, which the Director must then rebut. The minimal information that the Petitioner has provided about the associations and their membership requirements does not suffice to meet the Petitioner's burden of proof.

The Petitioner has not established that her memberships meet the regulatory requirements.

> *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 initially stated that she meets the requirements of this criterion through the following contributions:

- Development of the [redacted] training course;
- Development of the '[redacted]';
- Provision of "services on gathering and analysis of . . . information for developing of multifunctional cosmetology equipment" on behalf of [redacted]; and
- A cooperation agreement between [redacted] and [redacted] for "developing and implementing innovative protocols and standards in dermatocosmetology for the purpose of studying, teaching, advance[d] training and the exchange of scientific-research expertise."

The Petitioner noted that she has registered copyrights for her weight loss programs. The registration of a copyright indicates originality, but does not establish major significance. A copyright protects intellectual property; it does not, however, demonstrate a work's major significance. Promotional materials for the Petitioner's business ventures do not establish the significance of those ventures.

The Petitioner submitted copies of two cooperation agreements into which [redacted] entered. In 1999, the company agreed to assist with the testing cosmetology equipment developed by [redacted]. In 2000, [redacted] and [redacted] agreed to discuss "[j]oint research in the fields of mutual interest" and "to promote and contribute [to] direct cooperation." The Petitioner did not document the results of either of these agreements or establish their major significance in the field.

In response to the Director's RFE, the Petitioner asserted that her "work is of major significance because obesity is . . . a serious medical condition." At issue here is not whether obesity is a significant health risk, but rather whether the Petitioner's original contributions are, themselves, of major significance in *treating* obesity. The Petitioner has shown that she operates a weight loss center, but she has not established the major significance of her contributions.

In the denial notice, the Director concluded that the Petitioner's "evidence lacks specificity regarding how her achievements have affected the field or how the asserted achievements are being reproduced within the field," or "how others emulate her techniques or have widely applied her results."

On appeal, the Petitioner states that her "health centers in Ukraine participated in the trials of the new equipment [from [redacted] that is now commonly used by professionals." The Petitioner does not show that she participated in the design or development of the equipment. Her company was one of several companies that tested the equipment. She has not demonstrated that her company's testing of [redacted]s equipment, in particular, was an original contribution of major significance.

The Petitioner also asserts that she "published 48 articles in reputable professional publications." These articles are covered by a separate criterion, at 8 C.F.R. § 204.5(h)(3)(vi), which the Director granted. However, to establish that those articles are also contributions of major significance, the Petitioner must submit evidence to that effect, which requires more than simply documenting their existence. She must show that the articles have had an impact throughout the field, which she has not done.

The Petitioner has not established the major significance of her original contributions. For instance, she has not submitted studies showing that her methods represent a significant improvement over existing weight loss techniques, or documentation showing widespread adoption of her methods.

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 sustained national or international 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 recognition of her work on a scale 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.