U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20272207

Date: JUNE 13, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a media director in the advertising field, 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. 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 worked in the advertising industry in her native Brazil, as a media innovation manager for [redacted] and then as a media director for [redacted] and [redacted] The Petitioner entered the United States in 2018 as an L-2 derivative nonimmigrant and began working in [redacted] Oregon, as a planning director and senior partner for [redacted], a marketing and advertising firm that represents several internationally known companies and brands. At the time she filed the petition, the Petitioner was [redacted] regional media director for [redacted] In 2021, after the petition's filing date, she was promoted to [redacted] global media director for [redacted].

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 initially claimed 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;
- (vi), Authorship of scholarly articles;
- (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 three of the criteria, pertaining to receipt of prizes or awards; published material about the individual; and display. On appeal, the Petitioner asserts that she also meets the criteria pertaining to authorship of scholarly articles and leading or critical roles for distinguished organizations. The Petitioner does not contest the Director's conclusions regarding her remuneration, and therefore we consider that issue to be abandoned.[1]

Because the Director determined that the Petitioner had met three of the initial evidentiary criteria, the Director undertook a final merits determination to evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. The purpose of a final merits determination

[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 (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).

is to analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[2]

Because the Director's decision includes a final merits determination, we will examine that issue here. But first, we will explain why our *de novo* review of the record does not support the Director's conclusion that the Petitioner met the initial evidentiary threshold.

> *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 chairman of [redacted] Festival of Creativity confirms that the Petitioner worked on three advertising campaigns that won awards at the festival (and several other nominated projects). An [redacted] campaign for an [redacted] manufacturer won a "Bronze [redacted]" award in 2015, and an [redacted] campaign for a [redacted] company won two "Silver [redacted]" awards in 2016.

The Director concluded, without further comment, that these awards satisfy the regulatory criterion. We disagree.

The evidence in the record does not establish that the Petitioner was a named recipient of the [redacted] awards, as opposed to a participant in award-winning projects. The wording of the regulation, reinforced by policy, requires each petitioner to establish "the person's receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes." *See* 8 C.F.R. § 204.5(h)(3)(i); 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policymanual. In this instance, the record is ambiguous as to whether the Petitioner or her employer received the awards. The chairman's letter indicates that the prizes were "awarded to" the agencies that produced the campaigns. Because the burden of proof is on the Petitioner, she must establish, by a preponderance of the evidence, that she was named as a recipient of the awards. The ambiguous evidence in the record does not meet this burden.

> *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 submits copies of eight articles from various trade publications. The Director determined that two of the articles met the requirements of the criterion; on appeal, the Petitioner maintains that all the submitted articles qualify. On review, we conclude that the Petitioner has not met her burden of proof regarding any of the submitted articles.

Three of the articles appeared in *Meio & Mensagem*. Of these, only the earliest and shortest, a three-sentence piece from 2018, is about the Petitioner. It reported the Petitioner's hiring at [redacted] and

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[2] *See also* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

provided some background about her previous employment and the portfolio awaiting her at her new employer.

Each of the other two articles from *Meio & Mensagem* mentions the Petitioner once. A 2019 article about a [redacted] ~~ad~~ campaign focusing on female empowerment names several people, including the Petitioner, who worked on the campaign. A 2020 article about working conditions during the COVID-19 pandemic quotes the Petitioner regarding work arrangements at [redacted] but does not otherwise mention her.

The remaining five articles all appeared within days of one another in late [redacted] and early [redacted] of 2016, all reporting that [redacted] had hired the Petitioner. Given the near-simultaneous publication of the articles, similarities of wording, and the use of the same photograph of the Petitioner, the articles appear to derive from an unnamed common source.[3] Four of the articles lack the required author credit. The only credited article appeared on the website of [redacted] Ad School, which referred to the Petitioner as "our media course coordinator."

Evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (online or in print) is high compared to other circulation statistics and who the intended audience of the publication is. 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. In this case, the submitted evidence does not establish that the published materials appeared in publications that meet the regulatory requirements at 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner submits a page of translated background information about *Meio & Mensagem*, copyrighted to the publication itself. The document cites an Ipsos Connect study, stating that it "confirmed what everyone already imagines: *Meio & Mensagem* is an absolute leader in reading in the market." The Petitioner cites the same "research conducted by Ipsos Connect" to support the claim that *Meio & Mensagem* is "the most-read publication geared towards communications professionals . . . in Brazil." The record does not contain the Ipsos Connect report, its data, or a web address where that information is available. Identifying the source alone in relation to this issue does not satisfy the Petitioner's burden. The publication's description of itself as a market leader lacks context and corroboration.

The Petitioner points to SimilarWeb data showing the number of visits to the websites of the various publications, but raw numbers do not provide the comparison to other circulation figures required by the *USCIS Policy Manual* guidance.[4] The SimilarWeb data does provide comparative evidence in the form of rankings by country and category, as well as globally. *Meio & Mensagem*'s website has a global rank of 52,526; a country rank of 2585; and a category rank of 4582 in "News and Media." The Petitioner does not establish that these rankings establish *Meio & Mensagem* as a major trade publication or other major media. Submitted web traffic data from SimilarWeb do not indicate that the other websites are major trade publications. The highest rank for any of the publications is a "Marketing" category rank of 1156 for *Club de Criação*.

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[3] Some of the articles are presented as an announcement from [redacted]

[4] Evidence of published material in professional or major trade publications or in other major media publications about the person should establish that the circulation (online or in print) or viewership is high compared to other statistics and show who the intended audience is, as well as the title, date, and author of the material. 6 *USCIS Policy Manual*, supra, at F.2 appendix.

For the reasons discussed above, the Petitioner has not met her burden of proof to show that she satisfies all the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner wrote three articles (two with a co-author) offering advice to others in her field. In one article in *Meio & Mensagem*, the Petitioner stated that poor economic conditions did not rule out optimism for opportunities in the advertising field. A co-written article in the same publication was aimed at Brazilian advertisers working abroad. She and the same co-author also wrote a piece in *Adnews*, discussing the launch of a new advertising campaign and urging colleagues to choose cultural relevance over superficial opportunism.

The Director determined that the articles are not scholarly. The Petitioner argues that the articles are intended for a learned audience within the marketing and advertising field. We need not address this specific issue, however, because, as above, the Petitioner has not shown that the publications are "major" as the regulation requires.

Evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (online or in print) is high compared to other circulation statistics and who the intended audience of the publication is. 6 *USCIS Policy Manual*, *supra*, at F.2 appendix.

We discussed the SimilarWeb data for *Meio & Mensagem* above. Data for *Adnews* show a global rank of 590,235, country rank of 26,005, and a "News and Media" category rank of 35,340. These figures do not readily indicate that *Adnews* is a major trade publication or other major media.

The Petitioner was also one of three credited authors of [redacted] The record does not identify this piece as having appeared as part of any larger publication such as a journal or magazine, and therefore it appears to exist as a standalone publication. The Petitioner has not submitted any evidence to establish the extent of the publication's circulation. The publication is associated in an unspecified way with a website called Big Shifts, about which the record provides little information except for information about the site's founder. The record does not contain the complete translated text of [redacted]; instead, the Petitioner has submitted all 23 pages of text, reduced to fit onto a single page, with a translation of a two-sentence synopsis. Portions that are in sufficiently large print to be legible are in Portuguese with no English translation provided as required by 8 C.F.R. § 103.2(b)(3). The reduced-size, foreign-language printout does not establish that [redacted] is a scholarly article, or that it appeared in a publication that meets the regulatory requirements.

In light of the above analysis, 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 two claimed criteria, pertaining to display at artistic exhibitions and leading or critical roles for distinguished organizations, cannot change the outcome of this appeal. Therefore, we reserve these two issues as they relate to the

initial evidentiary criteria.[5] We will, however, consider them as part of the overall record in the context of the final merits determination, discussed below.

B. Final Merits Determination

As noted above, the Director's decision included a final merits determination, based on the Director's conclusion that the Petitioner had met three of the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3). Thus, the Petitioner structured her appeal around the assumption that she had satisfied the initial criteria. Therefore, we will discuss the essential question of whether the record as a whole demonstrates that the Petitioner has sustained national or international acclaim and that is one of the small percentage at the very top of the field of endeavor, whose achievements have been recognized in the field through extensive documentation. As explained below, we determine that the Petitioner has not established eligibility.

We agree with the Petitioner's objection that the final merits determination in the Director's decision consisted entirely of discussion of initial criteria in isolation, without consideration for how they relate to the record as a whole. For example, when the Director concluded that the Beneficiary had won qualifying awards under 8 C.F.R. § 204.5(h)(3)(i), the Director stated: "There is no evidence of any awards since 2016, a period of more than four years preceding the filing date of the petition." The Petitioner correctly asserts that an individual can continue to be acclaimed even in the absence of more recent awards.

Nevertheless, the record as a whole does not support the conclusion that the Petitioner has achieved sustained national or international acclaim and risen to the very top of her field of endeavor.

The Petitioner relies heavily on her employment with well-regarded advertising agencies, and her work with important clients. But a position of importance is not synonymous with national or international acclaim; rather, it contributes toward satisfying one of the lesser evidentiary criteria, at 8 C.F.R. § 204.5(h)(3)(viii). However well-regarded the Petitioner may be within the companies that have employed her over the course of her career, the totality of the evidence does not establish that the Petitioner has sustained acclaim at a national or international level. Recognition primarily among her close colleagues alone does not establish the level of acclaim necessary to qualify for the highly restrictive immigrant classification she seeks.

The Petitioner has risen to a high-ranking position in the advertising and marketing industry, and her recent promotion as global media director for [redacted] account is a position of significant responsibility for a prestigious client that has, in the past, set high standards for marketing and advertising, as the record shows. However, in the absence of specific evidence to meet the Petitioner's burden, responsibility of this kind does not automatically or inevitably translate into sustained national or international acclaim, as the statute and regulations require.

[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); *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).

Because the Petitioner was not yet [redacted] global media director for [redacted] when she filed the petition, that promotion cannot establish eligibility at the time of filing as required by 8 C.F.R. § 103.2(b)(1). Her prior position still involved significant responsibility, as it covered [redacted] in several overseas territories. But while the Petitioner has established [redacted] importance as a client, and its reputation for creative and effective advertising, the record does not show the extent to which the Petitioner's work enhanced or contributed to that reputation. The record contains an article listing [redacted] but the article does not show that the Petitioner had a significant role in any of the campaigns profiled. The article begins by discussing [redacted] and does not mention [redacted] at all. Likewise, with the exception of a co-founder of [redacted] the article does not name the advertising agency personnel behind the creation of the advertisements. As a result, the article cannot directly contribute to the individual acclaim and recognition of those creators; readers would not learn their names from reading the article.

The article described above sets the bar for the level of recognition that a [redacted] advertisement can attain, but the Petitioner does not show and the record lacks evidence that she played a significant role in the creation of [redacted] ads for the Asian, Pacific, and Latin American markets that had a comparable impact. The Petitioner also does not submit sales data or other information to show that her work, as opposed to more general factors such as brand recognition, increased sales of [redacted] products in those markets.

The Petitioner asserts that her work was displayed at two "artistic showcases," because she worked on an advertising campaign that was "displayed" at the 2016 [redacted] Festival of Creativity and "on [redacted] a virtual exhibition/showcase." This is another instance in which the Petitioner has not established that the success of a project has resulted in individual acclaim or recognition for her.

Although the Petitioner refers to the [redacted] and [redacted] as two separate "showcases," the evidence of display at the [redacted] consists entirely of screen captures from [redacted] The Petitioner's name does not appear on the screenshots in the record. Attempts to view the complete web page were unsuccessful because one must log in to the site for full access. The fragmentary materials submitted do not establish that the advertisement was displayed as the Petitioner's work. A partial page reproduced in the record shows that search results can be filtered by "Category," "Award," "Country," "Agency," "Advertiser," "Brand," "Campaign," and "Media." There is no search category for the names of individual participants.

The "About Us" page from [redacted] states, in part: "with more than 25,000 members in its Agency Category, [redacted] represents the collective voice of the advertising industry, which includes a Creative Library featuring more than 200,000 campaigns," adding hundreds more works each week. The same page from the website indicates that over 36,000 companies have [redacted] profiles, and that the site shows nearly 300,000 advertisements per month. These figures do not indicate that inclusion in [redacted] is highly selective, limited only to acclaimed individuals at the top of their field. Rather, [redacted] describes its "Creative Library" as "[a]n inexhaustible collection of fully credited ad campaigns."[6]

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[6] In addition to the high volume of work included on the site, the underlying purpose of the "showcase" appears to be commercial rather than artistic, with the intended audience being "brands and prospective new business partners." This distinction is relevant in the context of 8 C.F.R. § 204.5(h)(3)(vii), which requires display at *artistic* exhibitions or showcases.

Further above, we discussed published material about the Petitioner. These materials do not refer to the Petitioner as an acclaimed or recognized figure in her field. Most of them appear to amount, in essence, to short press releases in which "[redacted]" (to quote three of the similarly-worded articles). A similar announcement accompanied the Petitioner's hiring at [redacted] in 2018, but the record does not show that the Petitioner's work there has attracted coverage commensurate with sustained national or international acclaim. This is not to say that we consider these articles only in isolation, without regard to the other evidence in the record, but it remains that the Petitioner has not shown that her work has attracted significant media attention within her field. Most of the articles are only a few sentences long; the two longer articles briefly mention the Petitioner, but she is not the subject of either article. The Petitioner has not shown that these press releases translate to national or international acclaim, and that only those at the top of the field receive this level of media attention.

With respect to published articles *by* the Petitioner, the Director focused on the determination that the articles are not sufficiently scholarly to meet the criterion at 8 C.F.R. § 204.5(h)(vi). Beyond the strictures of the criterion, the Petitioner has not explained how, or shown that, her articles have either contributed to acclaim in her field, or that she was invited to contribute them as a result of that acclaim. The articles appear to consist of general advice for colleagues in the field, and the Petitioner has not shown that this advice has had a perceptible impact on the industry.

As explained above, we conclude that the Petitioner has worked at major agencies for prestigious clients, but has not submitted sufficient documentation showing that she herself has earned sustained national or international acclaim in her field to meet the Petitioner's burden of proof in this matter.

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. Review of the record in the aggregate 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 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.