U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20055457

Date: JUN. 13, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a dance instructor, 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 Petitioner had satisfied only two of the ten initial evidentiary criteria, of which she must meet at least three.

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)(A) 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
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> (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 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

Because the Petitioner has not indicated or demonstrated that she has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director determined that the Petitioner fulfilled the following two criteria: judging at 8 C.F.R. § 204.5(h)(3)(iv) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). On appeal, the Petitioner maintains eligibility for three additional criteria. After reviewing the record, the Petitioner did establish that she meets the requirements of at least three criteria.

A. Evidentiary Criteria

> *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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field.[1] 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.

On appeal, the Petitioner asserts that she "has contributions of major significance to the DanceSport industry of the State of [redacted] as well as the United States, by virtue of being a competitive coach for highly successful dancers, who have won prestigious national and international ballroom dance championships and international dance events from 2009 till present." Specifically, the Petitioner cites to three reference letters discussing her work with students. [redacted] described the Beneficiary's coaching of [redacted] "who at the [redacted] became a champion of the country and since did not lose that title in any of the age-groups." Likewise, [redacted] listed various students of the Beneficiary and stated that "they are Champions of [redacted] and winners of top places in such

[1] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

prestigious international dancesport competitions." Similarly, [redacted] mentioned several topics the Beneficiary covered at the [redacted] Dance Academy and opined that her "students are among [redacted] most outstanding competitive dancers, who have achieved impressive success at the most important international level competitions in dancesport," and "[t]he results that [the Petitioner's] students achieved at these prestigious international competitions, placing as high as in top 10 and top 15, validated the decision to trust them with the role of representatives in our country." Further [redacted] stated that "our academy's training camps led by [the Petitioner] have resulted in significant improvement in our student's performance and have invited increased interest toward our Academy's work."

The Petitioner also contends that her "work also impacted the DanceSport industry of the United States for a sustained period of times, starting 2018 through the present, as evidenced by the accomplishments of her students at [redacted] DanceSport Club." She references a letter from [redacted] and [redacted] who indicated that the Petitioner "has been coaching us and supervising our training process at [redacted] Dance Sport Club since the middle of 2019, making a great contribution to our achievements."

In this case, the Petitioner did not demonstrate how the personal achievements of her students represent original contributions of major significance in the field. Moreover, the letters do not articulate how the Petitioner has impacted the overall field beyond the schools at where she taught or the students with whom she coached.[2] Furthermore, while the letters list various dance finishes of her students, they do not elaborate and explain the significance of these placements in the field or how the Petitioner's coaching of these students to various finishes rises to the level of original contributions of major significance consistent with this regulatory criterion. Although the letters praise the Petitioner for her coaching abilities, they do not show how the Petitioner has impacted the field in a majorly, significant manner.

Here, the letters do not contain specific, detailed information explaining the unusual influence or high impact that the Petitioner's work has had in the overall field. Letters that specifically articulate how an individual's contributions are of major significance to the field and its impact on subsequent work add value.[3] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[4] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). We note that her contributions to the dance schools and academies are more applicable to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), which the Director determined that the Petitioner satisfied.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that she has made original contributions of major significance in the field.

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[2] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[3] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

[4] *Id. See also Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

> *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).

For the first time on appeal, the Petitioner claims eligibility for this criterion. However, we will not consider new eligibility claims or evidence in our adjudication of this appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reason opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal of any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).[5]

Accordingly, the Petitioner did not demonstrate that she satisfies 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).

In order to meet this criterion, a petitioner must demonstrate that her salary or remuneration is high relative to the compensation paid to others working in the field.[6] In his decision, the Director stated that while the Petitioner initially submitted a letter from an accountant certifying the Petitioner's employment as a ballroom dance coach earning an hourly rate of [redacted]260 and the minimum wage in [redacted] is [redacted] 29.12, "there is no indication of the minimum wage data is for professionals in [the Petitioner's] field or the minimum wage in the country of [redacted] in general." Further, the Director indicated that the Petitioner submitted short-term payments, a report from btl.gov reflecting hourly and monthly data of workers from 1997 – 2017 rather than from dance instructors, and a report from indeed.com showing the average salaries of dance instructors in the United States rather than high salaries. In addition, the Director concluded that the Petitioner did not offer any supporting financial documentation, such as payroll record or income tax forms, demonstrating the Petitioner's actual earnings for any given time.

In responding to the Petitioner's RFE documents, the Director indicated that the Petitioner submitted a U.S. Dollar [redacted] FX Spot Rate chart from 2014 – 2021 and a list of wage recipients in 2014 from the OL-SI Association for Promoting Ballroom Dancing in [redacted] for four other individuals. The Director further stated:

> [The Petitioner] also submitted a printout from plando.co of the OL-SI accounting system showing [the Petitioner] worked 150 hours in 2014 and a SalaryExpert report showing Dance Teachers in [redacted] earn an average (not high) salary range from 63,598 [redacted]/yr to 74/350[redacted]/yr. This evidence establishes that [the Petitioner] earned a higher salary than other instructors at OL-SI but it does not establish that [the Petitioner has] earned a significantly high salary in relation to others in the greater field. We must also note that in criterion V, the letter from [redacted] indicates that [the

[5] The Petitioner did not assert eligibility for this criterion either at the initial filing of the petition or in response to the Director's request for evidence (RFE).

[6] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

> Petitioner] found OL-SI and it would stand to reason that [the Petitioner] would earn a higher salary that others within the organization. Further [the Petitioner] did not submit any information to show how many hours the other instructors worked compared to [the Petitioner].

The Director also indicated that the Petitioner provided her OL-SI payroll statements for 2016 - 2018 and reports for the U.S. Bureau of Labor Statistics choreographers for 2016 - 2018 and found:

> According to [the Petitioner's] payroll statements from OL-SI [the Petitioner] earned only $1,471.10 higher than the lowest wages in 2016, $3852 higher than the lowest wages in 2017, and $6,384 less than the lowest wages in 2018 according to the U.S. Bureau of Labor Statistics. Further we must note that [the Petitioner] seek[s] to enter the United States as a Dance Instructor. The U.S. Bureau of Labor Statistics reports [the Petitioner] provided are for occupations of Choreographers. While the two [] occupations are related a Dance Teacher generally teaches how to execute dance steps while a Choreographer teaches a string of movements to do with accompanying music for a performance. Thus, [the Petitioner has] not established that [she] meet[s] this criterion.

On appeal, the Petitioner submits additional evidence "[t]o overcome these contentions." Again, we will not consider new evidence that was not previously presented before the Director. *See Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec. at 533. In this case, the Director evaluated the offered evidence and correctly determined that the Petitioner did not demonstrate that she commanded a high salary in relation to other dance instructors. As discussed by the Director, the Petitioner presented evidence comparing her wages to the minimum wages in [redacted] to the average wages in [redacted] to the average wages of dance instructors in [redacted] and limited to the wages of others at OL-SI.[7] The Petitioner did not compare her salary to the high salaries of dance instructors in [redacted] showing that she commands a high salary. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

For these reasons, the Petitioner did not establish that he meets this criterion.

[7] In addition, although she used her wages in [redacted] she submitted comparable evidence to the wages of dance instructors, as well as choreographers, in the United States. *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (providing that persons working in different countries should be evaluated based on the wage statistics or comparable evidence in that country, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States).

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).[8]

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve this issue.[9]

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 those progressing toward the top. *Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). 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,

[8] *See also* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3).

[9] *See INS v. Bagamasbad*, 429 U.S. at 25-26 (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also L-A-C-*, 26 I&N Dec. at 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

and 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). The record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

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.