U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23060846

Date: NOV. 15, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a public relations (PR) director, 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. The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

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 PR from [redacted] University in 2014. She worked for various agencies as a PR specialist from 2012 to 2015, and as a freelance PR manager from 2015 to 2017. In 2017, she founded [redacted], a PR agency in Russia where she served as director. Since March 2019, the Petitioner has been intermittently in the United States as a B-2 nonimmigrant visitor. The Petitioner intends to establish her own new PR firm in New York.

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;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner had not met any of the criteria. On appeal, the Petitioner maintains that she meets five of the criteria, and that she has submitted evidence comparable to receipt of a lesser nationally or internationally recognized prize or award.

As explained below, we agree with the Director that the Petitioner has not satisfied at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

> *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 wording of the regulation requires the prizes or awards to be received by the individual, not by his or her employer. 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policymanual.

The Petitioner documented her employers' receipt of various awards. The Petitioner asserted that individuals do not receive PR awards in Russia, and therefore her employers' receipt of the awards should be considered comparable evidence under 8 C.F.R. § 204.5(h)(4).

The chief executive officer of [redacted] where the Petitioner worked from 2013 to 2015, stated that "Russian National awards in the field of PR . . . are given to agencies/companies that implemented certain projects" and "can't be given to a specific person." The official stated that the Petitioner contributed significantly to the projects that won awards for [redacted]

In denying the petition, the Director observed that the Petitioner did not personally receive the awards. On appeal, the Petitioner repeats the claim that there are no individual PR awards in Russia, and that her employers' receipt of awards should therefore constitute comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence when a given criterion does not readily apply to the petitioner's occupation. But the burden is on the Petitioner to show that the criterion does not readily apply. We acknowledge the Petitioner's former employer's assertions, but the Petitioner has not submitted statements or information from officials of the awarding entities themselves to establish that the entities only give awards to organizations, and not to individuals. The Petitioner has also not established that her former employer is in a position to speak for those organizations.

Also, the Petitioner must establish that the submitted evidence is comparable to the criteria described in the regulation. *See* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. Involvement in an award-winning project does not necessarily reflect the awarding entity's intention to recognize the work of an individual participant. The strongest evidence of that intention would generally come from the awarding entity itself, rather than an award recipient such as the Petitioner's former employer. The Petitioner has not submitted evidence or statements from the awarding entities to confirm that the Petitioner's contributions to the projects weighed significantly on the selection of the award recipients, such that the awarding of the prizes constituted recognition of the Petitioner's excellence in her field of endeavor.

With regard to the selection process, we acknowledge a letter from [redacted], head of the Department of Public Relations in Business at [redacted] University. [redacted] indicated that he has served "as a Jury Member of the [redacted] Awards." He also stated that that the various awards "clearly demonstrate[] success and recognition of [the Petitioner's] outstanding PR work . . . because she was the one who created, led, and managed the PR campaigns of the projects." But the Petitioner's employer did not win an award from [redacted] Rather, the project was named as a finalist for such an award. [redacted] did not claim to have served on juries for the other awarding entities, and therefore he has not established that he can directly attest to the other entities' selection processes.

The Petitioner has not met her burden of proof to satisfy the requirements of this criterion, or to establish that her evidence is comparable to what the regulation requires.

> *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 asserted that she met this criterion through memberships in the Russian Public Relations Association (RASO) and the Global Women in PR (GWPR). On appeal, the Petitioner addresses only

her claimed RASO membership, and therefore we consider her claims regarding GWPR to be abandoned.[1]

Initially, the Petitioner submitted a letter from the vice president of RASO, stating that the Beneficiary's achievements qualified her for membership in the organization.

The Director issued a request for evidence (RFE), noting that the Petitioner did not submit a copy of her membership certificate in RASO. The Director asked the Petitioner to submit "[t]he section of the association's constitution or bylaws which discuss the criteria for membership."

In response, the Petitioner submitted another letter from RASO's vice president, who asserted: "we only accept individuals who have distinguished themselves as the most extraordinary PR professionals among their peers. We invited [the Petitioner] to join our organization because she has distinguished herself among her peers." The reference to an invitation to join appears to conflict with the previous letter from this same official, indicating that the Petitioner filed an application to join RASO.

The Petitioner submitted a printout from RASO's website, indicating that "the procedure for joining RASO" consists of filing an application form, to be considered by the executive committee. The submitted printout does not describe the minimum requirements for admission into membership.

In the denial notice, the Director noted that the Petitioner had not submitted direct documentary evidence of her membership in RASO or the organization's membership requirements.

On appeal, the Petitioner submits a printout from RASO's website. Where a petitioner has had an opportunity to submit required evidence prior to the denial, we will generally not consider new evidence submitted on appeal that the Petitioner could have submitted in response to an RFE.[2] The RFE provided the Petitioner an opportunity to submit further evidence material to her claim of membership in RASO, and identified specific documents. The Petitioner neither submitted the requested documents nor explained their absence. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Furthermore, the Petitioner has not established that the printouts from RASO's website would have materially affected the outcome of the Director's decision. The printout does not mention any requirement for outstanding achievements as a condition of membership. Rather, "the procedure for joining RASO" consists of submitting an application form, "two detailed written recommendations from RASO members who are familiar with [the applicant's] professional experience," and "a 2-minute video message . . . about [the applicant's] professional experience and the goals of joining the Association." The submitted letters from RASO officials do not address this publicly available information from the organization's own website or reconcile that information with their own claims of stricter membership requirements.

---

[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).

[2] *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988) and *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The Petitioner has not met her burden of proof to meet the requirements of 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 Petitioner submitted several articles about a bicycle ride and contest in [redacted] to promote the anniversary of a brand of cream cheese. These articles do not mention the Petitioner, but the Petitioner asserts that the articles are about her work in the field because she organized the event. The regulation, however, requires the published materials to be about the individual. The Petitioner's work in the field of public relations entails getting publicity for events that she is promoting, but that publicity is about the events in question, rather than about the Petitioner relating to her work in the field of PR.

In response to the RFE, the Petitioner submitted printouts of articles about various events organized while she was employed by the city of [redacted] These articles are not about the Petitioner, relating to her work in the field of public relations. Rather, most of the articles are press releases that the Petitioner wrote, or which name her as a contact. One article, about a then-upcoming [redacted] celebration, included a two-sentence quotation from the Petitioner describing the previous year's event.

In the denial notice, the Director stated that some of the articles do not mention the Petitioner's name, and therefore are not about her. Other articles were written by, rather than about, the Petitioner. The Director concluded that the Petitioner's evidence did not satisfy the regulatory requirements.

On appeal, the Petitioner acknowledges that "[s]ome of the published materials . . . do not mention the Beneficiary's name directly," but the Petitioner maintains that the absence of her name "does not necessarily mean that the material is not about the Beneficiary's work." The regulation, however, requires *both* that the published material relate to the Petitioner's work and that it be "about" her. Materials that do not identify the Petitioner do not fully satisfy these requirements.

Also, the Petitioner has not shown that the articles are about the Petitioner's work in the field of PR. The Petitioner contends: "The law does not require that press articles 'cover or discuss in detail' Beneficiary's contributions to her field of endeavor." The regulation requires the published materials to be "about" the Petitioner; a passing mention is not sufficient. According to guidance in the *USCIS Policy Manual*, the Petitioner and her work need not be the only subject of the published material; published material that covers a broader topic but includes a substantial discussion of her work in the field and mentions her in connection to the work may be considered material "about" the Petitioner, relating to her work. *See* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. The submitted materials do not include a substantial discussion of the Petitioner's PR work.

The Petitioner has not met her burden of proof to meet the requirements of 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).

All of the Petitioner's documented employment experience has been in Russia, with her remuneration paid in rubles (₽). A letter from [redacted] indicated that the Petitioner's "monthly income constituted" ₽80,000 in 2017, ₽105,000 in 2018, and ₽142,000 in 2019, plus ₽270,000 in "bonuses for the implementation of customer PR campaigns." The letter did not specify the timing of the bonus payments or itemize the amounts of individual payments. Also, the record does not specify other duties that the Petitioner may have performed for [redacted] in addition to those of a PR specialist, which might have affected the level of her compensation there.

The Petitioner submitted translations of Russian-language online materials to establish a basis for comparison. An article from *Sostav* indicates that "the average PR specialist salary" in [redacted] in June 2018 was ₽45,650 per month. A page from *Trud* indicates that, in 2019, the average monthly salary for a PR manager in [redacted] was ₽66,606. Another chart from *Trud* indicated that the monthly salary in [redacted] was ₽85,816, but the date for that figure is not clear from the translation provided. The Petitioner did not submit full Russian-language printouts, but rather individual graphs and tables with translations of the data within those materials.

In the RFE, the Director requested "independent objective documentary evidence," such as tax returns, to corroborate the salary figures in the letter from [redacted] The Director also requested further evidence to allow a comparison between the Petitioner's earnings and those of others in the field.

Translated invoices show payments from [redacted] to the Petitioner totaling ₽1,320,000 between March 2016 and April 2018.

Invoice	Date	Amount	Annual Total
2	March 17, 2016	₽80,000	
3	April 17, 2016	120,000	₽200,000
6	June 30, 2017	270,000	
7	July 31, 2017	200,000	
8	August 21, 2017	240,000	710,000
1	February 19, 2018	140,000	
2	March 19, 2018	90,000	
3	April 30, 2018	180,000	410,000
Total		₽1,320,000	

The developer of a mobile phone app stated that her company paid [redacted] ₽140,000 per month from March to September 2019, for a total of ₽980,000, to promote the product.

The Petitioner submitted copies of job announcements for PR manager, specialist, and director positions in [redacted] and [redacted] showing monthly salaries ranging from ₽45,000 to ₽120,000.

In the denial notice, the Director noted that the Petitioner had not submitted enough evidence to permit a comparison between the Petitioner's remuneration and that of others in the field.

On appeal, the Petitioner correctly observes that the Director mistook the Petitioner's claimed *monthly* income for *annual* income, and that there is no specific requirement for the Petitioner to submit tax returns. Nevertheless, we agree with the Director's fundamental determination that the submitted evidence is insufficient to meet the regulatory requirements of the criterion.

The Petitioner asserts on appeal that she "submitted copies of sixteen (16) monthly invoices for payments from her customers." We find only eight invoices in the record, along with English translations of those same eight documents.

The annual totals on the submitted invoices, described above, are considerably lower than the annual amounts extrapolated from [redacted] earlier letter: ₱960,000 in 2017 and ₱1,260,000 in 2018. The incomplete sequences of numbers indicate that some invoices were not submitted. The burden of proof is on the Petitioner to fully document her remuneration and account for the difference between the amounts on the receipts and those in [redacted] letter.

The submitted copies of job announcements show monthly salaries, which are of limited value when the record shows that the Petitioner does not receive a monthly salary. The Petitioner describes the invoices as "monthly," but this description implies regularly scheduled payments. The invoices show varying payments at irregular intervals on a per-project basis, with the Petitioner identified as the "Contractor" and [redacted] as the "Customer." The number 1 on the February 2018 invoice suggests that [redacted] did not pay the Petitioner in January 2018.

The Petitioner asserts that the mobile app developer discussed above paid the Petitioner ₱980,000 in "total annual remuneration for her PR services." The record does not document the payments. Therefore, the Petitioner has not established that these payments were made directly to the Petitioner herself, as her own remuneration, instead of fees paid to [redacted], which would have covered a number of expenses in addition to the Petitioner's own remuneration.

There is no specific requirement that the Petitioner submit her income tax returns, but the fragmentary materials that the Petitioner submitted do not establish her total annual compensation for comparison against the submitted salary figures. The invoices show that the Petitioner receives varying rates of pay on a project-by-project basis, but the Petitioner has not provided data for others in the PR field who likewise are paid by project rather than a regular monthly salary.

The submitted documentation provides an incomplete and inconsistent picture of the Petitioner's remuneration, and the comparative figures relate to fixed salaries rather than variable per-project compensation. Therefore, we agree with the Director that the Petitioner has not met her burden of proof to meet the requirements of the criterion.

In light of the above conclusions, 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 criteria, pertaining to original contributions of major significance and leading or critical roles for organizations or

establishments with a distinguished reputation, cannot change the outcome of this appeal. Therefore, we reserve those issues.[3]

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 record indicates that the Petitioner has engaged in successful projects for some high-profile clients, but it does not show that this success has translated into individual recognition for the Petitioner at a level that rises to 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.[4] 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.

[3] *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).

[4] We note that, in response to the RFE, the Petitioner submitted four job offer letters, all dated within days of each other in late September 2020. Three were from local businesses in [redacted], a window-cleaning service, a skin care center, and a jewelry manufacturer. A fourth letter does not identify the company or provide any details about the nature of its business activity. The Petitioner has not established that offers of this kind are of a caliber indicative of sustained national or international acclaim or having reached the very top of the field.